

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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ORLANDO RIVERA

v.

PHILADELPHIA GAS WORKS

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C-2010-2164222

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**COMPLAINANT, ORLANDO RIVERA'S EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE KY VAN NGUYEN'S INITIAL DECISION**

Complainant, Orlando Rivera, by and through his undersigned attorney, Michael I. McDermott, Esquire, hereby submits the following Exceptions to Administrative Law Judge Ky Van Nguyen's Initial Decision and in support thereof states the following:

1. The Administrative Law Judge (hereinafter referred to as "Judge") heard the testimony of four (4) witnesses during the hearing. However, the Judge in his opinion found that the Complainant's testimony alone did not establish enough evidence for the Complainant to meet his burden of proof. First, the Judge's finding that the Complainant's testimony alone is not enough to meet his burden of proof is incorrect. See p. 8 of the Initial Decision. Second, the Judge must consider all evidence produced through both testimony and exhibits to determine whether the Complainant met his burden of proof.

2. The Judge's opinion is not supported by the facts of record. The Complainant did meet his burden of proof.

3. The Judge found that the Complainant did not rebut the Respondent's evidence that the two red caps on the meter were removed. See p. 7 of the Initial Decision. See First their was no evidence that the two red caps were properly replaced on the meter on March 4, 2002 after respondent's service man replaced batteries in the ERT, which necessitated removing the two red caps. Second, the Judge's decision isn't reasoned on this point as the Respondent also shut the gas line off at the curb on March 14, 2002. So whether the meter was tampered with after March 4, 2002 alone is not enough to introduce gas into the building without the valve at the curb being

opened. The Judge's opinion is moot as to this important step in the process and record is without evidence as to how the valve was reopened. The respondent has special tools to open and close the valve at the curb and an ordinary person such as the Complainant wouldn't have such tools available to him.

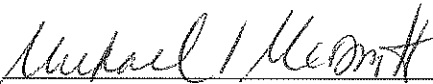
4. The Judge finds in Finding of Fact number 7 that the Complainant had a 250,000 BTU (British Thermal Unit) heater at the night club. The Respondent was unable to introduce any evidence as to what the 250,000 BTU heater was used for and whether it used any gas. This finding of fact by the Judge has no merit to the case and fails to shed any light on the matter.

5. The Judge found that the Complainant failed to arrive at an amount of unauthorized gas use. See p. 7 of the Initial Decision Despite the acknowledgment by the Respondent that they can not prove that any gas was indeed used by the Complainant. According to their own witnesses a representative of the Respondent was suppose to check the property at least once a year to insure the Complainant was not using gas. This procedure was not followed in the instant mater.

6. The Complainant reserves the right to amend the instant exceptions upon receipt and review of the Notes of testimony.

**WHEREFORE**, Complainant requests that the Administrative law Judge's Intitial Decision be vacated and that Complainant's Complaint be reinstated and granted.

Respectfully submitted,

By: 

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