



PHILADELPHIA GAS WORKS

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November 7, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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PA.PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Orlando Rivera v. PGW, Docket No. C - 2010- 2164222

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files an original and nine (9) copies of it's reply to the Complainant's exceptions to the October 7, 2011, Initial Decision in the above captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,


Danielle Ross

Enclosure

cc: Orlando Rivera (Regular Mail)
Michael I. McDermott, Esq. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Orlando Rivera

v.

Philadelphia Gas Works

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:
:
:
:
:

Docket No. C – 2010 – 2164B22

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PHILADELPHIA GAS WORKS'
REPLY TO COMPLAINANT'S EXCEPTIONS

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated October 7, 2011, in the above captioned matter, the Philadelphia Gas Works, ("PGW") hereby files timely, an original and nine (9) copies of its reply to the Complainant's exceptions to the October 7, 2011 Initial Decision (Initial Decision).

I. INTRODUCTION

In this matter, the Complainant alleges that there are wrongful charges for unauthorized usage. The Complainant was a PGW customer of record for gas service at 2938 Kensington Avenue, Philadelphia, PA (Service Address), in which the Complainant operates the "36 Nite Life," a nightclub.¹ On November 9, 2001, the Complainant called PGW to complain about the receipt of estimated bills since October 2000.² PGW attempted to schedule a visit to the Service Address on November 26, 2001 and January 31, 2002.³ On February 26, 2002, PGW informed the Complainant that it would visit the Service address on March 4, 2002 to change the batteries in the Encoder Receiver Transmitter (ERT), which supports the meter's automatic meter reading device (AMR).⁴ PGW terminated the Complainant's gas service for nonpayment on March 14 2002 by shutting off service at the curb valve.⁵ PGW found that the Complainant had a 250 BTU heater at the Service Address.⁶

PGW visited the Service Address on September 28, 2006 and found that the red caps securing the meter were removed, indicating that there had been meter tampering. Also a PGW employee took photos of the meter located inside the Service Address and

¹ Tr. pp. 7, 9

² PGW Exhibit – 1

³ PGW Exhibit – 1

⁴ Tr. p 54, PGW Exhibit 1

⁵ Tr. 32.37 PGW Ex. 2

found that the ERT head was loosely attached to the meter and that the red caps were missing.⁷ Further, PGW found that the gas service had been turned on at the curb valve and that the fuel lines leading to the gas appliances smelled from gas recently used. PGW removed the meter and locked the gas service with plugs and a wing lock. As to the curb valve, PGW placed an expander lock on the curb valve box. Thereafter, PGW billed the Complainant \$13,854.89 for the unauthorized usage for the period from March 2002 through September 2006. The Complainant filed

On March 9, 2010, the Complainant filed a complaint with the Commission to which PGW filed a timely answer on April 5, 2010. On April 25, 2011, the Commission held a hearing

On October 7, 2011, the Commission issued the Initial Decision, dismissing the Complaint and ordering that PGW shall recalculate the charged for estimated unmetered, unauthorized usage for the period between March 2002 and September 2006.

On October 27, 2011, the Complainant filed exceptions to the Initial Decision. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

Exceptions 1 and 2: (Summarized)

The Administrative Law Judge (ALJ) erred in finding that the Complainant failed to meet his burden of proof and that the ALJ did not consider all of the evidence.

PGW's Reply

The Complainant's exceptions fail to point to any real error in fact or law contained in the Initial Decision. The Commission should deny the Complainant's exception because the Complainant has failed to meet his burden of proof. To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PGW is responsible or accountable for the problem described in the Complaint.⁸ Such a showing must be by a preponderance of the evidence.⁹ Any finding of fact necessary to

⁶ Tr. 47,58 and 59

⁷ Tr. 78 – 82; PGW Exhibits 5 and 7

⁸ *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein*, 50 Pa. PUC 300 (1976)

⁹ *Samuel J. Lansbery, Inc. v. Pa. Public Utility Comm'n*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992).

support the Commission's adjudication must be based upon substantial evidence.¹⁰ More is required than a mere trace of evidence of a suspicion of the existence of a fact sought to be established.¹¹

In this matter, the record evidence of clearly supports Findings of Fact 5 through 10, the finding of unauthorized usage. After the gas service had been terminated for nonpayment in March 2002, in September 2006, the PGW employee at the Service Address observed that the red caps on the meter were removed, that the ERT was loosely attached to the meter, the curb valve was in the "on" position and that the fuel line leading to the gas appliances smelled from gas.

Exception 3 (Summarized)

There was no evidence that the red caps were properly replaced in March 2002. PGW has special tools to open and close the curb valve.

PGW's Reply

As the Complainant's burden is to show that by a preponderance of the evidence, PGW is responsible or accountable for the problem described in the Complaint. In Exception No. 3, the Complainant argues as if the Complainant did not have such a burden. The Complainant did not refute the evidence about the tampering with PGW's metering equipment and that the gas service was terminated at the curb in March 2002.

Exception 4 and 5 (Summarized)

Finding of Fact No. 7 – the Complainant's 250,000 BTU heater has no merit to the case. The amount of unauthorized usage is uncertain

PGW's Reply

The presence of the Complainant's 250,000 BTU heater has merit in this case; it provides evidence of a type of consumption of the unauthorized usage. Because of the tampering with the metering apparatus, PGW loses its ability to accurately state, by

¹⁰ Mill v. Commw., PA Public Utility Comm'n, 67 PA Commw. 597, 447 A.2d 6 (1993); 2 Pa.C.S. § 704.

¹¹ Norfolk and Western Ry. v. PA. Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review, 194 Pa. Super. 278, 16 A.2d 96 (1960); Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

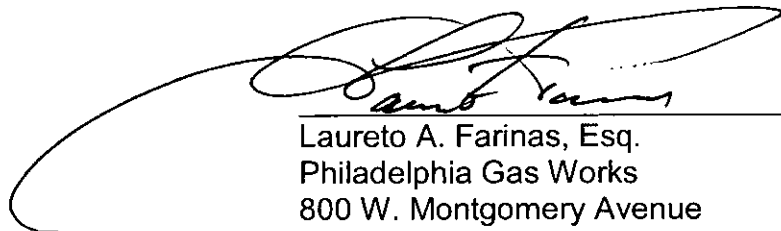
metered measurement, how much unauthorized usage occurred. PGW must rely upon an estimate based upon the length of time and the gas consuming appliances at the Service Address. PGW agrees with the Initial Decision, Ordering Paragraph 2 and will recalculate the charges for estimated unmetered usage for the period between March 14, 2002 and September 14, 2002 to be charged to the Complainant.

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant's exceptions to the Initial Decision and dismiss the Complaint.

Respectfully submitted,

November 7, 2011



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

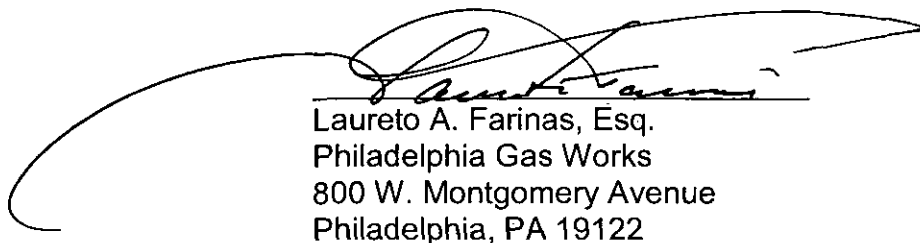
Service List:

For Complainant:

Michael I. McDermott, Esq.
1026 Winter Street, Suite 200
Philadelphia, PA 19107

Orlando Rivera
2938 Kensington Avenue
Philadelphia, PA 19143

November 7, 2011


Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

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SECRETARY'S BUREAU**

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