



PHILADELPHIA GAS WORKS

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November 18, 2011

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

Re: Roy Winston v. PGW, Docket No. C – 2010 – 2181504

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.102, the Philadelphia Gas Works ("PGW") hereby files the original Motion to Dismiss 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,

A handwritten signature in blue ink that reads "Danielle Ross".

Danielle Ross

Enclosure

cc: Roy Winston (Regular Mail)
Administrative Law Judge Angela Jones (email)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roy Winston

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2181504

NOTICE TO PLEAD

To: Roy Winston/ Estate of Roy Winston:

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Motion to Dismiss within twenty (20) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

November 18, 2011



Laureto Farinas, Esquire
Attorney I.D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Roy Winston

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2181504

**Philadelphia Gas Works’
Motion to Dismiss Formal Complaint**

Pursuant to 52 Pa. Code §5.102, the Philadelphia Gas Works (“PGW”) hereby files this Motion to Dismiss the above captioned matter at substance of this matter had been dismissed by this Commission in *Roy Winston v. Philadelphia Gas Works*, Docket No. F-2010-2171931, the Final Order entered July 26, 2011. In support of its motion, PGW avers the following:

1. On April 2, 2010, the Complainant, Roy Winston filed a formal complaint with the Commission against PGW under Docket No. F-2010-2171931, appealing an unfavorable decision of the Commission’s Bureau of Consumer Service. The matter complained of concerned the rebilling of the Complainant’s account at 3029 Germantown Avenue, Philadelphia, Pennsylvania (Service Address). PGW ought to have classified and billed the Complainant’s PGW account at a commercial rate.
2. PGW timely answered the Complaint, averring that in addition to being the Complainant’s residence, the Complainant uses the Service Address as a pool hall and a grocery store on the first floor. The Complainant’s account and gas appliances serve all floors of the Service Address. The Complainant’s account was enrolled in PGW’s low-income Customer Responsibly Program (CRP) erroneously. PGW recalculate the charges on the account at the applicable commercial rate (and not that of CRP) such that an outstanding balance as of May 2010 was \$7,551.61.
3. On June 1, 2010, the Complainant, Roy Winston, filed a second Complaint with the Commission against PGW at Docket No. C-2010-2181504, the instant matter. In the second Complaint, the Complainant essentially disputes PGW’s rebilling of the Complainant’s account for gas service at the Service Address after having reclassified it as a commercial account.

4. On June 21, 2010, PGW timely filed an answer to that Complainant, indicating that PGW rebilled the Complainant's account because, in addition to being the Complainant's residence, the Complainant uses the Service Address as a pool hall and a grocery store on the first floor and that the Complainant's account was enrolled in CRP, erroneously. PGW recalculated the charges on the account at the applicable commercial rate (and not that of CRP) such that the outstanding balance as of Amy 2010 was \$7,551.61.
5. By notice dated April 6, 2011, the Commission scheduled an Initial hearing in Docket No. F-2010-2171931, for May 20, 2011, before Administrative Law Judge (ALJ) Angela T. Jones, which was later changed to a telephonic hearing.
6. On April 7, 2011, PGW filed a motion to consolidate the matter under Docket Nos. F-2010-2171931 and C-2010-2181504.
7. The Commission had not acted upon PGW's motion to consolidate the matters.
8. At the hearing of May 20, 2011, ALJ Jones presided over the telephonic hearing of this matter. PGW appeared at the hearing with one potential witness. The Complainant failed to appear. PGW moved to dismiss that matter for lack of prosecution.
9. At the hearing on May 20, 2011, ALJ Jones and PGW noted that they obtained information indicating that the Complainant is deceased.
10. By notice dated May 27, 2011, the Commission scheduled an Initial Hearing in the instant matter, under Docket No. C-2010-2181504, for July 1, 2011, before ALJ Angela T. Jones.
11. On June 16, 2011, the Commission issued an Initial Decision dismissed the first Complaint under Docket No. F-2010-2171931, for lack of prosecution. That Initial Decision noted that the Prehearing Order, which was dated/mailed April 7, 2011, was returned to the Commission indicated that the Complainant as deceased.
12. On June 22, 2011, PGW requested a continuance of the hearing scheduled for July 1, 2011, as PGW anticipated that neither the Complainant's representative not representative of the Complainant's estate would appear.
13. The hearing scheduled for July 1, 2011 was continued.

14. PGW is neither aware of, nor has had contacted with the Complainant's family or successor in interest in the Complainant's affairs.

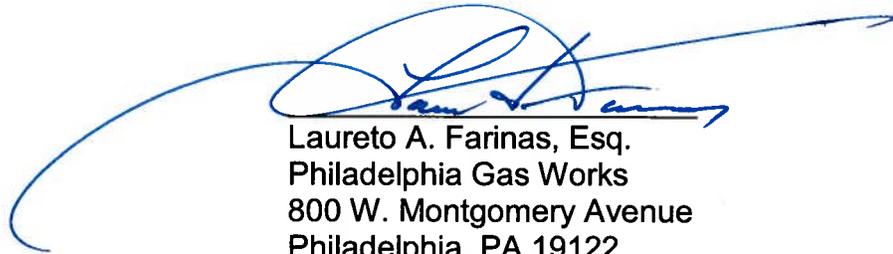
15. On July 26, 2011, the Commission issued its Final Order in *Roy Winston v. PGW*, Docket No. F-2010-2171931, dismissing that complaint for lack of prosecution.

16. The Complainant's family and the Complainant's successor in interest in the Complainant's affairs should be barred from pursuing this matter on the principal of *res judicata*, as the facts of this matter have been dismissed with prejudice for failure to prosecute by this Commission order of July 26, 2011 under Docket No. F-2010-2171931.

Wherefore, PGW respectfully requests that this Commission dismiss the matter of *Roy Winston v. Philadelphia Gas Works*, Docket No. C-2010-2181504.

Respectfully submitted,

November 18, 2011



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
215-684-6982

VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel to the Philadelphia Gas Works; and that as such, I am authorized to make this verification on its behalf, that the facts set forth in the foregoing motion are true to the best of my knowledge, information and belief, and that I expect to be able to prove these at a hearing held in this matter. I make this verification subject to the penalties of 18. Pa. C.S. §4904, pertaining to false statements to authorities.

November 18, 2011



Laureto Farinas

CERTIFICATE OF SERVICE

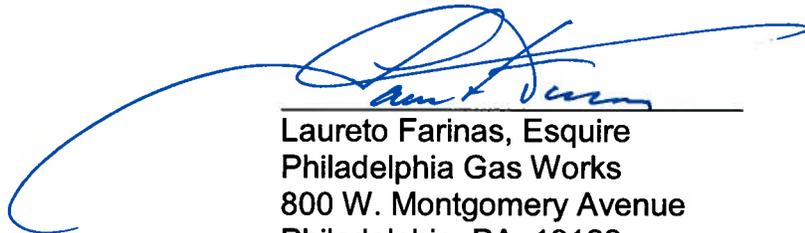
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Roy Winston
3029 Germantown Avenue
Philadelphia, PA 19133

November 18, 2011



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982