

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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ORLANDO RIVERA

v.

PHILADELPHIA GAS WORKS

C-2010-2164222

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

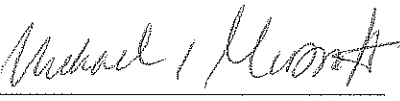
Complainant, Orlando Rivera, by and through his undersigned attorney, Michael I. McDermott, Esquire, hereby submits the following Exceptions to Administrative Law Judge Ky Van Nguyen's Initial Decision on Remand and in support thereof states the following:

1. The Judge's opinion on remand is not supported by the facts of record. The Complainant did meet his burden of proof
3. The Judge incorrectly found that the Respondent offered sufficient evidence to meet its burden despite the fact that the very same witness, Wendy Vacca and evidence was offered at the remand hearing.
3. The judge requested further information via correspondence dated May 14, 2012 requesting the average degree days for 2002, 2003, 2004, 2005 and 2006 and to indicate that the data published by the national oceanic and Atmospheric Administration (NOAA) is scientifically reliable and reasonably available to the public. A copy of the correspondence is attached hereto as Exhibit "A".
4. The respondent forwarded information on May 22, 2012, a copy of which is attached hereto as Exhibit "B".
5. The May 22, 2012 response fails to set forth the degree days either by date and/or the amount of days for each year. The Judge's opinion is not based on any reasonable calculation based on the evidence.

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 Initial Decision on Remand be vacated and that Complainant's Complaint be reinstated and granted.

Respectfully submitted,

By: 

Michael I. McDermott, Esquire

ID No. 52917

1026 Winter Street

Suite 200

Philadelphia, PA 19107

(215) 925-9732

Attorney for Complainant, Orlando Rivera

DATE: 07/25/2012

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CERTIFICATE OF  
SERVICE

I, Michael I. McDermott, Esq., hereby certify that on this date, I served by electronic filing United States Mail, first class, postage prepaid, a true and correct copy of the foregoing Exceptions to Administrative Law Judge Ky Van Nguyen's Initial Decision on Remand upon the following:

The Honorable Ky Van Nguyen  
Administrative  
Judge 1400 Spring  
Garden Philadelphia,  
PA 19130

Secretary of the  
Commission, Office of the  
Special Assistant  
2<sup>nd</sup> Floor Keystone Building  
400 North Street Harrisburg, PA 17120

Secretary of the  
Commission, Office of the  
Special Assistant  
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Orlando Rivera

Date: 07/25/2012

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**VERIFICATION**

The undersigned hereby states that the statements made in the foregoing Plaintiff, on remand Orlando Rivera's Exceptions to Administrative Law Judge Ky Van Nguyen's Initial Decision Pursuant to 52 Pa. Section 5.533 and 5.535 are true and correct to my best knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

  
Michael I. McDermott, Esquire,  
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Attorney for Complainant,  
Orlando Rivera

Date: 07/25/2012