



PHILADELPHIA GAS WORKS

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August 6, 2012

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

Re: Robyn Irving v. PGW, Docket No. C- 2011- 2279259

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of it's reply to the Complainant's exceptions to the June 8, 2012, 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: Robyn Irving (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robyn Irving	:	
	:	
v.	:	Docket No. C – 2011 – 2279259
	:	
Philadelphia Gas Works	:	

**PHILADELPHIA GAS WORKS REPLY TO
COMPLAINANT’S EXCEPTIONS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated June 21, 2012 in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files an original and nine (9) copies of its reply to the Complainant’s exceptions to the Initial Decision issued June 8, 2012, in the above captioned matter (Initial Decision).

I. INTRODUCTION

On December 6, 2011, the Complainant filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PGW. The Complainant alleged that in June 2011, the Respondent came to her home to change her meter because there was a strong gas odor in her basement. She received a bill for previously unbilled service of \$12,169 within 30 days after the meter change, which she disputes. After she disputed the bill, PGW sent to her findings on the dispute PGW explained that the bill for previously unbilled service was correctly rendered. The meter transmitter device was set incorrectly in the 1990s. PGW had only issued that bill for the most recent four years of usage. PGW adjusted the bill by based upon the usage for the most recent four years and required her to pay \$3,700. She asked that the Commission look into this billing practice, and that she should not pay for the PGW’s mistake.

PGW filed an answer to the complaint dated January 10, 2012. It stated that it did not install the wrong meter at the Complainant’s residence, but that the original Automatic Meter Reading device (AMR) was programmed incorrectly and only transmitted half of the gas passing through it. PGW averred that it had provided the Complainant a credit adjustment of \$7,727.06, reducing the amount of the bill to \$3,700.

On April 12, 2012, at 10:00 a.m., a hearing was held. The Complainant proceeded unrepresented. She and her son were at the hearing and introduced no exhibits. PGW presented the testimony of one witness and introduced five exhibits. All the exhibits were admitted into the record. The record was closed on April 12, 2012.

On June 8, 2012, the Commission issued the Initial Decision, dismissing the Complainant, finding that the Complainant had failed to sustain her burden of proof to show that she did not have the responsibility to pay for the bill for previously unbilled service. The Initial Decision ordered that the Complainant will pay the balance owed to PGW (\$3,575.43) in a payment agreement consisting of the current bill plus \$74.48 toward the outstanding balance until paid in full (48 months).

Pursuant to the Secretary's letter dated June 21, 2012, the date set for filing exceptions was July 16, 2012 and the date for reply exceptions is August 6, 2012.

By letter post-marked July 16, 2012, the Complainant served its exceptions to the Initial Decision upon PGW. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainants' exceptions fail to address any error in fact or law contained in the Initial Decision refuting the conclusion that the Complainant had failed to meet her burden of proof. The exceptions also fail to show that the Initial Decision is not supported by substantial evidence. Further, the Initial Decision states that based upon the evidence of record, PGW's explanation of the mechanical functioning of the encoder receiver transmitter device (ERT) on the automatic meter reader (AMR) is reasonable.¹ Section 332(a) of the Public Utility Code at 66 Pa. C.S. §332(a), provides that the party seeking a rule or order from the Commission, has the burden of proof in that proceeding. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible.²

¹ Initial Decision, p. 7, and Findings of Fact Paragraphs 6 through 12.

² Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Cmwlth.1990)

Exception Paragraphs Relating to Discernible Presence of Gas Leak

Record evidence supports the Initial Decision Findings of Fact, Paragraph 5. PGW's testimony and PGW Exhibit 1 clearly state the reason for PGW to visit the Complainant's residence on June 16, 2011. The finding that PGW visited the Complainant's residence and detected the presence of a gas leak is supported by substantial evidence. Therefore, the exception should be denied.

Exception Paragraphs Relating to the Functioning of the ERT

The Complainant takes exception to Findings of Fact Paragraphs 10 and 11 relating the functioning of the ERT and the finding that the Complainant owed PGW \$3,575.43 for unbilled service between July 31, 2007 and July 28, 2011.³

PGW admitted that the ERT was not transmitting all of the Complainant's usage, which caused PGW to issue a bill for the previously unbilled usage. PGW is permitted to re-bill an account pursuant to the Pennsylvania Public Utility Code at 52 Pa. Code §56.12 (5)(ii), which states that a public utility may render a make up bill when the actual meter reading establishes that the customer was under-billed due to an error in the registration of the remote reading device. This is also supported and by decision of the Commission in cases including *Angie's Bar v. Duquesne Light Company*, C-81881, Pennsylvania Public Utility Commission, 1990 Pa. PUC LEXIS 4; 72 Pa. PUC 213, March 27, 1990 and *Roderick Berry v. Philadelphia Gas Works*, F-01184412, Pennsylvania Public Utility Commission, 2004 Pa. PUC LEXIS 27, April 15, 2004, Entered.

In *Roderick Berry v. Philadelphia Gas Works*, the Commission elaborated on its use of the Code 66 Pa. C.S. §3314(a) to set a limit on the recoupment for funds when a utility fails to bill a customer for a period.

In that case, the Commission stated that,

We also must address the appropriate period for the make-up bill, if any is found to be warranted. The ALJ found that pursuant to Section 3314(a) of the Code, 66 Pa. C.S. § 3314(a), the Commission's statute of limitations is three (3) years from the date at which liability arose. (I.D. at 5). However, that is not the proper time

³ Initial Decision, p. 4, Finding of Fact Paragraph 12

frame for make-up billing. In *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213, 1990 Pa. LEXUS 4 (1990), (*Angie's Bar*) we stated the following on the issue of make-up billing generally:

Section 1312 of the Public Utility Code permits ratepayers to seek rate refunds when certain findings are made, up to a four-year past period measured from the date that the improper billing was discovered. Parity and equity warrant that a utility should likewise be limited to a four-year past period for recoupment of under billings. . . . *Accordingly, we shall limit backbillings to a four-year period in cases where the customer has no culpability*, and as such, Duquesne, in this proceeding, is permitted to backbill the Complainant for estimated unmetered usage for the period of April 10, 1982 to May 28, 1986.

Prior Commission decisions provide for a four year period for make-up bills where the customer has not been involved with theft of service or other culpable acts leading to the under billing.

Roderick Berry v. Philadelphia Gas Works, F-01184412, Pennsylvania Public Utility Commission, 2004 Pa. PUC LEXIS 27, April 15, 2004, Entered

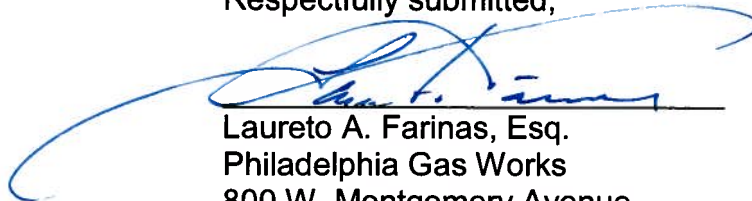
In the instant case, the Complainant received a bill for previously unbilled services after the actual meter reading established that the customer was under-billed due to an error in the registration of the remote reading device.

III. CONCLUSION

For the reasons stated above, the PGW requests that the Commission deny the Complainant's exceptions to the Initial Decision and adopt the Initial Decision issued June 8, 2012 in this matter.

August 6, 2012

Respectfully submitted,



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

CERTIFICATE OF SERVICE

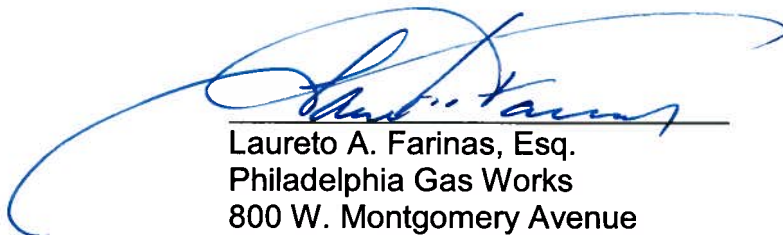
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Ms. Robyn Irving
3960 Pulaski Avenue
Philadelphia, PA 19140

August 6, 2012



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