



**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: 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 the original of it's reply to the Complainant's exceptions to the July 5, 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: Orlando Rivera (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Orlando Rivera</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2010 – 2164222</b>
	:	
<b>Philadelphia Gas Works</b>	:	

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

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter July 5, 2012, covering the Initial Decision 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 July 5, 2012 (Initial Decision).

**I. INTRODUCTION**

On March 9, 2010, the Complainant filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PGW. The Complainant alleged that the PGW had overbilled him because the gas service to his commercial address was shut off in 2002, but that he received in 2010 some \$13,000 in gas bills. He asked that the Commission investigate the Respondent’s practice.

On April 5, 2010, PGW filed its answer to the complaint. PGW’s Answer averred that the Complainant’s service was shut off on March 14, 2002. On September 28, 2006, PGW found a meter-tampered by-pass at the Complainant’s business address, and that his bill for this unauthorized use between March 14, 2002 and September 28, 2006 was correct.

The Commission scheduled a hearing on the complaint for April 25, 2011. On April 19, 2011, counsel for the Complainant, Michael I. McDermott, Esquire, filed with the Commission a Motion requesting a continuance of this hearing because he had a scheduling conflict on the date of the hearing. That request of a continuance was granted. On June 10, 2011, another hearing was scheduled. The Complainant presented the testimony of one witness and introduced one exhibit.

At the hearing, PGW presented the testimony of three witnesses and introduced seven (7) exhibits. All were admitted into the record.

On August 5, 2011, an Initial Decision was issued which dismissed the Complainant's complaint because he failed to carry his burden of proof and required PGW to recalculate the charges for the estimated unmetered use for the period between March 14, 2002 and September 28, 2006. The Complainant filed Exceptions to the Initial Decision on October 31, 2011, and PGW filed Replies to the Exceptions on November 7, 2011.

By Order entered on January 12, 2012, the Commission directed that the matter be remanded for the limited purpose of further developing the record to determine (a) the amount of gas consumption, and (b) the methodology used to calculate the charges for the unbilled gas consumption over the billing period in question.<sup>1</sup>

On April 30, 2012, a hearing on remand was held. At the hearing, PGW presented the testimony of one witness, Wendy Vacca, a witness at the June 10, 2011 hearing, and introduced one exhibit, PGW Exhibit 8, which was admitted into the record.

At the April 30, 2012 hearing, on cross-examination, the PGW witness stated that she would obtain the degree-days for the billing period between March 14, 2002 and December 31, 2006. (N.T. 19, 27, 28) The presiding Administrative Law Judge (ALJ) asked PGW to submit the average degree-days for 2002, 2003, 2004, 2005, and 2006. Further, the ALJ also asked PGW how its witness arrived at each number specified on page 3 of PGW Exhibit 8. On May 22, 2012, PGW responded to the ALJ's request. These responses will be marked as PGW Exhibit 9 and admitted into the record. The record was closed on June 14, 2012.

On July 5, 2012, the Commission issued the Initial Decision on Remand, dismissing the Complaint, ordering that the Complainant is responsible for the charge of \$13,832.29 for unauthorized usage for the period between March 14, 2002 through September 28, 2006, and finding that PGW is permitted to backbill the Complainant for estimated unmetered gas use for that period.<sup>2</sup>

On July 25, 2012, the Complainant filed Exceptions. Pursuant to 52 Pa. Code

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<sup>1</sup> *Rivera v. PGW*, C-20109-2164222, Order of January 12, 2012, Ordering Paragraph 4.

§5.535, and the Secretary's letter July 5, 2012, covering the Initial Decision in the above captioned matter, 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. 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.<sup>3</sup>

The Complainant's exception document states that PGW Exhibit 8, upon which the Initial Decision on remand is based is unsupported by the evidence, as it is not based upon any reasonable calculation.

The Initial Decision states that based upon the evidence of record, PGW's explanation of the calculation of the bill and the Degree-day information contained in PGW Exhibit 8 is reliable as the National Oceanic and Atmospheric Administration is a Federal governmental agency.

Pursuant to 52 Pa. Code §5.406(a)(2), a report, decision opinion or other document or part thereof, need not be produced or marked for identification but may be offered into evidence as a public document. The Initial Decision p. 3, Findings of Fact, Paragraphs 3 through 6 demonstrate the use of the weather information in the calculation of the bill. PGW's witness provided a complete and credible explanation of the method used in arriving at the bill issued to the Complainant.

Finally, the Initial Decision provides a step-by-step calculation of how PGW arrived at the bill with each step supported by the evidence of record.

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<sup>2</sup> Initial Decision, p. 8

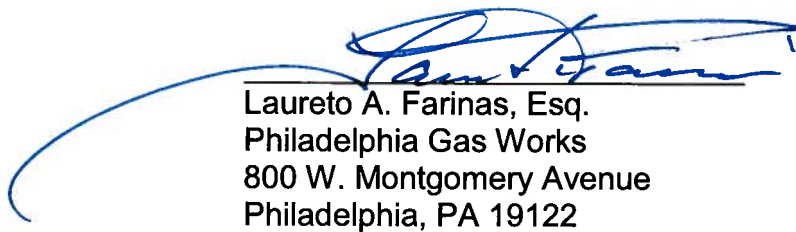
<sup>3</sup> Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Cmwlth.1990)

**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 July 5, 2012.

Respectfully submitted,

August 6, 2012



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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:

Michael I. McDermott, Esq.  
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August 6, 2012



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