



PHILADELPHIA GAS WORKS

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August 13, 2012

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

Re: Delores Asencio v. PGW, Docket No. C – 2011 – 2251832

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original and nine (9) copies of its Exceptions to the Initial Decision issued July 6, 2012, 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,

A handwritten signature in cursive script that reads 'Danielle Ross'.

Danielle Ross

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

Enclosure

cc: Ms. Delores Asencio (Fed Ex and Regular Mail)
Mr. Troy Edwards (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delores Asencio

v.

Philadelphia Gas Works

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:
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Docket No. C – 2011 – 2251832

**PHILADELPHIA GAS WORKS'
EXCEPTIONS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.535, and the Secretary's letters dated July 17, 2012 in the above captioned matter, the Philadelphia Gas Works, (PGW) hereby timely files an original and nine (9) copies of its exceptions to the Initial Decision issued July 6, 2012, in the above captioned matter (Initial Decision).

I. Introduction

On May 16, 2011, the Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PGW at Docket Number above alleging that when she attempted to sell property that she inherited from her mother, 4812 Greene Street, Philadelphia, Pennsylvania (Service Address). The Complaint states that the Complainant was informed that a lien had been placed on the Service Address for unpaid utility service for more than \$23,000.00. The Complaint states that the Complainant did not understand how the gas balance became so high. The Complaint averred that there might have been squatters at the property.¹ The account at the property was in a family member's name (Ovideo Asencio) even though the Complainant's father, Ovideo Asencio, had not been alive since 1969. The Complainant requested claimed that the high outstanding bill is fraudulent and that she should not be responsible for the bill.²

On August 4, 2011, PGW filed an Answer to the Complaint. PGW admitted that there is an outstanding balance at the Service Address of \$23,055.08. PGW denied the allegation regarding squatters living at the Service Address due to lack of information.

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¹ Complaint

² Id. at Paragraph 4

PGW requested that the Commission dismiss the Complaint.³ On that same day, PGW filed Preliminary Objections, with a Notice to Plead, averring that the Commission has repeatedly recognized its lack of subject matter jurisdiction in cases involving a dispute over a lien placed on a property. The City of Philadelphia, as owner of PGW, may file a municipal lien upon a property for the unpaid debt for gas service on the account of the customer or record, pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq. (Municipal Lien Act). Under the Municipal Lien Act, the City of Philadelphia as owner of PGW has the right to collect on municipal claims owed to PGW for gas service to a Service Address.⁴ PGW further averred that since the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, the Complainant's request for relief is "impertinent matter" and should be stricken from the Complaint. PGW requested that the Commission dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.⁵

On September 14, 2011, the Commission issued an order granting in part and denying in part the Preliminary Objections. That order found that PGW is correct that the Commission does not have jurisdiction over municipal liens and sustained PGW's Preliminary Objections with regard to any claims regarding the validity or the amount of the lien. The order denied the Preliminary Objections in part, noting that the Complaint is not limited to the lien placed on the Complainant's property. The Complaint stated claims that directly addressed PGW's ability to "furnish and maintain adequate, efficient, safe and reasonable service" as is required of all public utilities pursuant to Section 1501 of the Public Utility Code. 66 Pa. C.S.A. §1501.

By notice issued October 20, 2011, the Commission scheduled an Initial Telephonic Hearing for this matter for Friday, January 6, 2012. During the January 6, 2012 hearing, PGW was represented by counsel. The Complainant did not appear although the Complainant's husband appeared, stating that the Complainant was

³ Answer

⁴ PGW's Preliminary Objections

⁵ Id.

incarcerated and would not be able to participate in the hearing. Following a discussion of the matter, the parties agreed to postpone the hearing April 2012.⁶

The Commission scheduled a Further Telephonic Hearing for April 24, 2012. The Complainant appeared by telephone *pro se* and provided oral testimony only. PGW presented one witness who sponsored ten exhibits that were admitted into the record.

On July 6, 2012, the Commission issued the Initial decision sustaining in part and denying in part the Complaint. The Initial Decision, *inter alia*, reduced the amount of the bill underlying the municipal lien to \$3,702.97, representing the balance of the account on August 15, 2001 when PGW first attempted to stop the flow of gas to the Service Address.⁷

By letter dated July 12, 2012, PGW requested an extension in time in which to file exceptions as counsel for PGW had a previously scheduled vacation out of the country. By letter dated July 17, 2012, the Secretary set the new date in which to file exceptions for August 13, 2012. Pursuant to the Secretary's letter, this timely reply follows.

II. PGW'S Exceptions

The Initial Decision contains errors of law and is unsupported by substantial evidence in sustaining the Complaint in part, and finding that PGW failed to effectively stop the flow of gas at the Service Address, necessitating the reduction the bill underlying the lien from \$23,055.08 to \$3,702.97.

1. PGW takes exception to the conclusion that the Initial Decision finds it irrelevant that PGW argues does not ask the Complainant repay the amount for gas service that was the lien amount.⁸
2. PGW takes exception to the conclusion that PGW violated the Public Utility Code §1501 in its provision of service by failing to effectively stop the flow of gas service at the Service Address and allowing the outstanding balance on the account to become so high.⁹

⁶ Initial Decision, p. 3

⁷ Initial Decision, p. 3

⁸ Initial Decision, p. 16

⁹ Initial Decision, p. 16

3. PGW takes exception to the reduction of amount owed for gas service at the property to \$3,702.97, at this reduction is not supported by substantial evidence.¹⁰

III. PGW'S Exceptions With Supporting Reasons

1. PGW takes exception to the conclusion in the Initial Decision that it is irrelevant that PGW argues that its does not ask the Complainant repay the amount for gas service that became the amount of the Municipal Lien.¹¹
 - A. The fact that PGW has not transferred the disputed balance into an account in name of the Complainant is relevant to the disposition of this matter. The Complainant lacks standing to challenge the accuracy of the balance of the account that underlies the Municipal Lien.

In reviewing the Complainant's challenge to the accuracy of the balance of the account that underlies the Municipal Lien, the Initial Decision finds that PGW's collection/termination efforts in this matter were unreasonable. The Initial Decision fashions a remedy by reducing the balance underlying the Municipal Lien from \$23,055.08 to \$3,702.97, \$3,702.97, representing the balance of the account on August 15, 2001, when PGW first attempted to stop the flow of gas to the Service Address (terminate gas service). In this way, the Initial Decision attempts to limit the balance of the account and responsibility for payment as if the correct liability of payment from the customer of record should have stopped in August 2001.

The Initial Decision ignores several fundamental aspects of the Complainant's relationship to the PGW account and to the Service Address.

The account from upon which the Municipal Lien is based was established in the name of the Complainant's family member (presumably the Complainant's father) at some time earlier than December 1999.¹² PGW had issued bills for gas service up to May 2005.¹³ During the course of that account, PGW received some payment and conducted collection activity, providing notices including the termination of service from

¹⁰ Initial Decision, Ordering Paragraph 3

¹¹ Initial Decision, p. 16

¹² PGW Exhibit 1, p. 1 of 8

¹³ PGW Exhibit 1, p. 6 of 8

the curb box and requests for access.¹⁴ PGW issued the last bill for gas usage in May 2005 after gaining access to the Service Address and terminating service. The outstanding balance of that account as of September 26, 2005 was \$22,929.38.¹⁵ This represented the final bill of the account. PGW gave the outstanding balance "Write Off" status, enabling PGW to refer the amount for the filing of a Municipal Lien.¹⁶ Had the occupant/resident who had been receiving service under this account disputed the amounts of the bills or the termination of service that person could have filed a dispute with the Commission.

The Complainant's mother, Shirley Asencio, was the owner of the Service Address from the beginning of the Ovideo Asencio account up to the termination of service to that account in May 2005.¹⁷ The final bill for that account and PGW's designation for Municipal Lien treatment of the final bill of that account occurred by September 2005. The Complainant did not become the owner of the Service Address until September 2009.¹⁸ The PGW account of Ovideo Asencio and the unpaid debt from that account that underlies Municipal Lien are not the Complainant's personal responsibility.

The Complainant had no connection to the account or to the Service Address at the time of the accumulation of the disputed balance or the Municipal Lien treatment of the final bill of that account. As such, the Complainant cannot challenge the accuracy of the account balance underlying the Municipal Lien. The Pennsylvania Supreme Court has held that a utility's statutory duty to provide reasonable service under Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, does not extend to its customer's landlord.¹⁹

In this case, the Initial Decision attributes "standing" status upon the Complainant with the expectation that the statutory duty to provide reasonable service under Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, extends to its customer's landlord/owner of the Service Address at the time that service is rendered, but also that duty extends to future owners of the Service Address. The Complainant did not own the Service Address until four years after the account, which is the subject of this matter,

¹⁴ Tr. pp. 28 – 30

¹⁵ PGW Exhibit 1, p. 6 of 8

¹⁶ PGW Exhibit 1, p. 6 of 8

¹⁷ PGW Exhibits 9 and 10

¹⁸ PGW Exhibits 9 and 10

¹⁹ *Rohrbaugh v. Pa. PUC*, 556 Pa. 199, 727 A.2d 1080 (1999)

became final.

In *Faye Payne v. Philadelphia Gas Works*, Docket No. C-2011-2247124 (Order entered February 16, 2012), the Commission stated that, to the extent that the Complainant was challenging the accuracy of the bills issued to her tenants, the Complainant's Exceptions were viewed as a collateral attack on the authority of the City to collect unpaid gas bills by filing liens.²⁰ The Commission further stated that the Complainant was not in a position to challenge the bills that were issued to her former tenants.²¹

- B. The time to challenge the accuracy of the balance of the account that underlies the Municipal Lien has passed and is beyond the Commission's statute of limitations for filing a complaint.

As stated above the final bill for that account and PGW's designation for Municipal Lien treatment of the final bill of that account occurred by September 2005. The fact that the account remained in the name of the customer of record and not transferred to an account under the Complainant's name is relevant to the disposition of this matter. 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. If the customer of record (or his estate), or the record owner of the Service Address (in the case of squatters) challenged the final balance of the account within three years of the issue of the final bill on the Ovideo Asencio account, the accuracy of the balance and PGW's collection efforts on the account would have been reviewed by the Commission. No party filed such a complaint.

The Commission should reverse the Initial Decision in that it allows the Complainant to dispute a final bill that was issued in September 2005, where the Complainant was not the customer of record, did not own the Service Address as of September 2005 and did not file a formal complaint until May 2011.

²⁰ *Faye Payne v. Philadelphia Gas Works*, Docket No. C-2011-2247124 (Order entered February 16, 2012) at p. 9

²¹ *Id.* at p. 10

2. PGW takes exception to the conclusion that PGW violated the Public Utility Code §1501 in its provision of service by failing to effectively stop the flow of gas service at the Service Address and allowing the outstanding balance on the account to become so high.²²
3. PGW takes exception to the reduction of amount owed for gas service at the property to \$3,702.97, as this reduction is not supported by substantial evidence.²³
 - A. The Initial Decision is not supported by substantial evidence.

In reviewing the Complainant's challenge to the accuracy of the balance of the account that underlies the Municipal Lien, the Initial Decision finds that PGW's collection/termination efforts in this matter were unreasonable. The Initial Decision fashions a remedy by reducing the balance underlying the Municipal Lien from \$23,055.08 to \$3,702.97, \$3,702.97, representing the balance of the account on August 15, 2001, when PGW first attempted to stop the flow of gas to the Service Address (terminate gas service). In this way, the Initial Decision attempts to limit the balance of the account and responsibility for payment as if the correct liability of payment from the customer of record should have stopped in August 2001.

The Initial Decision in this regard is not supported by substantial evidence. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence.²⁴ Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party.²⁵ In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a

²² Initial Decision, p. 16

²³ Initial Decision, Ordering Paragraph 3

²⁴ *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990)

²⁵ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

suspicion of the existence of a fact" is insufficient.²⁶ The Initial Decision in this regard is not supported by substantial evidence.

The Complainant failed to meet his burden of proof in showing that PGW did not provide reasonable service. Pursuant to the Pennsylvania Public Utility Code at 66 Pa. C.S.A. §1501 - Character of service and facilities:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . .

In the record of the instant case, shows that the Complainant has failed show how PGW violated the Code or a regulation or order of the Commission. The Complainant merely presented oral testimony of events that occurred prior to her owning the Service Address. The record contains no documentation that would substantiate her claim that there were squatters at the service address, that there was a fire at the Service Address, rendering it uninhabitable and no evidence of when the rehabilitation of the Service Address occurred. On the balance, PGW presented evidence, which in some cases exceeded its four-year requirement for document retention, showing its collection efforts and terminations of service.²⁷ Despite the characterization of the use of a key instrument in the gas curb box, that method of termination is recognized as the normal practice in service termination, absent some other condition.

In fashioning the remedy of decreasing the bill underlying the Municipal Lien, the Initial Decision attempts to penalize PGW for failure to terminate service earlier. The Commission addressed a similar issue in *Faye Payne v. Philadelphia Gas Works*.²⁸ In *Payne*, in response to the argument that PGW failed to mitigate its damages because it did not terminate service to the complainant's tenants before the tenants accumulated a large outstanding bill, the Commission stated that a "mitigation of damages" defense of this nature is to be raised in the appropriate court.

²⁶ *Norfolk and Western Railway Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

²⁷ Tr. pp. 28 – 30, PGW Exhibits 2 through 5

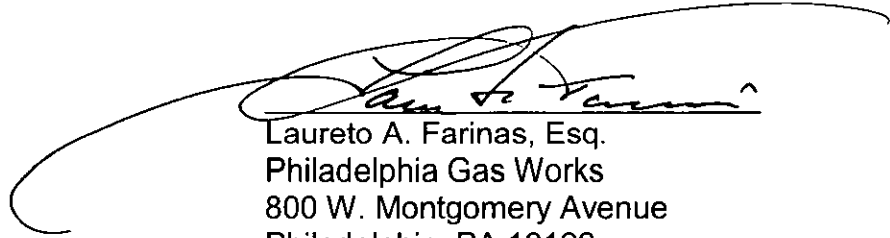
²⁸ *Faye Payne v. Philadelphia Gas Works*.²⁸ Docket No. C-2011-2247124 (Order entered February 16, 2012)

IV. CONCLUSION

For the reasons stated above, the PGW requests that the Commission adopt its exceptions and issue a Final Order reversing the Initial Decision and dismissing the Complaint.

Respectfully submitted,

August 13, 2012



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. Delores Asencio
10035 Bridle Road, 1st Floor
Philadelphia, PA 19116

Ms. Delores Asencio – OR6210
SCI Muncy
P.O. Box 180
Muncy, PA 17756

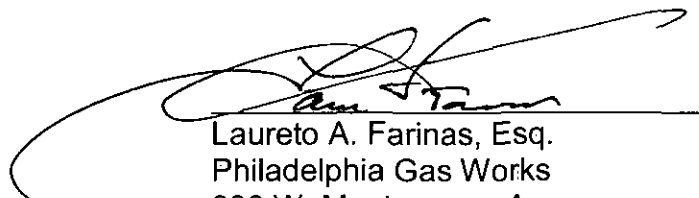
Mr. Troy Edwards, Counselor
SCI Muncy
P.O. Box 180
Muncy, PA 17756

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

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- NEW FedEx 2Day A.M.**
Second business morning. Sunday Delivery NOT available.
- FedEx 2Day**
Second business afternoon. Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Express Saver**
Third business day. Sunday Delivery NOT available.

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- FedEx Envelope*
- FedEx Pak*
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- Other

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- SATURDAY Delivery**
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- No Signature Required**
Package may be left without obtaining a signature for delivery.
- Direct Signature**
Someone at recipient's address may sign for delivery. Fee applies.
- Indirect Signature**
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies.

Does this shipment contain dangerous goods?

- One box must be checked.
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 - Yes As per attached Shipper's Declaration.
 - Yes Shipper's Declaration not required.
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