



PHILADELPHIA GAS WORKS

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August 20, 2012

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

Re: Darryl Hicks v. PGW, Docket No. C- 2010- 2207800

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 12, 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
Danielle Ross

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AUG 20 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enclosure

cc: Darryl Hicks (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darryl Hicks

v.

Philadelphia Gas Works

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:
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:
:

Docket No. C – 2010 – 2207800

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

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter extending the date upon which to file exceptions, in the above captioned matter, the Philadelphia Gas Works, ("PGW") hereby files an original of its reply to the Complainant's exceptions to the Initial Decision issued July 12, 2012, in the above captioned matter (Initial Decision). The Complainant's exceptions, although dated August 1, 2012, were mailed to the Commission by letter post marked August 6, 2012, received by the Commission and served upon PGW on August 8, 2012.

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I. INTRODUCTION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On October 27, 2010, the Complainant filed a complaint with the Commission against the PGW alleging, *inter alia*., that there are incorrect charges on the bill; that he tried to avoid a service interruption in March 2010; that he was told that he was charged \$6,066.01 after his meter was changed in May 2005 because his meter had not been recording actual usage since February 2000; and that PGW did not follow its own procedures when it changed the meter. The Complainant requests relief in the form of the removal of the outstanding charges on his account for usage prior to the May 2005 meter exchange.¹

On November 22, 2010, the PGW filed an Answer and New Matter with a Notice to Plead. In its Answer, PGW denied that there are incorrect charges on the Complainant's account. PGW admitted that the Complainant called to dispute his account in March 2010 and that PGW had responded to the Complainant's dispute by correspondence dated April 1, 2010. PGW's records showed that a October 6, 2010

¹ Complaint

Bureau of Consumer Services decision which dismissed the informal complaint and required the Complainant to pay a budget of \$224.00 plus \$158.00 towards the arrearage beginning in November 2010. PGW's answer also stated that the Complainant's account balance was \$9,507.06. Further the Complainant he had three broken payment agreements between October 2002 and October 2010.

In New Matter, PGW averred that after it exchanged the Complainant's meter on May 2, 2005, it issued the Complainant a \$6,066.01 bill on May 3, 2005, for previously unbilled usage. PGW stated that the Complainant was in the Customer Responsibility Program (CRP) until September 29, 2009. When he was removed from CRP, the "frozen arrears" became due. PGW raised the issue that the Complainant is barred from contesting the May 2005 bill since the statute of limitations is three years, pursuant to the Public Utility Code (Code) at 66 Pa.C.S.A § 3314(a). PGW also contended that based on the Code at 66 Pa.C.S.A § 1312, the Complainant can only seek a refund up to four years after the improper bill is discovered.

By hearing notice dated September 13, 2011, the Commission scheduled an Initial Hearing in this matter for November 17, 2011, before Administrative Law Judge (ALJ) Cynthia W. Fordham.

By letter dated November 8, 2011 (received November 14, 2011), the Complainant requested a continuance so that he could request documents from PGW and submit a subpoena application. PGW did not object to the continuance request and stated that the parties agreed to exchange documents on an informal basis before resorting to the formal discovery requests. By order dated November 16, 2011, the hearing scheduled for November 17, 2011, was continued to allow the Complainant to engage in discovery. By hearing notice dated November 17, 2011, the Commission rescheduled the Initial Hearing for February 6, 2012.

A hearing was held in this matter on February 6, 2012, in the Commission's Philadelphia Regional Office at 801 Market Street before ALJ Fordham. The Complainant, Darryl Hicks, testified in support of the complaint. Laureto A. Farinas, Esquire, represented the Philadelphia Gas Works. PGW presented one witness, Wendy Vacca, Customer Review Officer – PGW, who sponsored five exhibits.

The record was held open for PGW to submit a late filed exhibit regarding the CRP applications.² By correspondence dated March 15, 2012, PGW provided PGW Exhibit 6 - a seven-page (7-page) exhibit entitled "E-mail re: CRP enrollment records." With no objection from the Complainant, PGW Exhibit 6 was admitted into evidence as a late filed exhibit pursuant to 52 Pa. Code § 5.404(a). The record in this case consists of six (6) exhibits and a transcript of 104 pages. The record closed on March 28, 2012.

Pursuant to the Secretary's letter extending the date set for filing exceptions, the Complainant filed an exceptions document, although dated August 1, 2012, was post marked August 6, 2012. The Commission received (and time stamped) the exceptions document on August 8, 2012, as was PGW served with the exceptions document on that same date. This timely 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 his burden of proof. Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order, the Complainant, in this matter. Therefore, the Complainant bears the burden of proving by a preponderance of the evidence that PGW has violated the Public Utility Code or a regulation or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The Complainant must show that PGW is responsible or accountable for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

The record in this proceeding must be reviewed to determine whether the Complainant has satisfied his burden of proof. If the burden of proof has been satisfied, then it must be determined whether PGW has submitted evidence of "co-equal" value or weight to refute the Complainant's evidence. If this has occurred, the burden of proof has not been satisfied, unless the Complainant presented additional evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967).

The exceptions also fail to show that the Initial Decision is not supported by

² Tr. pp. 95, 98 - 102

substantial evidence. In addition to determining whether the Complainant has satisfied his burden of proof, care must be exercised to ensure that the Commission's decision is supported by substantial evidence. 2 Pa.C.S. § 704. The term "substantial evidence" has been defined by various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa.109, 413 A.2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

1. Reply to Exception to Admitting PGW Exhibit – 6 into evidence.

In this exception the Complainant states that he was not aware of how to proceed after the review of that exhibit. At the end of the Initial Hearing of this matter, ALJ Fordham provides instruction to the Complainant on what to do after he receives the exhibit by the deadline. ALJ informs him that he had until March 5, 2012 to let the ALJ and PGW know if he had any objections.³ The Commission should deny this exception.

2. Reply to Exceptions regarding CRP Enrollment and Social Security Card/Number

The exception states that the Complainant did not participate in the CRP application or enrollment process. The provision of the Social Security Card is mandatory for CRP application. PGW's witness stated clearly that showing a Social Security Card is a required document for CRP application.⁴ The Complainant testified that he was required to submit his Social Security Card.⁵ While the Complainant appeared confused about the status of his account and CRP enrollment, it is clear that the Complainant submitted information for a CRP application. The Complainant presented no evidence of his lack of enrollment in CRP other than his vague recollection and the inconsistency of an old record of a Social Security number. In this regard, the Initial Decision, in dismissing the Complaint, is supported by substantial

³ Tr. pp. 98 - 102

⁴ Tr. pp. 55 - 56

⁵ Tr. pp. 33 - 34

evidence. The Complainant testified that he was unable to access his account because PGW had a different social security number for the account. Since the application was processed more than four years ago, PGW was not able to produce the actual applications. However, the account statement shows that the Complainant was enrolled in CRP on November 3, 2005.⁶

Over a 36 month period, each month that the customer receives 1/36 forgiveness if they make timely payments. When the customer enrolls in CRP, they must provide Social Security cards for each household member with proof of income for the last 30 days for each household member. CRP is the only program that requires the submission of a social security card.⁷ When the Complainant was on CRP, his monthly bill was \$67.50.⁸ The Complainant was removed from CRP on December 6, 2006.⁹ From January 8, 2007, to March 9, 2007, the Complainant was billed for actual usage. From March 9, 2007, to May 2, 2008, the Complainant was on CRP.¹⁰ From May 3, 2008, to July 30, 2008, he was billed for actual usage. He was enrolled in CRP from August 1, 2008, to September 9, 2009.¹¹ Since September 9, 2009, the Complainant has been billed for actual usage.¹²

Thus, the Initial Decision using the credible evidence of record, supports its conclusion that the Complainant failed to show that he was not billed at the CRP rate, even though he benefited from being in CRP because he was receiving a discounted bill. This exception should be denied.

3. Reply to Exceptions regarding Meter Removal and Billing Dispute in 2005

As to these issues, the Initial Decision is supported by substantial evidence of record and the correct application of the Code governing the time in which one may file a complaint with the Commission.

The Complainant stated that he was contesting the May 2005 bill because he was not told that he could file a complaint with the Commission when he tried to contest

⁶ Tr. p. 54; PGW Ex. 1

⁷ Tr. p. 55

⁸ Tr. p. 56; PGW Ex. 1

⁹ Tr. pp. 56, 57

¹⁰ Tr. p. 57 and PGW Ex. 1

¹¹ Tr. pp. 58 and 64 and PGW Ex. 1, 2

the bill in 2005 and that he did not receive a resolution from PGW when he disputed the bill in 2005. The Initial Decision states plainly its basis for dismissing the Complaint. The Initial Decision relies upon the following evidence of record.

It is undisputed that the Complainant was receiving estimated bills prior to May 2005 and that PGW exchanged the meter on May 3, 2005.¹³ PGW presented evidence to demonstrate that the customer disagreed with the bill after the meter exchange.¹⁴ After the dispute was filed on May 16, 2005, PGW sent the Complainant a letter explaining the findings and stating that he was eligible for a payment agreement for 63 months to pay the amount rebilled.¹⁵ It was also undisputed that the Complainant had a balance of \$406.07 on May 3, 2005, before the meter exchange. After PGW issued a make-up bill for \$6,066.01, it credited \$551.99 to the Complainant's account for changes in the gas cost rate over the period of the makeup bill.¹⁶

The Complainant is barred from contesting the May 2005 bill since the statute of limitations is three years, 66 Pa.C.S. § 3314(a) as the evidence in the record shows that the Complainant did protest the May 2005 bill to PGW on May 16, 2005. PGW showed that it sent a letter containing the results of its investigation and that it informed the Complainant about his right to file a complaint with the Commission. The Initial Decision further concludes that even without the evidence regarding the investigation and notification, 66 Pa.C.S. § 3314(a) precludes the Complainant from filing a complaint in 2010 regarding the May 2005 meter exchange or the May 2005 bill.

Finally, the Complainant advanced no evidence that PGW failed to follow its own procedures in exchanging the meter at the Service Address in 2005.

The Initial Decision finds correctly that, based on the evidence in the record, the Complainant has not demonstrated that his bills are incorrect. The evidence in the record supports the conclusion that the Complainant was billed properly for his gas usage at the Winona Street property and should be responsible for paying the outstanding bill.

¹² Initial Decision, p. 8; Tr. p. 58 and PGW Ex. 1

¹³ Tr. pp. 51, 61, 66; and PGW Exhibits 1, 2 and 3

¹⁴ Tr. p. 51; and PGW Exhibits 2 and 3

¹⁵ Tr. pp. 51, 61, 66, 67; and PGW Ex. 2 and 3

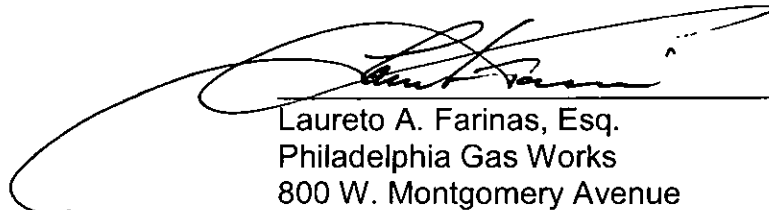
¹⁶ Initial Decision, p. 8; Tr. pp. 53, 66; PGW Ex. 1; and PGW Ex. 2, p. 5

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 12, 2012 in this matter.

Respectfully submitted,

August 20, 2012



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

CERTIFICATE OF SERVICE

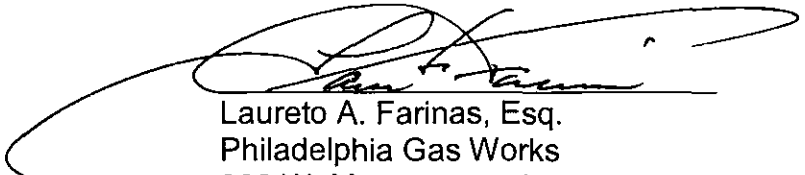
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Darryl Hicks
462 West Winona Street
Philadelphia, PA 19144

August 20, 2012



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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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1 From This portion can be removed for Recipient's records.

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Sender's Name Lauveta Foxman, Inc Phone 215 684-6982

Company PHILADELPHIA GAS WORKS

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City PHILADELPHIA State PA ZIP 19132 2878

2 Your Internal Billing Reference

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FedEx Standard Overnight
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FedEx 2Day
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SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required
Package may be left without obtaining a signature for delivery.

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Indirect Signature
If no one is available at recipient address, someone at a nearby address may sign for delivery. Fee applies. Residential deliveries only. Fee applies.

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