

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Andrew Carmichael,  
v.  
Philadelphia Gas Works,  
Initial Hearing  
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Docket No.: C-20055434

Pages 1 - 27

State Office Building  
1400 Spring Garden Street  
13th Floor  
Philadelphia, PA 19130

Monday, September 25, 2006  
Commencing at 10:00 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

APPEARANCES:

ANDRE JASENT, Esquire  
800 West Montgomery Avenue  
Philadelphia, PA 19122  
For the Respondent

ANDREW CARMICHAEL, Pro Se

ALSO PRESENT:

FLORA CARMICHAEL

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REPORTER: Sharon M. Marsh

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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JUDGE MARLANE R. CHESTNUT:

This is the hearing of docket C-20055434, Andrew Carmichael versus Philadelphia Gas Works. For the record let me state that I am Administrative Law Judge Marlane R. Chestnut. I'm going to call on two appearances for the record, Andrew and Flora Carmichael representing themselves and Andre Jasent representing PGW. I believe we'll start and I'll allow the parties a chance to discuss this. Mr. Jasent, do you have anything?

ATTORNEY JASENT:

Yes, Your Honor. We were able to discuss off the record a framework for possible settlement. We have not been able to successfully conclude a negotiated settlement in this particular proceeding. This is an unfortunate situation where a turnoff was made on a customer in error and as of right now the complaint surrounds repair work that needs to be done with a pipe --- a new pipe was installed for safety reasons because of a popup problem, potentially, with leaks.

And now the cement work around the pipe has to be re-looked at and plus there's some aesthetic

1 things that the customer would like us to look at. We  
2 also paved in the outside a concrete square where  
3 there was --- where the dig up occurred. And it was  
4 --- a shutoff of service was implemented.

5 We're trying to work it out because we're  
6 sort of in that --- I don't really think it's a gray  
7 area. We're just sort of spilling over to a small  
8 claims area with respect to an aesthetic improvement  
9 to a home following a repair job with a turn-on  
10 service. That being what it is, we are still trying  
11 to work it out with the customer. As of right now, we  
12 were not able to conclude our issues.

13 JUDGE CHESTNUT:

14 Mr. and Mrs. Carmichael, which of you is  
15 going to be speaking?

16 MRS. CARMICHAEL:

17 What is that?

18 JUDGE CHESTNUT:

19 Which of you is going to be speaking?

20 MR. CARMICHAEL:

21 She is.

22 MRS. CARMICHAEL:

23 I am.

24 JUDGE CHESTNUT:

25 Okay. Now, you understand the

1 Commission's limitations in this kind of case; right?  
2 Because I sent you a letter explaining that and  
3 actions involving evidence, the Commission doesn't  
4 have jurisdiction. So, you did read my letter; right?

5 MRS. CARMICHAEL:

6 I read a letter.

7 JUDGE CHESTNUT:

8 Okay. You understand that even if you  
9 are successful in the complaint, I can't award you  
10 damages and I can't order the company to do repair  
11 work. You really have to go to small claims court to  
12 do that. If you want to proceed and try to show that  
13 the company rendered inadequate service and you  
14 succeed on that, then what happens is then I would  
15 impose a fine on them but that wouldn't go to you.  
16 That would go to the Commission. So really, to be in  
17 your best interest, you should try and work this out  
18 with the company now. Because otherwise, you would  
19 have to go through this and then go through another  
20 proceeding in small claims court to get what you --- I  
21 assume, is what you want; okay?

22 MRS. CARMICHAEL:

23 Yeah. May I say something?

24 JUDGE CHESTNUT:

25 Sure.

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MRS. CARMICHAEL:

I'm trying to work it out with the company --- trying to work it out PGW and have been trying to work it out for the last --- past year. Because I have to live there and I'm afraid to live there under the circumstances. People laugh at me when I say I have snakes in the yard and they were standing in the yard. Now, I have seen them go down in the ground in a hole, and I have had one that run across my foot as long as my arm. Then there was one that cut up in ---.

JUDGE CHESTNUT:

Okay. Let's keep this talking about PGW; okay? I understand your situation.

MRS. CARMICHAEL:

This has been to PGW. And when they came --- I have pictures if you want to see how they came --- and I feel like they didn't have to chop down my wall like they did. They could have made it a little bit decent than what they did, the way in which they took the sheet rock down.

JUDGE CHESTNUT:

Okay. I don't want you to testify too much because you've not been sworn in yet. But the reason I said what I did was because I want you to be

1 realistic about what you can expect to get out of this  
2 proceeding here. Now, it was said that the company is  
3 willing to do a certain amount of work and it is that  
4 question of --- are you willing to do some work?

5 ATTORNEY JASENT:

6 We're willing to give the credit to her  
7 bill so that we can have a contractor do basically  
8 \$300 to \$400 worth of work restoring the drywall. And  
9 we want to make her whole. We just have to get --- we  
10 have one estimate already and we were asking basically  
11 for another estimate to do --- setup a framework to  
12 settle this, and that was our best way to sort of  
13 create on a budget to make the customer whole.

14 JUDGE CHESTNUT:

15 Now, what's wrong with that?

16 MRS. CARMICHAEL:

17 Well, the thing I said is wrong with it  
18 --- because the other estimate I tried to get, the  
19 people were going to charge me \$75 which I'm not able  
20 to pay nobody \$75 to come out and give me an estimate.  
21 The other one that I called wanted to charge me \$50.  
22 I cannot pay money up front like that because I don't  
23 make enough and I have so many ---.

24 JUDGE CHESTNUT:

25 So what's standing in the way of this is

1 you don't want to pay for an estimate which you say  
2 you need?

3 MRS. CARMICHAEL:

4 No. I said I didn't have the money to  
5 pay for somebody to come and give an estimate.

6 JUDGE CHESTNUT:

7 Is that what you were talking about, Mr.  
8 Jasent?

9 ATTORNEY JASENT:

10 Yes. What we have --- I guess that's  
11 part of it because I have to take the whole reality.  
12 But the way I view it is we have a contractor at the  
13 customer's church who can also look at this job and  
14 tell us how much that would be. We have an estimate  
15 for \$425 and within that world, those parameters, we  
16 think there's a settlement potentially. In other  
17 words, in the three --- a little bit more, it's all  
18 about sheet rock and aesthetic sorts of things;  
19 insulation, important things, but not costly things in  
20 the overall scheme of things.

21 JUDGE CHESTNUT:

22 Because I really prefer that you work  
23 this out and that you get relief.

24 MRS. CARMICHAEL:

25 I want to work it out.

1                   JUDGE CHESTNUT:

2                   Because I'll be honest with you, if we  
3 have to go ahead with this hearing, it's not really  
4 going to really help you much. Do you understand what  
5 I'm saying? That you're not going to get the relief  
6 that I think you're looking for. So I think really  
7 --- I can't direct you act in your own interest, but I  
8 think it's in your own best interest to work with the  
9 company to work this out. But if you don't want to,  
10 then we'll go ahead.

11                   But like I said, I don't think it's  
12 really going to help you to get what you want.  
13 Because at the most, what you'll get is a decision  
14 from me and the Commission saying perhaps the company  
15 acted inadequately in doing the --- well, in creating  
16 the situation and responding to you, but I can't order  
17 them to pay you and I can't order them to do the  
18 makeup work.

19                   MRS. CARMICHAEL:

20                   I'm not asking them to pay me. All I'm  
21 saying --- all I'm asking them to do is to fix the  
22 problem. I'm not asking for them to give me not one  
23 dime. Come out and fix the problem.

24                   JUDGE CHESTNUT:

25                   Well, I can't order them to fix the

1 property.

2 MRS. CARMICHAEL:

3 Well, if you see the pictures you will  
4 understand.

5 JUDGE CHESTNUT:

6 I just can't do it. The Commission  
7 doesn't have jurisdiction.

8 MRS. CARMICHAEL:

9 You can't look at the pictures?

10 JUDGE CHESTNUT:

11 I'll look at the pictures, but I don't  
12 know what ---. I'm trying to explain to you there's  
13 only so much the Commission can do here, and your  
14 asking the company to repair that situation is not one  
15 of them. This is a very limited jurisdiction. You  
16 really need to go to small claims court. We're trying  
17 to save you from having to do that by allowing me to  
18 address this with the company here, but if that's what  
19 you want, the company makes a motion to dismiss, I'm  
20 going to have to grant it. I mean, I may feel that  
21 you're right, but there's just nothing I can do about  
22 that. You do understand that, don't you or don't you  
23 understand?

24 MRS. CARMICHAEL:

25 I understand what you are saying and

1 because of --- you know, I could have gotten a lawyer,  
2 but I was trying not to go that route. I was hoping  
3 that things get worked, just get some sheetrock and  
4 fix that wall back because there was another thing  
5 involved that didn't have to be involved.

6           Because when they fixed the cement back  
7 on the sidewalk, the cement is slanted like this  
8 (indicating). And the cement that they took up was  
9 not like that. And the guy that was there Friday took  
10 pictures outside, also.

11           JUDGE CHESTNUT:

12           Well, you have the burden of proof here.  
13 You have to establish your case and like I said, if  
14 you do, the most I'm going to do is order a couple  
15 hundred dollar fine to the company. That's all I can  
16 do. And if you want further relief in terms of how to  
17 --- fixing your --- the situation, you're going to  
18 have to go elsewhere. You're going to have to go to  
19 small claims court. I'd like to avoid you having to  
20 do that and I think the company would, too, and that's  
21 why they're trying to work with you here because they  
22 don't have to do that. I guess I'm not sure really  
23 what the problem is here. Mr. Jasent, can you help me  
24 out?

25           MRS. CARMICHAEL:

1           And I want you to understand me. The  
2 only thing that I have been asking for for the last  
3 past year --- it was a year April the 25th. The only  
4 thing that I was asking them to do is to come back and  
5 fix the wall, so I won't have to be afraid to live in  
6 my home.

7           JUDGE CHESTNUT:

8           I understand that and I have complete  
9 sympathy for you, but I'm saying I can't order them to  
10 do that as much as I would like to.

11          MRS. CARMICHAEL:

12          Well, ---.

13          JUDGE CHESTNUT:

14          I would. I would like to do that. Even  
15 if you sustain your burden of proof, and I'm sure you  
16 will or perhaps you will, but I can't order them to do  
17 that. So you're better off working with Mr. Jasent to  
18 come up with a way to ---.

19          MRS. CARMICHAEL:

20          Who is Mrs. Jan (phonetic) that told me  
21 to do all of this? She told me everything to do. She  
22 also told me ---.

23          JUDGE CHESTNUT:

24          I have no idea who you're talking about.

25          ATTORNEY JASENT:

1 She a paralegal in the legal department.

2 MRS. CARMICHAEL:

3 Mary Jan.

4 ATTORNEY JASENT:

5 She's a paralegal.

6 JUDGE CHESTNUT:

7 Okay. PGW?

8 ATTORNEY JASENT:

9 Yes.

10 JUDGE CHESTNUT:

11 All right. Mr. Jasent, can you help us  
12 out here or should we just go ahead?

13 ATTORNEY JASENT:

14 Yes. I think in the customer's best  
15 interest, we need to sort of recognize there's only  
16 two ways to solve the problem. One is small claims  
17 court in terms of actually getting drywall or the  
18 equivalent dollar amount for you, or PGW can work out  
19 a settlement with you. So really the only two ways  
20 unless you want a fine and recognition from the PUC  
21 that, you know, something was done wrong.

22 But quite frankly, and we've said to you  
23 and we'll say it on the record, you were shut off in  
24 error and we need to make it right by you and that  
25 would require our approach to these sorts of problems

1 and a credit in your bill. And that's where the rub  
2 came in because there's a \$78-a-month bill that Mrs.  
3 Carmichael pays. And 78 times approximately three was  
4 the universe of charges we thought could sort of make  
5 this right with a friendly contractor that would take  
6 a down payment and do the work and then get that  
7 payment at the end.

8                   That's the question, I think, more the  
9 rub than anything else is how the credit would be  
10 applied so that Mrs. Carmichael can engage a  
11 contractor and make the work done and that's what  
12 we're working on when you ---.

13                   JUDGE CHESTNUT:

14                   Now, a definite question. She doesn't  
15 want to put the money --- are you asking her to put  
16 the money out and then get the credit on the bill?

17                   ATTORNEY JASENT:

18                   We're saying we would, based upon an  
19 estimate, give you give the credit but freeze up the  
20 cash so that you can engage a contractor to get the  
21 work done.

22                   JUDGE CHESTNUT:

23                   Do you understand that?

24                   MRS. CARMICHAEL:

25                   Yes. I understand that. This is what I

1 was telling you and I was telling him. I don't have  
2 additional money to put down ---.

3 JUDGE CHESTNUT:

4 Right. But he's saying you won't get  
5 that because you won't have to pay your PGW bill.  
6 That's where you get the money to pay the contractor.  
7 That's what they're offering you.

8 MRS. CARMICHAEL:

9 It doesn't work like that. I can't pay  
10 \$78 and pay the contractor.

11 JUDGE CHESTNUT:

12 Listen, I'm talking, Mrs. Carmichael.

13 MRS. CARMICHAEL:

14 Okay. I'm sorry.

15 JUDGE CHESTNUT:

16 Please don't speak when ---. Is there  
17 some way to make the deal with the contractor yourself  
18 and then you won't get a credit?

19 MRS. CARMICHAEL:

20 That'll be fine.

21 JUDGE CHESTNUT:

22 I don't know. Can you do that? If you  
23 can, that would be great.

24 ATTORNEY JASENT:

25 Well, I think that's something we have to

1 explore. That's usually not the approach that folks  
2 at PGW take. But perhaps that question needs to be  
3 asked.

4 JUDGE CHESTNUT:

5 I mean, we're talking a lot of money here  
6 are we?

7 ATTORNEY JASENT:

8 No. In the scheme of things, it's not a  
9 lot of money.

10 JUDGE CHESTNUT:

11 Is there some way you can find that out?

12 ATTORNEY JASENT:

13 We will try to do that next. But quite  
14 frankly, I was trying to work after a credit situation  
15 which is something that's easy to persuade our  
16 superiors at PGW that's reasonable because it would  
17 give me more parameters on the dollar side. Because,  
18 you know, we ---.

19 JUDGE CHESTNUT:

20 Well, Mrs. Carmichael, you got to ask Mr.  
21 Carmichael, too. I don't usually deny this  
22 discussion. It's sounds like you'll get a better deal  
23 with the credit approach, but perhaps they can look in  
24 to the other approach but you're not going to do as  
25 well.

1                   MRS. CARMICHAEL:

2                   May I say something ma'am?

3                   JUDGE CHESTNUT:

4                   Sure.

5                   MRS. CARMICHAEL:

6                   I have said to the gentleman here, I said  
7 if you all deal direct with the contractor, all I want  
8 is that wall repaired to keep things from coming into  
9 the house. I have had everything crawling in the  
10 house since that's been open. If you just deal ---  
11 you don't have to --- I was told to get an estimate,  
12 deal direct with the person I got here. If you want  
13 another one, I'm sure Mr. Goetz (phonetic) would be a  
14 little bit higher. He may be \$600. This guy's  
15 charging \$400.

16                   And this guy also was out there looking  
17 like --- both of them said that they could go  
18 underneath the pipe now where Randy saw that problem  
19 happening. The pipe was jammed up against the wall,  
20 against the ---.

21                   JUDGE CHESTNUT:

22                   Okay. We're passed that point, Mrs.  
23 Carmichael.

24                   MRS. CARMICHAEL:

25                   Okay.

1                   JUDGE CHESTNUT:

2                   The company has already agreed to take  
3 care of you. The question now is how the best to do  
4 that.

5                   ATTORNEY JASENT:

6                   And I think we need to explore that and  
7 we'll call, you know, our folks at PGW to see if we  
8 can get some leeway with this to help get the work  
9 started. But I have a feeling that part of this is  
10 going to be something that entails a credit which we  
11 thought, quite frankly, because it gives us a little  
12 more latitude, I don't have to go risk management. I  
13 can deal with it in our world which is the customer  
14 review representative and we --- you know, credits are  
15 a lot easier than cutting a check, especially if  
16 you've ever met --- well, I won't get into personnel.

17                   JUDGE CHESNUT:

18                   All right. Do you understand, Mr. and  
19 Mrs. Carmichael? He's going to try and get approval  
20 to deal directly with the contractor but that might  
21 not be possible. And in that case, your only option  
22 is to accept the credit and then take that money and  
23 deal with the contractor yourself. All right?

24                   MRS. CARMICHAEL:

25                   You all are not understanding. Yes, I

1 have a whole lot of medicine to buy for him. I can't  
2 just dish out money. The contract --- estimate  
3 person, they are not going to take \$78 down. I  
4 haven't anybody to do that yet. They're not going to  
5 take \$78 down. They're going to want more money than  
6 that or either they're going to want it all, and I  
7 can't afford to pay it all because I only get \$500 a  
8 month.

9 JUDGE CHESTNUT:

10 Is there anything I can do to make this  
11 work for you, Mr. Jasent?

12 MRS. CARMICHAEL:

13 Work it out right with the contractor.

14 ATTORNEY JASENT:

15 Well, I'm certainly going to report back  
16 that you asked us to redouble our efforts ---

17 JUDGE CHESTNUT:

18 I strongly urged you to take care of  
19 this.

20 ATTORNEY JASENT:

21 --- and make this happen.

22 JUDGE CHESTNUT:

23 Okay.

24 ATTORNEY JASENT:

25 Okay. And that leverage will help us get

1 the next step and we'll just do our best from there.

2 JUDGE CHESTNUT:

3 Okay. Because you might want to --- you  
4 know, if it's in the company's interest to get this  
5 here job from an inadequate service perspective.

6 ATTORNEY JASENT:

7 From the standpoint of today's hearing, I  
8 don't know if Your Honor wants to do an adjournment, a  
9 continuance recognizing we're going to do this right  
10 now, but that you have an option to recall the hearing  
11 if it doesn't happen after some period of time elapses  
12 or that sort of thing ---?

13 JUDGE CHESTNUT:

14 Well, what I was thinking was, we won't  
15 go ahead with this hearing, and we'll give you a  
16 chance to work it out. And you'll report back to me.  
17 And if at that point we need a hearing, we can  
18 schedule one. Okay? Do you understand that, Mr.  
19 Carmichael and Mrs. Carmichael?

20 MR. CARMICHAEL:

21 We do.

22 JUDGE CHESTNUT:

23 Mr. Jasent is going to try and get them  
24 to approve dealing directly with the contractor. If  
25 he's not able --- then I'm going to assume that would

1 settle this.

2 MRS. CARMICHAEL:

3 Yeah. You know, I don't ---.

4 JUDGE CHESTNUT:

5 And if he's not able to do that, then  
6 we'll just go ahead. You can either withdraw your  
7 complaint, because understand it's not really going to  
8 get to them there, or you can go ahead and pursue it  
9 if you wish; okay? But I think that really is in your  
10 interest.

11 MRS. CARMICHAEL:

12 Well, all I want is the wall fixed so I  
13 won't be afraid to go down in the basement.

14 JUDGE CHESTNUT:

15 I understand that. Believe me, if I  
16 could order some kind help for you, I would. But that  
17 just isn't possible the way things are set up. Mr.  
18 Jasent, did you give me some kind of a time frame that  
19 you think that would work for you on this?

20 ATTORNEY JASENT:

21 Truthfully, I can't, but I wasn't  
22 thinking of it that way. I was thinking of it  
23 financially. You know, how --- my next step is get to  
24 the company and hopefully while Mr. and Mrs.  
25 Carmichael are still --- they're here this morning,

1 come up with a framework that's of middle ground,  
2 something they can accept. After that, then it's a  
3 question of engage the contractor, get the contractor  
4 out there on whatever terms whether directing to PGW  
5 or otherwise and how long it would take to make this  
6 happen. And that's why I wouldn't want the  
7 continuance to allow you to have continued  
8 jurisdiction if it's not satisfactory after the  
9 contractor has been there.

10 JUDGE CHESTNUT:

11 Well, I doubt if that's going to happen.  
12 I mean, you're talking months, aren't you?

13 ATTORNEY JASENT:

14 Well, 90 days, 60 days. I don't know how  
15 long usually you can hold onto it.

16 JUDGE CHESTNUT:

17 I have a lot of pressure to get these  
18 cases ---. I mean really.

19 ATTORNEY JASENT:

20 All right. And then it would be the  
21 framework.

22 JUDGE CHESTNUT:

23 A 60-day continuance right where at least  
24 --- well, it sounds like --- why won't you know  
25 whether or not you can go ahead with this?

1                   ATTORNEY JASENT:

2                   Well, I will make the call in a few  
3 minutes and then I will be aware of what the client  
4 PGW is going to let me do in this situation.

5                   JUDGE CHESTNUT:

6                   All right. Then we will take a short  
7 break then for you to do that.

8                   ATTORNEY JASENT:

9                   Okay.

10                  JUDGE CHESTNUT:

11                  We'll take a short adjournment while he  
12 talks with the people at the company and then we'll  
13 take it from there; okay?

14 SHORT BREAK TAKEN

15                  JUDGE CHESTNUT:

16                  Go back on the record. We gave the  
17 parties a chance to see if they could work this out.  
18 Mr. Jasant?

19                  ATTORNEY JASENT:

20                  Yes, Your Honor. I'm happy to report  
21 that based upon the invoice that the customer has  
22 given us for the repair work in question, that we were  
23 able to work out a payment mechanism at PGW. So they  
24 will have a check for \$425 and that this will be a  
25 full settlement on this case.

1                   JUDGE CHESTNUT:

2                   Okay. Mr. and Mrs. Carmichael, do you  
3 understand that agreement?

4                   MR. CARMICHAEL:

5                   Sure.

6                   JUDGE CHESTNUT:

7                   And I understand that this will satisfy  
8 your complaints that we won't precede with the  
9 hearing?

10                  MR. CARMICHAEL:

11                  I think we're all covered.

12                  JUDGE CHESTNUT:

13                  Okay. Great. I'm really glad that it  
14 worked out that way.

15                  MRS. CARMICHAEL:

16                  I appreciate that.

17                  JUDGE CHESTNUT:

18                  I hope you understand the company really  
19 didn't have to do that. I believe they did --- a lot  
20 of utilities would have dragged you through all kinds  
21 of proceedings. So I'm really glad it worked out this  
22 way for everybody.

23                  MRS. CARMICHAEL:

24                  Yes. I thank everybody. Because like I  
25 said, all I want is the wall covered.

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JUDGE CHESTNUT:

Sure. Like I said, if I could award that I would have, but I just couldn't do that. Thank you very much. This hearing is adjourned.

\* \* \* \* \*

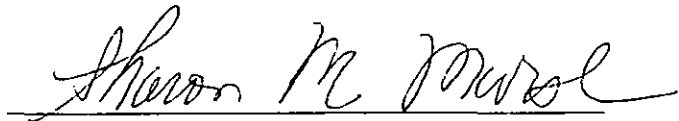
HEARING CONCLUDED AT 11:18 A.M.

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C E R T I F I C A T E

I hereby certify, as the  
stenographic reporter, that the foregoing  
proceedings were taken stenographically by  
me, and thereafter reduced to typewriting  
by me or under my direction; and that this  
transcript is a true and accurate record  
to the best of my ability.



Court Reporter

**END**