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ANDRE C. DASENT, P.C.  
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Philadelphia, Pennsylvania 19102

January 8, 2007

VIA FEDERAL EXPRESS

James McNulty, Secretary  
PA Public Utility Commission  
North Office Building  
400 North Street, Room B-20  
Harrisburg, PA 17105-3265

**RE: Venessa Burrell v. Philadelphia Gas Works**  
**PUC Docket No. F-01763537**

DOCUMENT  
FOLDER

Dear Secretary McNulty:

This office represents Philadelphia Gas Works ("PGW") in the above referenced proceeding. Pursuant to 52 Pa. Code 5.535, PGW files the enclosed Reply to Exceptions. A copy of the aforesaid document is being served upon the Complainant. Thank you for your attention to this matter.

Very truly yours,

*Andre C. Dasent*

ANDRE C. DASENT

ACD/vb  
cc: Judge Cynthia Williams Fordham  
Ms. Venessa Burrell

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JAN 08 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. F-01763537

Venessa Burrell

v.

Philadelphia Gas Works

DOCUMENT  
FOLDER

**REPLY OF PHILADELPHIA GAS WORKS TO COMPLAINANT'S EXCEPTIONS**

Philadelphia Gas Works ("Company" or "PGW"), by the undersigned attorney, replies to Complainant's Exceptions pursuant to 52 Pa. Code 5.535. PGW maintains that the Initial Decision rendered by Judge Cynthia Williams Fordham ("ALJ") is supported by substantial evidence and consistent with applicable law in fairly apportioning responsibility for contested charges of approximately \$5,500.

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JAN 10 2007

**I. INTRODUCTION**

This case concerns a billing dispute in connection with properties located at 1748 E. Tulpehocken Street and 7353 N. 20<sup>th</sup> Street in Philadelphia. Both properties are owned by Venessa Burrell ("Complainant"). As stated in the Initial Decision, Complainant alleges that there are (a) incorrect charges on her bill; (b) charges appear on her bill for repairs that were unauthorized and should therefore be removed; and (c) that Complainant wants to pay her normal bill. Decision at 1. An initial hearing was held in this matter on March 14, 2006. Complainant presented testimony on that date and proffered 19 exhibits. The Company also presented the testimony of PGW Customer Review Officer, Eloise Carnall and offered 5 exhibits in support of its position. Additional exhibits were received from both parties prior to the close of the record on August 31, 2006.

The Initial Decision determined that Complainant had sustained her burden of proving that charges related to her Tulpehocken Street account were over-stated by \$1,075.70 (\$841.82 usage and late charges; and \$233.88 for repair bills). Decision at 11. The aforesaid decision also

indicated that Complainant had failed to sustain her burden of proving that bills for the 20<sup>th</sup> Street account (amounting to some \$4,417 according to PGW Exhibit 6) were over-stated and therefore Complainant was responsible for same. Decision at 8; 11-13 The Exceptions filed by Complainant misinterpret the findings of the ALJ by not looking at the decision as a whole.

## II. GOVERNING LEGAL STANDARD

Under Section 322 of the Public Utility Code, the proponent of a rule or order has the burden of proof in a proceeding. Burden of proof imports the duty of finally establishing the existence of a certain fact or set of facts by evidence which preponderates to a legally required extent. The burden of proof never shifts, but remains with the party affirming a fact in support of its case. *See, Se-Ling Hoisery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

In the instant case, Complainant, by inference, argues that the *Waldron* doctrine<sup>1</sup> should apply – presuming that she presented a *prima facie* case and that PGW had not submitted evidence of co-equal value.<sup>2</sup> The Company maintains that Complainant’s argument is misplaced, as she did not meet her burden of persuasion concerning the disputed charges for 20<sup>th</sup> Street account and therefore the *Waldron* doctrine cannot apply.<sup>3</sup> The essential point that cannot be

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<sup>1</sup> *Malcolm Waldron v. Philadelphia Electric Company* (Docket No. C-77100047), 54 Pa. PUC 98 (1980).

<sup>2</sup> Complainant argues that the evidence submitted by PGW was not of “co-equal value or weight” so as to refute her evidence. Exceptions at 3.

<sup>3</sup> The *Waldron* doctrine essentially establishes that once the complainant has presented such evidence as to establish a *prima facie* case, the burden of going forward with the evidence shifts to the opposing party to meet the *prima facie* case that has been established. To accomplish this, the defensive party need not produce evidence which preponderates or outweighs the evidence of the complainant. Rather, it is sufficient if such evidence (produced by the defensive party) is co-equal. *Milkie v. PA PUC*, \_\_\_ Pa. Cmwlth. \_\_\_, 768 A.2d 1217 (2001).

Complainant contends that her bill at 20<sup>th</sup> Street was over-stated as during a part of the period April, 2004 – November, 2005, repairs were being undertaken and service should have been minimal. The record is equivocal as to the period during which repairs were actually being undertaken and the times that heating was required while such repairs were being completed. There was also no comparative period that would indicate whether usage was higher or lower than normal for the property in question. The arguments raised by Complainant simply fail to meet the minimal threshold so as to trigger the application of the *Waldron* doctrine. There is no documentation of the period of usage or the consistency or frequency of same from which a reasonable argument can be made that the bill is over-stated. *See, Burtleson v. PA PUC*, 501 Pa. 433, 461 A.2d 1234 (1983); *Milkie v. PA PUC*, *supra*.

minimized is that, as to the 20<sup>th</sup> Street account, Complainant failed to meet her onus of proving that the charges in question were either over-stated or otherwise not her responsibility.

### III. ARGUMENT

Per the record, it was Complainant's contention that the charges related to the 20<sup>th</sup> Street account for the period April 23, 2004 through November 4, 2005 were over-stated and/or not her responsibility. However, the record clearly established that Complainant's tenant vacated the 20<sup>th</sup> Street property in February, 2004; and that gas service in the tenant's name concluded on February 19, 2004. Decision at 7 (Findings of Fact 21-22). Complainant testified that she was undertaking repairs to the premises during a part of this period and maintained possession of the 20<sup>th</sup> Street property throughout same. Complainant finally notified PGW that she had possession of the premises and would assume responsibility for service in July, 2004 (four months after the tenant vacated the premises). Decision at 7 (Finding of Fact 24). PGW maintains that that responsibility for payment should be borne by Complainant after the tenant's account was closed and Complainant assumed possession of the premises.

Given the foregoing, the period from April, 2004 - November, 2005 is the focus of the Exceptions. Complainant raises numerous questions in her Exceptions all pointing to what she believes are unexplained discrepancies in the decision and offers *ex parte* documents to support her position. PGW requests that the Commission disregard the aforesaid documents (and information contained therein) submitted with Complainant's Exceptions. The Company also believes when the Initial Decision is viewed as a whole, it is very clear that the ALJ determined that Complainant had not met her burden of proof as to the billing dispute related to the 20<sup>th</sup> Street account and that she had responsibility for payment of charges for service at that property. The PUC should also be aware that tariff requirements and 66 Pa. C.S. 1524 dictate the landlord's responsibilities in this context.

The various questions raised by Complainant in her Exceptions are restated below. Same all return to the same issue as to the time period of April, 2004 - November, 2005 and

Complainant's perception that she either bore no responsibility or, at best, partial responsibility (July, 2004 – November, 2005) for that period. The fact of the matter is that Complainant continuously received gas service during the period in question (at a time when she had possession of the property). There is no dispute as to this over-arching fact. Complainant even concedes in the record that she belatedly (four months after the tenant vacated the premises) requested that service be transferred to her name in July, 2004. Decision at 7 (Finding of Fact 24; Tr. 19). In this context, the questions posed by Complainant miss the point that she is responsible for usage at her property, as documented by actual meter readings. Decision at 8 (Finding of Fact 31-32; PGW Exhibit 6).

1. So it appears to me the question would be why am I being charged from April 2004 when the respondent stated that service turn on date was November 2004?<sup>4</sup>
2. Why does this particular building not get the meter read monthly and there is a 7 month interval?<sup>5</sup>
3. Which date did service start? Did it start on April 2004 as stated on page 8 or November 2004 as stated on page 13?<sup>6</sup>
4. If service started in April 2004, why was I given a breakdown on page 12 under DISCUSSION starting November 2004 at \$538.86? Also if service began in April, why was I not given any billing statements by the respondent for seven months, if that's when service was initiated?<sup>7</sup>
5. The sum from the bar graph on page 12 equals \$3,654.37. Where does the difference of \$763.05 come from?<sup>8</sup>

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<sup>4</sup> Complainant was appropriately charged for service provided during the period she had possession of the premises (April, 2004 – November, 2005). PGW Exhibit 6.

<sup>5</sup> The usage in question was calculated based upon actual meter readings. PGW Exhibit 6. The elapse of time may related to the period over which repayment can be made, but does not negate the fact that service was used at the premises.

<sup>6</sup> The months of April and November are transposed on page 13 (typographical error at the end of the first paragraph). The period in question is very clear when the decision is read as a whole. Moreover, at the bottom of the same page the period April 2004 – November 2005 is plainly stated. Decision at 13.

<sup>7</sup> The initial billing period in question related to service from April 23, 2004 through November 15, 2004. The amount of charges for this period was \$538.86 as shown in the Table on page 12 of the Initial Decision. As stated above, the elapse of time may go to the question of over what period repayment should be amortized, but does not negate the fact that service was used at the premises.

<sup>8</sup> The graph on page 12 of the Initial Decision reflects usage charges for the period in question. In addition, there are interest and penalty charges which explain the difference between the amount of \$3,654.37 (the sum of usage charges in the bar chart) and the overall amount due of \$4,417.42. PGW Exhibit 6.

6. With regard to the PGW letter dated July 11, 2006, where was this letter sent and to whom? <sup>9</sup>
7. What was the last date the meter was read (in connection with the period of service in controversy)? <sup>10</sup>

The above questions taken together with arguments as to the “co-equal value of PGW’s evidence,” only by inference, constitute formal exceptions. As stated above, the *Waldron* doctrine does not apply here, as Complainant did not establish a *prima facie* case concerning the billing dispute for the 20<sup>th</sup> Street account. See discussion, *supra*.

#### IV. CONCLUSION

For all of the foregoing reasons, PGW requests that the Commission reject the Complainant’s Exceptions and affirm the Initial Decision of the Administrative Law Judge.

Respectfully submitted,

*Andre C Dasent*

ANDRE C. DASENT, ESQUIRE  
Attorney for Philadelphia Gas Works

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Philadelphia, Pennsylvania 19102  
(215) 625-0555

Of Counsel:

LAURETO A. FARINAS, ESQUIRE  
Office of the General Counsel  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

Date: January 8, 2007

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<sup>9</sup> This letter was transmitted during the proceeding in response to an inquiry of the Administrative Law Judge. PGW Exhibit 6. This exhibit was objected to by Complainant as noted at page 4 of the Initial Decision.

<sup>10</sup> The meter reading for the 20<sup>th</sup> Street account for the period ended November, 2004 took place on April, 2004. See, PGW Exhibit 6.

DATE: January 18, 2007

SUBJECT: F-01763537

TO: Cheryl W. Davis, Director  
Office of Special Assistants

FROM: James J. McNulty  
Secretary  
nvl

**DOCKETED**  
JAN 18 2007

VENESSA BURRELL  
V.  
PHILADELPHIA GAS WORKS

**DOCUMENT  
FOLDER**

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

**VENESSA BURRELL**

Reply Exceptions have been received from:

**PHILADELPHIA GAS WORKS**

cc: Susan Hoffner