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| 1. <b>REPORT DATE:</b><br>June 21, 2007  | 2. <b>BUREAU AGENDA NO.</b><br>JUL-2007-OSA-0149* |
| 3. <b>BUREAU:</b> Office of Special Assistants   | RJP   |
| 4. <b>SECTION(S):</b>  |   |
| 6. <b>APPROVED BY:</b><br>Director: C.W. Davis 7-1827<br>Mgr/Spvr: R.A. Marinko 3-3930<br>Legal Review: K. Barrow 2-8840 | 5. <b>PUBLIC MEETING DATE:</b><br>July 11, 2007   |
| 7. <b>PERSONS IN CHARGE:</b><br>C.A. Muriceak 3-5155   | 9. <b>EFFECTIVE DATE OF FILING:</b><br>N/A        |
| 8. <b>DOCKET NO.:</b><br>F-01763537  | DOCUMENT FOLDER<br><b>DOCKETED</b><br>AUG 24 2007 |

10. (a) **CAPTION** (abbreviate if more than 4 lines)  
 (b) **Short summary of history & facts, documents & briefs**  
 (c) **Recommendation**

(a) Venessa Burrell (Complainant) v. Philadelphia Gas Works (PGW)

(b) On August 24, 2005, the Complainant filed a Formal Complaint (Complaint) against PGW alleging, *inter alia*, that there were incorrect charges on her bill. On September 14, 2005, PGW requested an extension of time to answer the Complaint. PGW filed an Answer on January 30, 2006. An evidentiary hearing was held on March 14, 2006, before Administrative Law Judge (ALJ) Cynthia Williams Fordham. On December 11, 2006, the ALJ's Initial Decision was issued, wherein she recommended, *inter alia*, that the Complaint be sustained in part and dismissed in part. The Complainant filed Exceptions to the Initial Decision on December 26, 2006. PGW filed Reply Exceptions on January 8, 2007.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order which denies the Complainant's Exceptions and adopts the ALJ's Initial Decision.

Order Doc. No 671686v1

Calendar Doc. No.671019v1

11. **MOTION BY:** Commissioner Chm. Holland

Commissioner Fitzpatrick - Yes

Commissioner Christy - Yes

**SECONDED:** Commissioner Cawley

Commissioner Pizzingrilli - Yes

**CONTENT OF MOTION:** Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

July 12, 2007

F-01763537

THOMAS KUDSEN SENIOR VP/CFO  
LAURETO A FARINAS ESQUIRE  
PHILADELPHIA GAS WORKS  
800 WEST MONTGOMERY AVENUE  
PHILADELPHIA PA 19122

KJR

DOCUMENT  
FOLDER

Venessa Burrell  
v.  
Philadelphia Gas Works

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on July 11, 2007 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

**DOCKETED**  
JUL 24 2007

James J. McNulty  
Secretary

encls  
cert. mail  
JF

VENESSA BURRELL  
1748 EAST TULPENHOCKEN STREET  
PHILADELPHIA PA 19138

ANDRE C DASENT ESQUIRE  
1500 MARKET STREET  
12<sup>TH</sup> FLOOR EAST TOWER  
PHILADELPHIA PA 19102

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held July 11, 2007

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Terrance J. Fitzpatrick  
Tyrone J. Christy  
Kim Pizzingrilli

DOCUMENT  
FOLDER

Venessa Burrell

F-01763537

v.

Philadelphia Gas Works

OPINION AND ORDER

DOCKETED  
JUL 24 2007

**BY THE COMMISSION:**

Before the Commission for consideration and disposition are the Exceptions<sup>1</sup> of Venessa Burrell (Complainant), filed on December 26, 2006, to the Initial Decision of Administrative Law Judge (ALJ) Cynthia Williams Fordham, which was issued on December 11, 2006, in the above-captioned proceeding. Philadelphia Gas Works (PGW) filed Reply Exceptions on January 8, 2007.

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<sup>1</sup> Since the Complainant did not initially serve PGW with a copy of her Exceptions, the Commission, by Letter dated December 29, 2006, served a copy of those Exceptions on PGW, and PGW was afforded ten days from that date in which to file Reply Exceptions. On January 8, 2007, PGW timely filed its Reply Exceptions.

### History of the Proceeding

On August 24, 2005, the Complainant filed a Formal Complaint (Complaint) against PGW alleging that there were incorrect charges on her gas bill. She requested that the Commission order PGW to remove the alleged incorrect charges and unauthorized repairs made at 7353 N. 20<sup>th</sup> Street (20<sup>th</sup> Street) so that she could again begin paying her normal bills.

The instant Complaint is an appeal of a Decision of the Commission's Bureau of Consumer Services (BCS), issued on July 15, 2005, at Case Number 1763537. By way of that Decision, the BCS found that the Complainant's bills were correct as rendered and the Complainant was advised to contact PGW for a payment arrangement. The BCS determined that the customer's account balance for 1748 E. Tulpehocken Street (Tulpehocken Street), as of July 1, 2005, was \$1,161.26, and that the customer's account balance for 20<sup>th</sup> Street, as of June 15, 2005, was \$3,354.12.

On January 30, 2006, PGW filed an Answer to the Complaint denying the material allegations of the Complaint.

On March 14, 2006, an initial hearing was held by the ALJ. The Complainant testified on her own behalf and sponsored nineteen exhibits. PGW was represented by counsel and presented the testimony of one witness who sponsored five exhibits.

On December 11, 2006, the Commission issued the ALJ's Initial Decision wherein she recommended: (1) that the Complaint be sustained in part and dismissed in part; (2) that PGW cancel the final repair bill at 20<sup>th</sup> Street in the amount of \$233.88; (3) that PGW remove the charges of \$841.82 and the late charges assessed after May 22,

2004 from the Tulpehocken Street account; and (4) that the Complainant is responsible for paying the charges for the 20<sup>th</sup> Street account. As previously stated, the Complainant filed Exceptions to the Initial Decision on December 26, 2006, and PGW filed Reply Exceptions on January 8, 2007.

### Discussion

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. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[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.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ made thirty-six Findings of Fact and reached two Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The Complainant had disputed the amount of her bills that she received for the 20<sup>th</sup> Street residential rental property. The first issue dealt with the final bill tendered to one of her tenants who vacated the 20<sup>th</sup> Street property, without notice to the Complainant, in February 2004. PGW presented evidence that the tenant was issued a final bill of \$1,972.75 on February 19, 2004, the date she vacated the 20<sup>th</sup> Street property. According to PGW's records, the tenant had gas service in her name from April 2, 2002 to February 19, 2004. (I.D. at 7). PGW's witness testified, contrary to the Complainant's assertion, that the \$1,972.75 final bill issued to the tenant was never transferred to the Complainant's account. (Tr. at 43). Accordingly, the ALJ found that the Complainant did not satisfy her burden of proof regarding an improper assignment of the final balance due.

The Complainant's second issue was that on July 21, 2004, she claimed she requested that PGW change the account for service to the 20<sup>th</sup> Street property into her name. (Tr. at 19). The Complainant did not receive a bill until November 2004, which, according to PGW, was the service turn-on date. This bill included charges for gas used since the last meter read, which was in April 2004. The total amount of the April 23, 2004 through November 2004 bill was \$538.86. (PGW Exh. 3; Exh. C. 15; I.D. at 12).

Next, the Complainant contended that she was then overcharged in the months of December 2004, January 2005, February 2005, March 2005 and April 2005. During that time, the Complainant was making repairs to the 20<sup>th</sup> Street property and claimed that the repairmen only used gas during the day while they were there. (Tr. at 20, 21). The ALJ found that there was no evidence in the record to show the number of hours and days that the repairmen worked or the temperature the thermostat was set at during that time. Also, there was no comparative period that would indicate whether usage was higher or lower than normal for the property in question. Based upon those factors, the ALJ found that the Complainant was responsible for the metered gas billings for November 2004 through April 2005, as she did not carry her burden of proof. (I.D. at 13).

The Complainant next averred that a month to month lease, beginning July 1, 2005, was signed by new tenants. However, PGW stated that it does not have a record of anyone applying for service at the 20<sup>th</sup> Street property between April 23, 2004 and November 4, 2005. The total charges for gas service at 20<sup>th</sup> Street from April 2004 through November 4, 2005, were \$4,417.42 and were based on actual meter readings. According to PGW, on November 4, 2005, a subsequent tenant established service for the 20<sup>th</sup> Street property. This tenant did not make any payments on the account between November 4, 2005 and June 28, 2006. The account attained a balance due of \$4,327.03, and on June 28, 2006, the “gas service was dug at the main for non-payment.” (I.D. at 8-9).

Therefore, the ALJ recommended that the Complaint be sustained in part and dismissed in part. Specifically, the ALJ dismissed the Complainant’s allegations that tenants are responsible for some of the charges for the 20<sup>th</sup> Street property between April 2004 and November 2005, and that PGW overcharged her, for failure to carry the burden of proof.

In her Exceptions, the Complainant alleges that the Initial Decision contains contradictions and discrepancies that were made by PGW. Her Exceptions contain questions and documents that have not been made part of the record in an attempt to justify her position as to why she should not have to pay the billed gas charges for certain periods. (Exc. at 1-2).

In reply, PGW states that the Exceptions filed by the Complainant misinterpret the findings of the ALJ by not looking at the decision as a whole. (R. Exc. at 2). PGW avers that the Complainant testified that she maintained possession of the 20<sup>th</sup> Street property throughout this period and finally notified PGW that she had possession of the premises and would resume responsibility for service in July 2004. PGW maintains that responsibility for payment should be borne by the Complainant after the tenant’s account was closed and the Complainant assumed possession of the premises. (R. Exc. at 3).

Although the Complainant argues that the ALJ's Initial Decision contains inconsistencies, our review of the Exceptions in conjunction with the established record indicates that the Complainant appears to misunderstand the relevant facts of the case. The crux of the Exceptions pertain to the Complainant's question as to why her bill for the 20<sup>th</sup> Street property starts as of April 2004, when the Initial Decision states that the service turn-on date was November 2004.

The Initial Decision indicates that the tenant vacated the 20<sup>th</sup> Street property in February 2004, and was issued a final bill. (I.D. at 12). PGW last read the meter at the 20<sup>th</sup> Street property in April 2004. Between April 2004 and November 2004, PGW had no request for service at the 20<sup>th</sup> Street property. When service was resumed in November 2004, a meter reading was taken and the difference between that reading, and the reading from April 2004, was 302 Ccf. The tenant vacated the property in February 2004. Until another tenant occupies the premises, the Complainant is responsible for the payment of utility usage. 66 Pa. C.S. § 1529.1(b) states in part:

In the case of an individually metered dwelling unit, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

It is clear from the above quoted Statute that the Complainant is the responsible party for the utility services provided by PGW to the 20<sup>th</sup> Street property during the interim periods when the property is not leased. This resulted in a \$538.86 charge that was billed to the Complainant in November 2004. The Complainant has not made any payments on this account. As such, the resulting amount due, \$4,417.42, is for the gas consumption, plus accumulated late payment charges.<sup>2</sup>

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<sup>2</sup> The Complainant's account was billed \$3,654.37 for gas usage from April 2004 to November 2005. In November 2005, a tenant established service for the 20<sup>th</sup> Street property. The Complainant was charged \$763.05 in interest and penalty charges. (\$3,654.37 + \$763.05 = \$4,417.42).

Upon our review and consideration of the record evidence, we shall deny the Complainant's Exceptions. We note that in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98, 1980 Pa. PUC LEXIS 90 (1980), we established a policy wherein a complainant establishes a *prima facie* case of overbilling with a showing that: (1) the number of inhabitants has not changed; (2) there were no prior billing abnormalities; and (3) the customer could not have used the amount of energy for which he or she is charged. If a complainant is successful in establishing a *prima facie* case, then the burden of going forward with the evidence shifts to the utility. In this instance, the Complainant has offered no credible evidence to support her contention that she could not have used the amount of energy for which she was charged. Consequently, we find that the Complainant did not establish a *prima facie* case of overbilling pursuant to *Waldron*.

### Conclusion

Based upon the foregoing discussion, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision which sustained in part and dismissed in part the Complaint; **THEREFORE**,

### **IT IS ORDERED:**

1. That the Exceptions of Venessa Burrell to the Initial Decision of Administrative Law Judge Cynthia Williams Fordham are denied consistent with this Opinion and Order.
  
2. That the Initial Decision of Administrative Law Judge Cynthia Williams Fordham is adopted, consistent with this Opinion and Order.

3. That the Complaint of Venessa Burrell against Philadelphia Gas Works is dismissed.

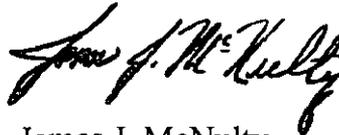
4. That Philadelphia Gas Works shall cancel the final bill for repairs in the amount of \$233.88.

5. That Philadelphia Gas Works shall remove the charges of \$841.82 and the late charges assessed after May 22, 2004, from the Complainant's Tulpehocken Street account.

6. That Venessa Burrell is responsible for paying the outstanding balance for the 20<sup>th</sup> Street account to Philadelphia Gas Works.

7. That this proceeding be marked closed.

**BY THE COMMISSION,**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2007

ORDER ENTERED: **JUL 12 2007**

2. Article Number



7160 3901 9843 1289 3097

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

THOMAS KNUDSEN SR VP/CFO  
LAURETO A FARINAS

F-01763537 O&O

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) \_\_\_\_\_ B. Date of Delivery \_\_\_\_\_

C. Signature  
X *Jim O'Hara*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below: \_\_\_\_\_



PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 1289 3172

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

VENESSA BURRELL

F-01763537 O&O

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) \_\_\_\_\_ B. Date of Delivery \_\_\_\_\_

C. Signature  
X *Venessa Burrell*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below: \_\_\_\_\_

**BTL**

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 1289 3257

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

ANDRE C DASENT ESQUIRE

F-01763537 O&O

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) *L. Newbold* B. Date of Delivery \_\_\_\_\_

C. Signature  
X *L. Newbold*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below: \_\_\_\_\_



PS Form 3811, March 2005

Domestic Return Receipt

**END**