

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDER SMITH	:	
Complainant	:	
v.	:	Docket No. F-2012-2315538
	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	

**Motion for Sanctions for PGW's Failure to Respond to Complainant's  
Interrogatories and Requests for Production of Documents, Set I**

**Responsive pleading is due within five days.**

Pursuant to 52 Pa. Code § 5.371 Alexander Smith ("Complainant"), through Counsel Community Legal Services, Inc. hereby moves to sanction Philadelphia Gas Works ("PGW") for failure to respond to Complainant's Interrogatories and Requests for Production of Documents, Set I (hereinafter the "Interrogatories"). In support of this motion, Complainant states as follows:

1. On or about July 24, 2012, Complainant, acting *pro se*, filed a Formal Complaint against PGW with the Commission, disputing PGW's allegations of unauthorized use on his gas service account.
2. An initial hearing was scheduled for December 7, 2012.
3. On November 30, 2012, Counsel for Complainant filed a notice of appearance and a motion for continuance of the hearing.
4. Complainant's request for continuance was granted on December 4, 2012 and the hearing was rescheduled for January 30, 2013.
5. In early December, 2012, the parties engaged in settlement discussions, but were unable to reach a settlement.

6. Complainant served Interrogatories on PGW by first class mail and e-mail on December 7, 2012.<sup>1</sup>

7. Pursuant to 52 Pa. Code § 5.342 (d), answers to Complainant's Interrogatories were due on December 27, 2012, twenty (20) days after the date of service.

8. As of January 4, 2013 – twenty eight (28) days after service of the Interrogatories- Complainant has not received any response to his interrogatories. PGW did not request additional time to respond to interrogatories and has not provided responses even after a full week has passed since the discovery deadline.

9. December 17, 2012 was PGW's deadline to object to the Interrogatories. 52 Pa. Code § 5.342(e). As of January 4, 2013, PGW has not communicated any objections to the Interrogatories. Pursuant to 52 Pa. Code § 5.371(d), PGW may not now be excused from its failure to respond to the Interrogatories on the ground that the discovery is objectionable.

10. The Commission's regulations, at 52 Pa. Code § 5.371(a) regarding sanctions for discovery violations, provide that the Commission or presiding officer may, on motion, make an appropriate order for sanctions if a party fails to answer or otherwise respond to discovery requests.

11. The presiding officer may order that the matters regarding which interrogatories and data requests were asked be established in accordance with the claim of the party obtaining the order. 52 Pa. Code § 5.372(a)(1).

12. 52 Pa. Code § 5.372 (a)(2) provides that the presiding officer may issue an order refusing to allow the disobedient party to support or oppose designated claims or

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<sup>1</sup> Alexander Smith's Interrogatories and Requests for Production of Documents, Set I is attached as Exhibit 1.

defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

13. The presiding officer may also prohibit the defaulting party from calling a witness whose identity has not been provided in response to a discovery request. 52 Pa. Code § 5.372(c).

14. PGW's failure to respond to these Interrogatories prevents Complainant's Counsel from having sufficient time to evaluate the responses, conduct further discovery, and adequately prepare for the hearing.

15. Complainant's Interrogatories contain requests for information that is in the exclusive possession of PGW.

16. Complainant carries the burden of proof at trial and will be severely disadvantaged by PGW's failure to provide the information requested in the Interrogatories absent the relief requested in this motion

WHEREFORE, Complainant moves that the Commission sanction PGW for failure to respond to Complainant's Interrogatories and Requests for Production of Documents, Set I in the manner set forth below:

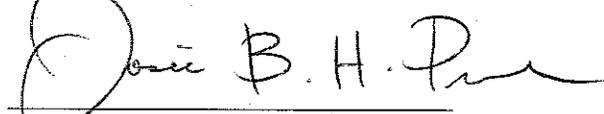
- i. Prohibit PGW from introducing any evidence concerning Complainant's contacts with PGW, credit history, collections events on Complainant's gas service account, and any evidence of defaulted payment agreements;<sup>2</sup>
- ii. Prohibit PGW from supporting any claim or introducing any evidence that Complainant is responsible for unauthorized use, theft of gas, meter tampering, or AMR disconnection at 3348 E Street in Philadelphia;<sup>3</sup>

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<sup>2</sup> PGW failed to respond to Interrogatory I-1, which specifically requests PGW to provide records of all contacts, credits, and collections events for the account.

- iii. Prohibit PGW from opposing Complainant's claim that his PGW account was current at the time PGW removed the gas meter and from introducing evidence of any additional charges;
- iv. Prohibit PGW from opposing Complainant's claim that his gas water heater and range were offline;
- v. Prohibit PGW from calling any witness who investigated, discovered, or confirmed unauthorized use, gas theft, or meter tampering at Complainant's home and any witness who removed the meter from Complainant's home;<sup>4</sup>and
- vi. Grant such other relief as is just and appropriate.

Respectfully submitted,



Josie B. H. Pickens, Esq.  
Attorney for Complainant  
COMMUNITY LEGAL SERVICES, INC.  
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January 4, 2013

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<sup>3</sup> PGW failed to respond to Interrogatories I-2 through I-10. These interrogatories seek information on how PGW determined there was unauthorized use at Complainant's address and request specific account history, as well as detailed information on PGW's policy and procedure. Further, PGW failed to respond to Interrogatories I-22 through I-24, which concern the meter that was removed from Complainant's property and seek information on the meter's history, how it was handled upon removal from the property, and its current location.

<sup>4</sup> PGW failed to respond to Interrogatories I-2(e)(concerning the name and position title of all employees connected with determining unauthorized use or gas theft at Complainant's property), I-3(c) and I-8(c) (concerning the PGW personnel and departments involved in investigating incidents of unauthorized use, gas theft, meter bypass, vandalization, or disconnection), and I-11 (requesting the name(s) of the PGW employee(s) who removed the meter from Complainant's home).

Exhibit 1

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALEXANDER SMITH :  
Complainant :  
v. : Docket No. F-2012-2315538  
PHILADELPHIA GAS WORKS :  
Respondent :

Alexander Smith's Interrogatories and Requests for Production of Documents  
SET I

Pursuant to 52 Pa. Code §§5.341, 5.349, Complainant Alexander Smith, through counsel Community Legal Services, Inc., hereby propounds the following Interrogatories and Requests for Production of Documents to Philadelphia Gas Works (hereinafter "PGW") to be answered by those officers, employees or agents as may be cognizant of the requested facts and/or documents and who are authorized to answer on behalf of the Company. The due date for response to the Interrogatories is twenty (20) days from the date of service.

The following instructions apply to these interrogatories:

1. These interrogatories shall be deemed to be continuing. PGW is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to PGW after the answers hereto are served.
2. The answer period should first restate the question asked and also identify the name and position of the individual who provided the answer.
3. Each interrogatory and request for production shall be answered fully and completely. All information is to be divulged that is within the knowledge, possession,

## Exhibit 1

control, or custody of PGW or may be reasonably ascertained thereby. The term "PGW" or "Company" as used herein includes PGW, its attorneys, agents, employees, or other representatives.

4. As used in these discovery requests, the word "document" or "workpaper" includes, but is not limited to, the original and all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, notice, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing, in whatever form stored or contained in or on whatever medium including computerized memory or magnetic media.

5. As used in these discovery requests, the word "Account" means the Gas Account of Alexander Smith, for gas service provided to 3348 E Street Philadelphia, PA 19134.

6. As used in these discovery requests, the word "Complainant" means Alexander Smith.

Exhibit 1

Alexander Smith v. Philadelphia Gas Works

Docket No. F-2012-2315538

Alexander Smith's Interrogatories and Request for Production of Documents  
Set I

1. Please provide records of all contacts between PGW and Complainant, including but not limited to, a printout of Contacts and Credit and Collections events for the Account.

2. Please provide all information, documents and records pertaining to any alleged unauthorized usage or gas theft on the Account, including but not limited to, documents and records which contain the following information:

- a. The date the alleged unauthorized usage or gas theft was discovered;
- b. How the alleged unauthorized usage or gas theft was discovered;
- c. Any notices concerning alleged unauthorized usage or gas theft provided to Complainant;
- d. How it was determined that there had been unauthorized usage or theft of gas;
- e. The names and position titles of all employees connected with determining that there had been unauthorized usage or gas theft; and
- f. The method by which the alleged unauthorized usage or gas theft was accomplished.

3. Please describe the Company policy and procedure for investigating unauthorized usage or gas theft. Please provide all current PGW manuals, training materials and documents pertaining to, but not limited to, the following:

- a. What triggers PGW to conduct an investigation;
- b. What notices are provided to the customer concerning the investigation;

Exhibit 1

- c. What PGW personnel and departments are involved in the investigation;
  - d. How long the process takes; and
  - e. What steps are taken to determine the reason for and the nature of the alleged unauthorized usage or gas theft.
4. Please state the Company procedure for handling customers when PGW discovers they have been using gas without authorization. Please provide all current PGW manuals, training materials and documents including but not limited to copies of notices and other documents provided to the customer, and procedures for terminating service.
5. Please state any specific health and safety issues involved with the illegal usage alleged in this case, and provide any supporting documents in PGW's possession.
6. Please provide all records of any instances, if any, of suspected unauthorized use at the residence prior to November 15, 2011.
7. Please provide all information, documents and records pertaining to any alleged meter bypass, meter tampering, or AMR disconnection on the Account, including but not limited to, documents and records which contain the following information:
- g. The date the AMR disconnection was discovered;
  - h. How the AMR disconnection was discovered;
  - i. Any notices concerning AMR disconnection provided to Complainant;
  - j. Photographs of the meter and AMR in question, including the date and location of each photograph and the name and job title of the person taking each photograph;
  - k. How it was determined that the meter had been bypassed, vandalized, or disconnected;

Exhibit 1

1. The names and position titles of all employees connected with determining that the meter had been bypassed, vandalized, or disconnected.
8. Please describe the Company policy and procedure for investigating meter bypass, vandalization, or disconnection. Please provide all current PGW manuals, training materials and documents pertaining to, but not limited to, the following:
  - a. What triggers PGW to conduct an investigation;
  - b. What notices are provided to the customer concerning the investigation;
  - c. What PGW personnel and departments are involved in the investigation;
  - d. How long the process takes; and
  - e. What steps are taken to determine the reason for and the nature of the alleged meter bypass, vandalization, or disconnection.
9. Please state the Company procedure for handling customers when PGW determines that they have bypassed, disconnected, or otherwise vandalized a meter. Please provide all current PGW manuals, training materials and documents including but not limited to copies of notices and other documents provided to the customer, and procedures for terminating service.
10. Please state any specific health and safety issues involved with the meter tampering alleged, and provide any supporting documents in PGW's possession.
11. Please provide the name(s) of the PGW employee(s) who removed the meter from Complainant's home on or about November 15, 2011 and any reports generated by the employee(s) about the meter in question.
12. Please state if a bonus was paid to the employee(s) who removed the meter from the Complainant's home. If yes, please provide the following:

Exhibit 1

- a. The name(s) of the employee(s) who received the bonus;
- b. The amount of this bonus and any documentation relating to payment of this bonus;
- c. The number of bonuses paid to the employee(s) during the course of employment with the Company; and
- d. All documents, manuals and memos that relate to such type of bonus, including but not limited to, information about when and under what conditions such a bonus would be paid.

13. Please provide the amount of gas that was used illegally and how this number was determined.

14. Please provide all information pertaining to Account activity during November 15, 2007 and November 15, 2011. Please include all documents pertaining to any gas usage, the amount of usage, when the usage began, and all notices sent to the Complainant about the usage occurring during this time period.

15. What was the Complainant's monthly gas usage from November 15, 2003 and November 15, 2007.

16. Please provide all documents and records pertaining to the Account's gas service termination on or about November 15, 2011. This includes, but is not limited to, documents and records pertaining to the following:

- a. All termination notices provided to the Complainant prior to and subsequent to the shut-off.
- b. All visits made to the Complainant's service address prior to termination.
- c. All telephone calls made to the Complainant's service address prior to termination.
- d. All telephone calls made by the Complainant to PGW concerning service termination prevention, service termination, and service restoration.
- e. All visits made by the Complainant to PGW customer service centers concerning service termination prevention, service termination, and service restoration.

Exhibit 1

- f. All records arising from the actual terminations of service at Complainant's residence.
- g. The names and position titles of each employee involved in the termination process, from shut off notices to physical equipment shut off.

17. Please state the amount PGW requested to have service restored on November 15, 2011 and explain how that amount was calculated.

18. Please state the payment amount PGW is now requesting for restoration of gas service and explain how the amount was calculated.

19. Please state the total amount Complainant currently owes to the Company.

Please itemize the different segments of this debt including:

- a. what portion of this total debt is for service for which Complainant has not paid, and
- b. what portion of the total debt is for other fees charged by PGW.

20. Please describe the Company policy for routine maintenance and/or inspection of meters and AMR devices. Please provide all current PGW manuals, training materials and documents pertaining to the maintenance and/or inspection of meters and AMR devices.

21. Please identify all dates when PGW was required to perform maintenance and/or inspection on any meters or AMR devices located at Complainant's property between 1991 and 2011 and indicate whether the maintenance or inspection was performed.

22. Please describe the Company policy and procedure for removing a meter from a property where PGW has discovered unauthorized usage, meter tampering, or theft of gas. Please provide all current PGW manuals, training materials and documents pertaining to, but not limited to, the following:

Exhibit 1

- a. How the meter is removed;
- b. Where the meter is stored upon removal from the property;
- c. How the meter is transported to PGW;
- d. Where the meter is stored upon return to PGW; and
- e. Whether recovered meters are refurbished and/or reused.

23. Please describe how the meter at Complainant's property was removed, transported and stored.

24. Please identify the current location of the meter that was removed from Complainant's address on or about November 15, 2011.

25. Please provide any information PGW has on record concerning the Complainant's household income and poverty level. Please state how and when this information was collected.

26. Please provide all documents pertaining to the assignment of Complainant's PGW debt to collection agencies.

27. Please state whether any of Complainant's PGW debt is currently being handled by a collection agency and if so, when the debt was assigned to the collection agency.

28. Please provide the Company policy and procedure as it pertains to the use of collection agencies. Please include all documents describing how a specific collection agency's services are chosen over another collection agency's services. Please include all documents describing how and when the Company decides to assign the debt to the collection agency.

Exhibit 1

29. Please state the Company procedure for handling a customer's repayment of PGW debt to a collection agency.

30. Please provide all documents pertaining to the Complainant's receipt of LIHEAP grants, including, but not limited to the following:

- a. LIHEAP applications made by the Complainant that PGW has on file;
- b. The amount of LIHEAP grants (cash and crisis) that have been applied to Complainant's account;
- c. When these grants were applied to Complainant's account; and
- d. How each grant changed the amount of money PGW demanded from Complainant; and
- e. Whether the receipt of any LIHEAP grant prevented imminent termination of service or resulted in service restoration at Complainant's service address.

31. Please provide documents pertaining to the Company policy on treatment of written off charges for persons seeking restoration of service, including treatment of charges for service incurred more than 4 years prior.

Respectfully submitted,

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Josie B. H. Pickens, Esquire  
PA Attorney I.D. # 309422

Attorney for Complainant

COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street  
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215-981-3704

December 7, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ALEXANDER SMITH**  
**Complainant**

v.

**PHILADELPHIA GAS WORKS**  
**Respondent**

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**F-2012-2315538**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, served a copy of the foregoing Motion for Sanctions for PGW's Failure to Respond to Complainant's Interrogatories and Requests for Production of Documents, Set I upon the participants, listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant).

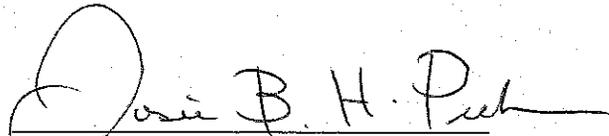
By First Class U.S. Mail, postage prepaid and/or facsimile and e-mail as indicated:

Administrative Law Judge Angela Jones  
Pennsylvania Public Utility Commission  
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Alexander Smith  
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Dated this 4<sup>th</sup> day of January, 2013.



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