

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Berger Development, L.P.	:	
	:	
v.	:	C-2012-2340584
	:	
Philadelphia Gas Works	:	

**EXCEPTIONS OF COMPLAINANT TO INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
SUSTAINING PRELIMINARY OBJECTIONS AND DISMISSING COMPLAINT**

Berger Development, L.P. files the following exceptions to the initial decision of Administrative Law Judge David A. Salapa, and in support thereof avers as follows.

1. Berger Development, L.P. through its operations manager, Kathryn Sullivan, filed a "Formal Complaint Form", attached hereto as Exhibit A, with the Pennsylvania Public Utility Commission on or about September 9, 2012. That complaint was served on Philadelphia Gas Works on or about October 30, 2012. Although the Philadelphia Gas Works was obligated to file an answer within twenty days of service of the complaint upon them, they did not do so and their answer was not filed until January 16, 2013.
2. On Page 9, Paragraph 8 of the "Formal Complaint Form" Edgar Einhorn was listed as the "Lawyer's Name". This was done without Mr. Einhorn's authorization or knowledge (see attached Exhibit A – "Formal Complaint Form"). Consequently, any averments in said complaint were made by a layperson rather than the undersigned attorney Edgar R. Einhorn.
3. The Honorable Judge David A. Salapa incorrectly based his decision upon the belief that the complaint filed by Berger Development, L.P. requested that the lien of PGW be stricken and/or that the said complaint questions the validity and enforcement of the lien filed by Philadelphia Gas Works. It is based upon this incorrect assumption that the preliminary objections were sustained and the complaint was dismissed.
4. On Page 7, Paragraph 4 of the "Formal Complaint", Subparagraph A has checked off that Berger Development, L.P.'s complaint is, "There are incorrect charges on my bill."
5. In Subparagraph B on Page 7 the last paragraph states, "We therefore dispute the entire amount as requested by PGW..."

6. On Page 8 of Exhibit A, "Formal Complaint Form", in Paragraph 5 the resolution requested was, "We are requesting that all charges be removed from our account." This request was based upon the fact that Berger Development, L.P. questioned the amount and method of determination of said amount of the lien.
7. Based upon the allegations in the Complaint in Paragraph 4A, the last paragraph of 4B, and Paragraph 5, Berger's dispute in this matter, and which was before the PUC, was not as to the validity or enforcement of the lien but rather questioned what, if anything, was owed PGW and how that amount was determined.
8. The building at 229 Arch St. to which gas service was provided by PGW was vacant, locked and not used since the time Berger Development, L.P. acquired it in 2008. It was periodically inspected and at no time was there any evidence of break-in or use of the property by unauthorized persons.
9. The amount of the lien is in dispute because of the following reasons:

Administrative Judge David A. Salapa's stated in the third paragraph of Page 2 of his opinion, that PGW's answer denies that it shut off the utility service at 229 Arch St. Attached to these exceptions as Exhibit B is a copy of PGW's computer screen, "Contacts for Premises", which was supplied by PGW. The said contact screen states that on 9/10/09, "SHUT GAS OF (sic) PER ED S PROP VACANT".

Again on Exhibit B on January 7, 2011 it stated:

"Patrick McGlone Jr. was here on a Meter Reclamation Program order with Order #2831532, with a result of **COMPLETED**, with activities of ("Meter and Connections – Shut Off), with comments of "No answer, House is CGI". (Emphasis added.)

On May 2, 2011, Exhibit B, "Contacts for Premises", states:

"Stephen Yurick was here on a Meter Reclamation Program order with Order #3040800, with a result of **COMPLETED**, with activities of (General – Inspected/Corrections), with comments of PROP VACANT FOR LEASE 215-925-1198." (Emphasis added.)

10. PGW does not dispute that it closed the account in this matter on September 10, 2009 (see Paragraph 4, PGW's Preliminary Objections). If PGW was unable to gain access to the property, which they allege and which is contrary to entries of May 2, 2011 and January 7, 2011, which appeared on Exhibit B, why wasn't the gas service to this property **SHUT OFF AT THE PGW CURB STOP WHICH IS ON THE SIDEWALK OUTSIDE OF THE BUILDING.**

11. The amount of the lien is in issue because of the following reasons:

- a. The gas usage analysis provided by PGW, a copy of which is attached as Exhibit C, states "Account Type – Non-Heating".
- b. The subject premises previous to the present owner was used by the Commonwealth of Pennsylvania as a drug rehab center. The only gas appliances which appear to have been in this property were a stove in a kitchen and hot water heaters.
- c. Attached as Exhibit D is a copy of a two page monthly statement issued by PGW for the period of July 28, 2008 to August 26, 2008.

On Page 2 of the monthly statement it indicates that for the period of this statement 20 Ccf were used. On Page 2 of the monthly statement in the lower portion of the right hand side of the page in the paragraph marked "Energy Usage Information" there is a history of usage for this property over the last twelve months. Note that the reading for the monthly statement and also the usage for the twelve months are "Actual" usages and not "Estimated". The total usage for the twelve months is approximately 31 times the usage for the period July 28 through August 26, 2008 [623 Ccf (one year) ÷ 20 Ccf (7/28 to 8/28) = 31]. Therefore the charge for the previous twelve months would be approximately \$1965 (statement usage charge \$63.39 x 31 = \$1965.09).

- d. Page 2 of PGW's answer states:

"On September 10, 2009 PGW took the gas service out of the Complainant's name as of September 26, 2008 (it is assumed that this should be 2009). The service was finalized at index 26501."

If the meter was read on September 10, 2009 why wasn't the service shut off at the time of the meter reading?

This index reading was one month after the period of time set forth in the monthly statement which is Exhibit D. In the monthly statement on the second page in the paragraph titled "Meter Detail", the reading on August 26, 2008 was 26482. Based on PGW's statement that one month later on September 26, 2008 the reading was 26501, the usage for the month following the statement which is Exhibit D was 19 Ccf, which was approximately the same amount of usage as set forth on the August monthly statement.

12. Berger Development, L.P. also contests it not having received proper credits for a deposit which it placed with PGW. On the first page of the monthly statement which is Exhibit D, it indicates that there was a deposit in the amount of \$21,437.90. The

monthly statement indicates that \$12,049.39 was owed including past due amounts. Subtracting the amount due on September 30 from the deposit amount (\$21,437.90 - \$12,049.39) would indicate that \$9,388.51 remained on deposit as of the August, 2008 statement. However, PGW in its answer on Page 2, second paragraph, states that on October 22, 2008 (two months after the August statement) PGW applied a security deposit of \$1,328.24, which left a balance due of \$54.11 which was paid on October 16, 2009. Berger Development, L.P., although it has requested, has not received an explanation of why the balance of deposit as of August 28, 2008 of \$9,388.51 was only \$1,328.24 two months later on October 22, 2008. What happened to the difference between the amount on deposit on August 26, 2008 (\$9,388.51) and the amount of the deposit credited to the account on October 26, 2008 (\$1,328.24), which amount is \$8,060.27?

13. On Page 2 of PGW's answer they aver in the last sentence of the first paragraph that there was an **INOPERABLE ENCODER RECORDER TRANSMITTER** (ERT) (emphasis added). The fact that the ERT was inoperative raises an issue as to whether or not Meter No. 1724255 also was inoperative or was incorrectly reporting usage, if any. It should be further noted that the "Contacts for Premises" computer screen printout (Exhibit B) indicates that on February 29, 2012 there were two entries of "THFT" which apparently indicates theft. Further there is an entry on the same date of "Turn Off AMR".
14. Berger Development, L.P. requests, in order to add additional reasons for these exceptions, that the Philadelphia Gas Works be directed to provide to Berger Development, L.P.:
 - a. A full and complete account summary from 2007 through 2012.
 - b. A complete computer screen printout of "Contacts for Premises" from January 1, 2008 through the end of 2012.
 - c. Results of any testing of Meter No. 1724255, and when the inoperative ERT was replaced.

For the foregoing reasons it is respectfully requested that Administrative Judge Salapa's decision be reversed and this matter remanded back to the Commission for reconsideration of the disputed bill because:

1. Complainant did not contest the validity or enforcement of Respondent's lien, but rather disputed the method of computation and the amount of the monies allegedly owed the Respondent.
2. Discrepancies in the amount of gas usage alleged in Respondent's lien as compared to actual usage in the year prior to the start of the contested usage period.

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).

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

Gerald Clark, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

Anne Marie Cromley
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

Linda Pereira
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122



EDGAR R. EINHORN, ESQUIRE

Dated: 2/18/13

EXHIBIT A – FORMAL COMPLAINT FORM

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Berger Development, LP

Street/P.O. Box 901 N Penn St Apt # FC-1

City Phila State PA Zip 19123

County Philadelphia

Daytime Telephone Number Where We Can Contact You: (215) 413-2000 x 14

E-mail Address (optional): kat.m.sullivan@hotmail.com

Utility Account Number 779462297 (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name Berger Development, LP

Street/P.O. Box 229 Arch Street

City Philadelphia State PA Zip 19106

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Philadelphia Gas Works

3. TYPE OF UTILITY (check one)

- ELECTRIC, GAS, WATER, TELEPHONE, STEAM HEAT, WASTE WATER, MOTOR CARRIER

4. **COMPLAINT (check one)**

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

Disputed billing period 09/06/08 through 02/29/12.

ON March 8, 2012 Berger Development first received notification that PGW had placed a lien in the amount of \$ 67,483.03 on the property located at 229 Arch St, Phila, PA 19106.

Berger contacted PGW and informed them that the gas service was turned off per Berger's request on 09/10/09 and that all bills received up to that date had been paid in full. PGW's own information agrees that the service was disconnected per Berger's request on 09/10/09.

PGW is basing the amount due on supposed usage post the shut off date. Berger contends that the property has been vacant since acquisition until interior renovations began in December of 2011. we therefore dispute the entire amount as requested by PGW and provide documentation of the requested shut off and payment of all invoices prior to this request.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

We are requesting that all charges be removed from our account.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name Edgar Einhorn

Street 255 S. 17th St, Suite 2606

City Phila State PA Zip 19103

Area Code/Phone Number (215) 985-4050

E-mail Address (If Known) einhorn@aol.com

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Kathryn Sullivan, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



(Signature)

09/09/12

(Date)

Operations Manager

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

EXHIBIT B – CONTACTS FOR PREMISES

229 Arch St/Philadelphia,Pa Transaction History Full Comments

03/20/2012	DRUL	Dispute received on 03/20/2012 regarding Customer disputes billings for last 4 years states property was vacant. gas was not shut off but does not believe that much gas was used	Berger Development Lp
03/19/2012	CRIC	KATHY CALLED IN REF TO LIEN AND GAS BILL FOR \$67000.00 EXPLAINED THAT GAS WAS NOT OFF, SHE STATED THEY PURCHASED PROPERTY IN 2008 AND THAT PROPERTY WAS VACANT BUT METER WAS STILL RUNNING. WILL GIVE TO SENIOR TO CONTACT HER TOMMOROW.	Berger Development Lp
02/29/2012	THFT	per MIU (CF) billed acct from 9/26/08 - 2/29/12, bill issued.	Berger Development Lp
02/29/2012	SER1	Ajms Order#: 3647569 Cancelled -error	Berger Development Lp
02/29/2012	SER1	Turn Off (AMR) 02/29/2012	Berger Development Lp
02/29/2012	THFT	assist Meter Reader Deleo PR # 9441, who was working on a Meter Reclamation service order when he uncovered a Commercial Unauthorized User. We found meter # 1724255 on at index 66509. The property is vacant and under construction. However the previous customer record Berger Development LP is responsible for the total usage. I spoke with Ms. Cathy who is a representative of Berger Development and advised her that Berger Development will be billed for the total usage.	No Name
05/02/2011	SERV	Stephen Yurick was here on a Meter Reclamation Program order with Order # 3040800, with a result of Completed, with activities of (General - Inspected/ Corrections), with comments of "PROP. VACANT FOR LEASE215-925-1198"	
04/29/2011	SERV	Meter Reclamation Program. 05/02/2011, 1200 - 1600 Meter Reclamation Program	
01/07/2011	SERV	Patrick McGlone Jr. was here on a Meter Reclamation Program order with Order # 2831532, with a result of Completed, with activities of (Meter and Connections - Shut Off), with comments of "No answer.. House is CGI"	
01/07/2011	SERV	Meter Reclamation Program. Order Sent As Unassigned To Dispatcher sw	
09/12/2009	SDAP	Deposit of \$0.00 Refunded Deposit Interest of \$0.00 Refunded Created by: CDPRFAR	Berger Development Lp
09/10/2009	BILL	SHUT GAS OF PER ED S PROP VACANT	Berger Development Lp
08/14/2009	SERV	Bernard Breslin was here on a Oil Change order with Order # 1939329, with a result of Can't Get In, with comments of "cg"	Berger Development Lp
08/13/2009	AMP	08/13/2009 1200 - 1600	

EXHIBIT C – GAS USAGE ANALYSIS

Gas Usage Analysis

[\[Send To Printer\]](#)

**BERGER DEVELOPMENT LP
229 ARCH ST
PHILA , PA 19106**

**SA ID: 6568486167
Account Type: Non-Heating**

Read Date		Meter Readings		Number Of Days	Usage In CCF*	Number of Deg Days**	Cubic Feet per Day
From	To	From	To				
9/27/2008	9/24/2009	26501	44000	363	17499	4614	4820.7
9/25/2010	9/24/2011	51500	57100	365	5600	4542	1534.2
9/25/2009	9/24/2010	44000	51500	365	7500	4283	2054.8
9/27/2008	9/24/2010	26501	51500	1093	30599	13439	2,799.5
Read Date		Meter Readings		Number Of Days	Usage In CCF*	Number of Deg Days**	Cubic Feet per Day
From	To	From	To				

* CCF = Hundred Cubic Feet

** A Degree Day is an index of energy consumption for heating. It indicates the number of degrees the average temperature drops below 65° F

*** CFDD equals cubic feet of gas used per degree day

Gas Usage Analysis

[\[Send To Printer\]](#)

**BERGER DEVELOPMENT LP
229 ARCH ST
PHILA , PA 19106**

**SA ID: 6568486167
Account Type: Non-Heating**

Read Date		Meter Readings		Number Of Days	Usage In CCF*	Number of Deg Days**	Cubic Feet per Day
From	To	From	To				
9/25/2011	2/29/2012	57100	66509	158	9409	2824	5955.1
9/25/2011	2/29/2012	57100	66509	158	9409	2824	5,955.1
Read Date		Meter Readings		Number Of Days	Usage In CCF*	Number of Deg Days**	Cubic Feet per Day
From	To	From	To				

* CCF = Hundred Cubic Feet

** A Degree Day is an index of energy consumption for heating. It indicates the number of degrees the average temperature drops below 65° F

*** CFDD equals cubic feet of gas used per degree day

EXHIBIT D – PGW MONTHLY STATEMENT – 7/28/08-8/26-08



PHILADELPHIA GAS WORKS
 800 W. MONTGOMERY AVENUE, PHILADELPHIA, PA 19122-0050

235-7071

Page: 1 of 2
 Billing Date: 09/05/08
 Account Number: 0779462297

MONTHLY STATEMENT

From 07/28/08 thru 08/26/08

Billing Cycle Number: 22

Account for:

Berger Development Lp
 205 ARCH ST
 PHILA PA 19106

Payments Summary

08/15/08 Check \$61.19

Billing Summary

Past Due Amount \$11,986.00
 Current Charges \$63.39
 Deposit Amount \$21,437.90

Total Amount Due By Sep 30, 2008	\$12,049.39
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GENERAL INFORMATION

CONTACT US

Gas Leaks & Emergencies	215 235-1212
Billing & General Information	215 235-1000
Appliance Service	215 235-2050
Theft of Gas	215 684-6383
Foreign Language Assistance	215 235-1000
Hearing impaired TTY Line	215 236-4646
Representantes Que Hablan Espanol	215 235-2175

Web Site - www.pgworks.com

CUSTOMER SERVICE CENTERS

(Hours 9 a.m. - 5 p.m.)

Center City	1137 Chestnut St. (M, T, TH, F)
Germantown	210 W. Chelton Ave. (T, W, F)
S. Philadelphia	1601 S. Broad St. (M, W, TH)
Frankford	4410 Frankford Ave. (T, TH, F)
N. Philadelphia	1337 W. Erie Ave. (M, W, TH)
W. Philadelphia	5230 Chestnut St. (M, T, W, F)

To avoid Finance Charges please pay total amount due by the due date. Finance Charge is calculated at 1.5% monthly. (18% yearly)

Questions or complaints about your bill? Please call us before the Due Date at 215-235-1000.
 Or write to: PGW P.O. Box 3500, Phila., PA 19122-0050



Berger Development Lp
205 ARCH ST
PHILA PA 19106

Page: 2 of 2
Billing Date: 09/05/08
Account Number: 0779462297

Account Summary

Previous Balance	Payments Received	Balance Brought Forward	Repairs and Adjustments	Current Charges	Account Balance
\$12,047.19	\$61.19	\$11,986.00	\$0.00	\$63.39	\$12,049.39

Current Basic Charges

SA ID# 1618343147, 229 ARCH ST
Rate Class: General Service Commercial

Supply Charges

Commodity Charge 20 Ccf @ \$1.36362.....	\$27.27
Total Supply Charges	\$27.27
Delivery Charges	
Customer Charge @ \$18.00	\$18.00
Distribution Charge 20 Ccf @ \$0.75997.....	\$15.20
Gas Cost Adjustment @ -\$0.06126 for 29 Days	\$1.23 CR
Total Delivery Charges	\$31.97
PA SALES TAX 7% OF \$59.24.....	\$4.15
Total Current Billing Charges	\$63.39

Meter Detail

Meter #: 1724255 Service Point: 9972610027
Multiplier: 1.0000 Gas Pressure Factor: 1.000

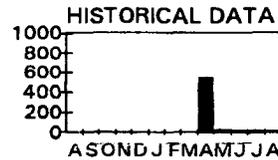
Next Meter Read: Sep 25, 2008

From			To			Difference	Usage (Ccf)	Conversion Factor	Total Therms
Date	Reading	Type	Date	Reading	Type				
07/28/2008	26462	Actual	08/26/2008	26482	Actual	20	20.00	1.029	20.58

Energy Usage Information

SA ID# 1618343147, 229 ARCH ST
COMPARATIVE GAS USAGE THIS MONTH

	This Year	Last Year
Avg Daily Usage (Ccf)	1.0	0.0
Billing Days	29	0
Avg Daily Cost	\$2.19	\$0.00



LAST 12 MONTHS
Total Ccf 623.00
Avg Ccf 51.92

Actual (solid line)
Estimated (dashed line)

Deposit Information

Current Deposit Amount \$10,718.95
Past Due Deposit \$10,718.95
Total Deposit Amount \$21,437.90

Message Center

Attention Budget customers: This bill may include your Budget True Up amount. Next month, you will be billed for your scheduled budget amount.

Effective September 1, 2008 PGW rates have changed. Commodity Charge decreased to \$1.33798 per CCF. Gas Cost Adjustment decreased to \$(0.07271). Distribution Charge decreased to \$0.73109. The changes will decrease the typical commercial heating bill by about \$270.48 a year.