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July 10, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

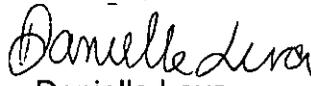
Re: 1305 Walnut Street. Corp. v. PGW, Docket No. C- 2012 - 2337290

Dear Secretary Chiavetta:

Pursuant to the Administrative Law Judge's Order to Establish Briefing Schedule dated October 31, 2007 and the Order to Amend briefing Schedule dated November 29, 2007 in the above captioned matter, the Respondent, the Philadelphia Gas Works (PGW) hereby files PGW's Main Brief.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,


Danielle Leva

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Enclosure

cc: Joshua L. Grimes, Esq. (Fed Ex and Email)
William McNamara (Fed Ex)
Administrative Law Judge Cynthia W. Fordham (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

water heater connection.⁵ PGW inspected this connection for the fitness of operation.⁶ Ultimately, the piping work for the gas line feeding the newly installed hot water heaters were configured in such a way as to bypass the PGW meter measuring usage to the hot water heaters.⁷ That configuration prevented PGW from charging the Complainant for gas usage to the hot water heaters. Such a configuration which is created to bypass metering is theft of gas service.

There is a gas industry standard for some large industrial and commercial utility customers to have dual meters and a locked “bypass” configuration.⁸ The function of the utility bypass is to provide for uninterrupted service to the industrial/commercial customer while PGW is working on the meter. The only time that the PGW bypass should be unlocked is when PGW is working on the meter. At one time there were two meters at the Service Address, one was removed. To seal off former meter location and to prevent the unmetered flow of gas PGW and replaced with a lock.⁹

After the installation of the Complainant's hot water heaters, a PGW service person was at the Service Address to verify the safe installation of the Complainant's hot water heater.¹⁰ During the period of the disputed Unauthorized Usage, PGW service persons were at the Service Address to perform duties but not to inspect for theft of service.

In April 2008 PGW discovered that the lock had been removed and the piping enabling the installation of the hot water heaters was installed in a configuration fed from the unlocked PGW bypass.¹¹

On April 30, 2008 PGW issued the bill for Unauthorized Usage.¹² Beginning in 2008 PGW and the Complainant had intermittent discussions in an attempt to arrive at a solution. After the initial issuance of the disputed bill, PGW removed the disputed amount from the Complainant's account so that the Complainant's bill would not reflect the attempted collection of a disputed amount.¹³ During its discussions about the disputed

⁵ Complainant's Exhibit C – 1

⁶ Complainant's Exhibit C – 2

⁷ PGW Exhibit – 1, PGW Exhibit – 11, pp. 2 - 6

⁸ Tr. pp. 227 - 230

⁹ Id.

¹⁰ Complainant's Exhibit C – 2

¹¹ PGW Exhibit – 11, pp. 2 – 6

¹² PGW Exhibit – 5, p. 3

¹³ Tr. pp. 133 - 137

bill, the Complainant challenged the accuracy of the calculation of the bill for unauthorized use, as it was based upon heating load information.¹⁴ In response, PGW presented the Complainant with an analysis which took into account the complexities of the commercial hotel setting with actual usage information obtained since the discovery of the Unauthorized Usage and the proper metering of the Complainant's usage.¹⁵ The Complainant did not respond to PGW's analysis until the Initial Hearing of this matter. After intermittent discussions over several years, the Holiday Inn finally filed a formal complaint in December 2012.

By notice dated February 1, 2013, the Commission scheduled an Initial Hearing of this matter for March 21, 2013 before Administrative Law Judge Cynthia W. Fordham. By motion of the Complainant, the Administrative Law Judge Fordham granted a request for a continuance. By notice dated March 7, 2013, the Commission rescheduled the Initial Hearing for May 22, 2013.

The Complainant's conducted discovery consisting of one set of interrogatories and one set of request for production of documents. In response PGW provided the Complainant with responses totaling approximately 114 pages of account information, PGW records and photographs responsive to the discovery requests.

On May 22, 2013, Administrative Law Judge Fordham presided over the Initial Hearing of this matter that generated 274 pages of testimony. The Complainant sponsored six exhibits that were admitted to the record. PGW sponsored eleven exhibits that were admitted to the record. At the conclusion of the hearing and by Order dated June 18, 2013, Administrative Law Judge Cynthia W. Fordham set the briefing schedule with Main Briefs due on July 10, 2013 and Reply Briefs due on July 22, 2013.

¹⁴ PGW Exhibit – 7

¹⁵ PGW Exhibit - 8

II. **Summary of the Argument:**

The Complainant failed to meet its burden of proof to show that PGW violated its obligation to provide adequate and reasonable service under the Public Utility Code. The Complainant did not show that the configuration of the piping that provided gas to its hot water heaters was the responsibility of PGW and that the Complainant also failed to show the most accurate methodology by which to calculate the bill for Unauthorized Usage for the period from 2000 to April 2008.

III. **Argument**

A. **The Complainant Has Failed to Show that PGW Has Acted Unreasonably or Provided Unreasonable Service in Violation of the Public Utility Code §1501 in the Discovery of Gas Theft or the Billing for It.**

1. The Complainant has the burden of proof in this matter to show the provision of unreasonable service in the discovery of Unauthorized Usage and the Issue of a Bill for Unauthorized Usage.

Pursuant to the Public Utility Code, 66, Pa. C.S. §332(a), the party seeking affirmative relief from the Commission, the Complainant, bears the burden of proof. To establish a sufficient case and satisfy its burden of proof, the Complainant must show that the PGW is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. P.U.C. 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). Such a showing must be made by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 134 Pa. Cmwlt. 218, 578 A.2d 600 (1990). A finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Pa. P.U.C., 67 Pa. Cmwlt. 597, 447 A.2d 1100 (1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. V. Pa. P.U.C., 489 Pa. 109, 419 A.2d 1037 (1980). The Complainant failed to meet its burden of proof in showing that PGW did not provide reasonable service.

Pursuant to the Pennsylvania Public Utility Code at 66 Pa. C.S.A. §1501 -

Character of service and facilities:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . .

In the record of the instant case, there is no evidence of PGW's any violation of the adequate and reasonable service standard. After making the determination that the piping configuration to the Complainant's hot water heaters was unmetered gas, the record evidence reflects that PGW took steps to investigate the circumstances surrounding the theft of service and the calculation of the bill for such usage based upon information that it had at the time. During its discussion with the Complainant regarding the disputed bill, PGW removed from the account so that collection activity would not proceed on that disputed amount. As PGW witness Cromley explained, the disputed bill was removed from the account while the parties discussed the matter.¹⁶

As there were no meter readings upon which to base a bill for Unauthorized Usage, PGW based the calculation of the bill based upon information it had at the time. Generally, PGW used a weather based/ degree day method of establishing a basis on which to bill for Unauthorized Usage. In the process of discussions with the Complainant on the accuracy of the bill for Unauthorized Usage, PGW submitted to the Complainant an analysis based upon the actual usage obtained after the discovery of the Unauthorized Usage and the proper metering of the hot water heaters. Even after its initial investigation of this matter, PGW continued dialogue with the Complainant to arrive at those factors most accurately reflecting the use and quantity of the unmetered gas. Thus, throughout the Complainant's dispute process, PGW preserved the Complainant's rights with respect to the disputed amount and engaged in a dialogue to discuss the correct estimation of the bill for Unauthorized Usage. PGW did not violate any section of the Pennsylvania Public Utility Code.

¹⁶ Tr. pp. 133 – 137

2. The Configuration of the Piping Serving Complainant's Two Hot Water Heaters Bypassed PGW's Metering Apparatus and Supplied Unmetered Gas to Operate Those Hot Water Heaters.

It is uncontroverted that witnesses for both parties of this of this matter have testified that the configuration of the piping serving the Complainant's two hot water heaters bypassed the meter and supplied unmetered gas to the newly installed hot water heaters. The Complainant's witness and consultant, Gary Derr of Diversified Refrigeration testified that Exhibit C-3, the photograph of the configuration of the piping serving the Complainant's two hot water heaters is a photograph of the Complainant's facilities and that the photograph depicts a piping configuration serving the Complainant's hot water heaters that bypasses the PGW meter. Further, PGW system records of April 24, 2008 indicate that,

Met Dist, here for load, found theft, AWH Boilers were found tied into and running off PGW installed locked bypass. Lock found missing and inlet 4' plug lube valve on. Notified R. Welte of same. MIU T. Selecki came out along w/ Super. G. Trock, meter here feeds 5 comm, dryers and emerg. Gen. Boilers were suppose to be fed off this meter.¹⁷

Thus, the record evidence clearly establishes that through the configuration of the pipes as found on April 24, 2008, PGW discovered unmetered usage serving the Complainant's hot water heaters and theft of service.

3. PGW did not cause or exacerbate the non-metering of gas to the Complainant's hot water heaters.

On several occasions from the installation of the hot water heaters in 1999 through to April 2008, PGW personnel were at the Service Address for various reasons. The first of these was on November 1, 1999, where PGW Technician was at the Service Address to inspect the fuel line associated with the installation of the Complainant's hot water heaters.¹⁸ The second occasion that a PGW Technician was at the Service Address was on July 25, 2007 for an oil change to PGW's equipment. On both occasions, the PGW

¹⁷ PGW Exhibit – 11, pp. 2 – 4 of 18 (emphasis added)

¹⁸ Exhibit C – 2

service persons were not sent to do a specific inspection of the piping configuration for theft of service. With the visit on November 1, 1999, that service person's responsibility was to check primarily for safety issues that the fuel line from the hot water heaters was not leaking gas.¹⁹ Since that PGW service person was at the Service Address on November 1, 1999, the hot water heaters had not gone into routine operation and any reconfiguration of the pipes feeding the Complainant's hot water heaters for unmetered use could have occurred soon thereafter. The nature of the other PGW service person's visit was to perform an oil change on the meter to provide the requisite lubrication under government regulations. As PGW witness Oetinger testified, a visit for such purposes would not include an inspection for theft of service.²⁰

Thus, PGW's presence at the Service Address for purposes other than to inspect for theft of service did not cause or exacerbate the unmetered gas serving the Complainant's hot water heaters.

4. The Configuration of the Gas Piping that Supplied Unmetered Gas to the Complainant's Hot Water Heaters Constitutes Theft of Service.

The record evidence of this matter including the configuration of the piping and the report made by PGW personnel on the day of discovery clearly and substantially shows that the Complainant's hot water heaters were the recipient of the gas, the pipes for which were configured by someone other than PGW for the purpose of bypassing the measurement of such gas to the Complainant's benefit.²¹ Thus, theft of service occurred at the Service Address.

¹⁹ Tr. pp. 227 – 231

²⁰ Tr. pp. 232 – 233

²¹ Exhibit C-3, PGW Exhibit – 4 and PGW Exhibit - 11

B. The Complainant is Obligated for the Payment of the Unmetered Gas Consumed by the Complainant's Two Hot Water Heaters.

According to the Pennsylvania Code, 66 Pa. C.S. §1303 – Adherence to tariffs, states in pertinent part,

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility until changed, as provided by this part...

Thus, PGW is charged with the task of ensuring that it charges users of its service for all gas used. Additionally, the PGW Gas Service Tariff §8.3 – Tampering states,

In the event of the Company's meters or other property being tampered or interfered with, the Customer being supplied through such equipment shall pay the amount which the Company may estimate is due for service used even if such usage is not registered on the Company's meter, and for any repairs or such replacements required, as well as for costs for inspections, investigations, damages and protective equipment and installations prior to reconnection.²²

According to PGW Tariff §8.3, where the nature of the tampering interferes with PGW's metering of the gas used, PGW may estimate such charges based upon the circumstances.

1. When presented with additional information about the nature of the usage associated with the Unauthorized Usage, PGW provided a new analysis of calculation of the bill.

PGW's first issuance of the bill for Unauthorized Usage in the estimated amount of \$203,209.74 was based upon a heating/degree day analysis and reflected PGW's understanding of the Complainant's gas usage at the time of the billing. When presented with additional information from the Complainant by letter dated June 18, 2012, about the nature of the usage associated with the Unauthorized Usage, PGW provided a new

²² Philadelphia Gas Works Gas Service Tariff – Pa. P.U.C. No. 2, §8.3 (emphasis added)

analysis of calculation of the bill.²³ The new information provided to PGW was the nature and use of the hot water heaters that would service the Complainant's requirements Hotel guestroom bathrooms, public toilet rooms and Laundry washing machines.²⁴ PGW responded with an analysis based upon the usage information obtained since the Complainant's hot water heaters have been being properly connected to the PGW meter and properly metered.²⁵ This new analysis used the increase in usage since April 2008, after establishing the proper metering of the Complainant's hot water heaters. On average the analysis points to usage of 26,983.05 CCF per year from 1999-2000 through 2007-2008. Applying the appropriate rate in effect (General Service – Commercial), the total amount due would be \$314,035.51.²⁶ PGW did not issue a new bill for this new amount since the bill for Unauthorized Usage is already in dispute and the estimation of the amount to charge for Unauthorized Usage is a central issue in this matter to be decided by the Commission. The Complainant did not respond to PGW's new analysis until it submitted a brief critique of the PGW analysis on May 22, 2013, the hearing date, as Exhibit C – 6.²⁷

2. Although disputing the original bill issued in April 2008, the Complainant fails to provide any specific proof on the timing of the changes in hotel industry practice with regard to laundry or hot water use generally.

As mentioned above, the Complainant did not respond to the PGW analysis until it submitted its Exhibit C – 6 at the hearing of this matter. Essentially, its critique is based upon the annual average as a constant in the computation of the usage for the Complainant's hot water heaters. Complainant's Exhibit C – 6 states that the PGW analysis does not take into account any variations in usage from year to year between 1999 and 2008. The Complainant's Exhibit C – 6 arbitrarily notes that a significantly lower number of usage should apply because of changes that were "beginning to happen

²³ PGW Exhibit – 7

²⁴ Id.

²⁵ PGW Exhibit – 8

²⁶ Id.

²⁷ Complainant's Exhibit C – 6

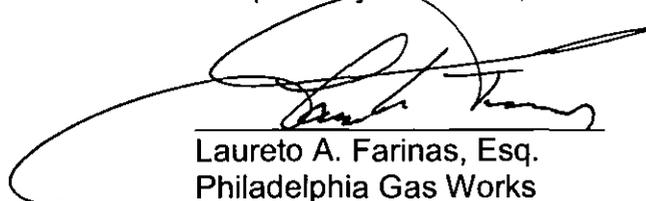
in our significantly increased laundry operations required by the Holiday Inn Brand...²⁸
Without providing any substantiating information about the timing or the magnitude of changes in hot water requirements of the hotel industry, the Complainants states that the estimated usage for the Unauthorized Usage be reduced 134,609 CCF. Such a reduction in the estimation of usage for the period is unsubstantiated. The finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Pa. P.U.C., 67 Pa. Cmwlth. 597, 447 A.2d 1100 (1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. V. Pa. P.U.C., 489 As PGW received Complainant's Exhibit – 6, at the hearing of this matter, and as it does not contain any substantiated industry information concerning the timing and magnitude of hotel industry hot water requirements, it must be disregarded as an appropriate method to arrive at the accurate bill for the Unauthorized Usage of the Complainant's hot water heaters for the disputed period.

IV. CONCLUSION

In this matter the Complainant has failed to meet its burden to show the appropriate analysis for the billing of the unmetered gas at the Service Address.

For the foregoing reasons, PGW respectfully requests that the Commission dismiss the Complaint and issue a decision finding that PGW was neither in violation of any section of the Pennsylvania Public Utility Code nor its Tariff in connection with its actions in the above referenced matter, that its updated methodology used to calculate the bill for Unauthorized Usage is correct and dismiss the Complaint.

Respectfully submitted,



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

July 10, 2013

²⁸ Id.

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).

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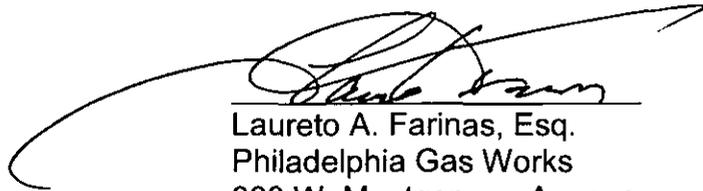
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July 10, 2013



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