



**PHILADELPHIA GAS WORKS**

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July 22, 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 June 18, 2013, the Respondent, the Philadelphia Gas Works (PGW) hereby files PGW's Reply 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

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)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**1305 Walnut Street Corporation,  
Complainant**

v.

**Philadelphia Gas Works,  
Respondent**

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**Docket No. C – 2012 – 2337290**

**REPLY BRIEF OF  
PHILADELPHIA GAS WORKS**

Pursuant to the Administrative Law Judge’s order establishing a briefing schedule dated June 18, 2013, in the above captioned matter the Respondent the Philadelphia Gas Works (PGW) hereby files PGW’s Reply Brief. The parties’ main briefs in this matter were filed on July 10, 2013.

**Summary of the Argument:**

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. 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 configuration was not theft of service.

**I. Argument**

**A. The Complainant Has Failed to Show that PGW is 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. Cmwlth. 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. 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 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. The Complainant's main brief in this matter postures its argument to infer that the PGW bears the burden of proof and argues that if the original bill is incorrect, it should be stricken and removed in its entirety.

**B. The Complainant Remains Obligated for the Payment of the Unmetered Gas Consumed by its 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...

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.<sup>1</sup>

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<sup>1</sup> Philadelphia Gas Works Gas Service Tariff – Pa. P.U.C. No. 2, §8.3 (emphasis added)

In the context of this proceeding involving the discovery of meter tampering 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. Thus, it is PGW's (and now the Commission's) task to arrive at the correct calculation of the bill for gas used.

1. In an effort to discuss the correct gas usage with the Complainant, PGW provided a new analysis of calculation of the bill, when it was presented with additional information about the nature of the usage associated with the Unauthorized Usage.

The Complainant's main brief suggests that if the original bill is incorrect, it should be stricken and removed in its entirety.<sup>2</sup> 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 analysis for calculation of the bill.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Given the information that it had at that time, PGW's revised analysis is the most reasonable and supported an accurate calculation of usage. The Complainant did not respond to PGW's new analysis

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<sup>2</sup> Complainant's Main Brief, p. 16

<sup>3</sup> PGW Exhibit – 7

<sup>4</sup> Id.

<sup>5</sup> PGW Exhibit – 8

<sup>6</sup> Id.

until it submitted a brief critique of the PGW analysis (Exhibit C – 6) on May 22, 2013, the hearing date.<sup>7</sup>

In its Main Brief, the Complainant reiterates that the “increase in laundry” industry standard occurred conveniently only one year prior to the discovery of the gas theft (2007).<sup>8</sup> It is important to note however, that 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.<sup>9</sup> Mr. Derr’s testifies that the gas piping at the Service Address existed as it is depicted in Exhibit C – 3 from his time at the Service Address beginning 2004 until 2008.<sup>10</sup>

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.

2. 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 is submitted its Exhibit C – 6 at the hearing of this matter. Essentially, the critique is that PGW Exhibit – 7 is based 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. That Complainant’s Exhibit arbitrarily notes that a significantly lower amount of gas usage should apply because of changes that were “beginning to

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<sup>7</sup> Complainant’s Exhibit C – 6

<sup>8</sup> Complainant’s Main Brief, p. 15

<sup>9</sup> Tr. pp 58 – 64

<sup>10</sup> Tr. pp 61 - 62

happen in our significantly increased laundry operations required by the Holiday Inn Brand...”<sup>11</sup>

The Complainant's argument fails to recognize that without providing any substantiating information about the timing or the magnitude of changes in hot water requirements of the hotel industry, the Complainant's estimated usage for the reduction of the usage to 134,609 CCF is unsubstantiated. 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 finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Pa. P.U.C., 67 Pa. Cmwith. 597, 447 A.2d 1100 (1982).

PGW received the information in Complainant's Exhibit – 6, for the first time at the hearing of this matter PGW learned it does not contain any substantiated industry information concerning the timing and magnitude of hotel industry hot water requirements. It therefore, must be disregarded as the last word in the appropriate method to arrive at the accurate bill for the Unauthorized Usage of the Complainant's hot water heaters for the disputed period.

3. 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.

In the Complainant's main brief, the Complainant argues that due to the number of PGW visits to the Service Address, the conclusion of gas theft is not credible.<sup>12</sup> The record evidence does not support these arguments. 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

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<sup>11</sup> Complainant's Exhibit C – 6

configuration serving the Complainant's hot water heaters that bypasses the PGW meter.<sup>13</sup> Mr. Derr's testimony states that the gas piping at the Service Address existed as it is depicted in Exhibit C – 3 from his time at the Service Address beginning 2004 until 2008.<sup>14</sup>

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.<sup>15</sup>

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.

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

In the Complainant's main brief, the Complainant argues that it is unlikely that gas theft would have occurred without PGW discovering it. Or, that due to the number of PGW visits to the Service Address, the conclusion of gas theft occurred is not credible.<sup>16</sup> 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 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.<sup>17</sup> The second, 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 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

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<sup>12</sup> Complainant's Main Brief, p. 18

<sup>13</sup> Tr. pp 58 – 64

<sup>14</sup> Tr. pp 61 - 62

<sup>15</sup> PGW Exhibit – 11, pp. 2 – 4 of 18 (emphasis added)

<sup>16</sup> Complainant's Main Brief, p. 18

<sup>17</sup> Exhibit C – 2

safety issues that the fuel line from the hot water heaters was not leaking gas.<sup>18</sup> 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 configuration of piping through which gas theft occurred was already in place and certainly observed by Complainant's witness Derr beginning in 2004.<sup>19</sup> The nature of other the PGW service persons visit was to perform an oil change on the meter to provide the requisite lubrication under government regulations. According to PGW witness Oetinger, a visit for such purposes would not include an inspection for theft of service.<sup>20</sup>

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. Further, 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.<sup>21</sup> Thus, theft of service occurred at the Service Address.

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<sup>18</sup> Tr. pp. 227 – 231

<sup>19</sup> Tr. pp. 59 – 64

<sup>20</sup> Tr. pp. 232 – 233

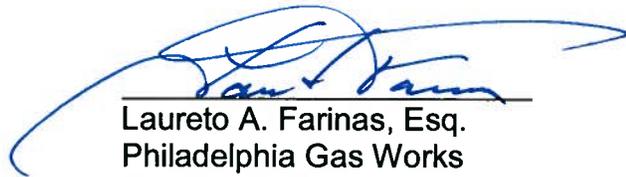
<sup>21</sup> Exhibit C-3, PGW Exhibit – 4 and PGW Exhibit - 11

## II. Conclusion

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 there was gas theft at the Service Address that occurred sometime after November 1999 to be discovered April 2008, and that PGW's updated methodology for the calculation the bill for Unauthorized Usage is correct and dismiss the Complaint.

Respectfully submitted,

July 22, 2013



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

**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).

Service List:

For Complainant:

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(By e-mail and express mail)

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July 22, 2013



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