



PHILADELPHIA GAS WORKS

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September 9, 2013

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

Re: **Michael Prendergast v. PGW, Docket No. F - 2012 - 2317187**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its reply to the Complainant's exceptions to the August 9, 2013, Initial Decision in the above captioned matter.

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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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enclosure

cc: Michael Prendergast (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SEP 09 2013

Michael Prendergast

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v.

: Docket No. F – 2012 – 2317187

Philadelphia Gas Works

**PHILADELPHIA GAS WORKS'
REPLY TO COMPLAINANT'S EXCEPTIONS**

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated August 30, 2013 and the Initial Decision in the above captioned matter, the Philadelphia Gas Works, ("PGW") hereby files its reply to the Complainant's exceptions to the Initial Decision issued August 9, 2013, in the above captioned matter ("Initial Decision" or "ID").

I. INTRODUCTION

On July 16, 2012, the Complainant filed a complaint with the Commission against PGW alleging that there are incorrect charges on his account (bill of \$6,429.40) resulting from the recalibration of the gas meter at the Complainant's residence at 12101 Elmore Terrace, Philadelphia, PA (Service Address).

On August 22, 2012, the PGW filed an answer, denying that there are incorrect charges on the bill. PGW further denied that the Complainants' payments do not coincide with the PGW account records for the Complainants' gas service from 2008 to date. PGW averred that it posted all payments that it received from the Complainants.

By hearing notice dated October 25, 2012, the hearing in this matter was scheduled for December 27, 2012, at 10:00 a.m. The hearing was held in this matter on the date scheduled in the Philadelphia Regional Office at 801 Market Street before Administrative Law Judge Eranda Vero. The Complainant, Michael Prendergast appeared *pro se* and testified in support of the complaint. PGW was represented by counsel and presented two witnesses, Ann Marie Cromley, Senior Customer Review Officer – PGW and Robert Keal, Field Services Department –

5. Referring to the Initial Decision, page 9, the exception discusses that that PGW never notified him of the testing of the meter that was removed from the Service Address. The Complainant also disputes that PGW performs the tests on their own meter rather than an independent company performing the meter test.
6. Referring to the Initial Decision page 18, the exception asserts various questions challenging the testimony given by PGW witnesses, Keal and Cromley.

PGW's Reply

The Exceptions seek to further challenge the responsibility for payment for gas services at the Service Address. The Exception Nos. 1, 2, 3, 4 and 6 restate dissatisfaction with the PGW information and the Initial Decision by repeating the arguments made in the complaint and raising new but generic concerns with PGW. These are unsupported by evidence of record. Exception 5 restates the Complainant's dispute with not being called to witness the meter test. The Transcript at page 48 and the Initial Decision page 9 clearly show that the Complainant declined the offer to be present for the meter test. Finally, the Exceptions include copies of approximately eleven photographs that are not part of the record of the proceeding. These should be stricken from the record and not considered.

The Exceptions fail to demonstrate that the Initial Decision is unsupported by substantial evidence. Each finding of the Initial Decision is well supported by evidence of record. The exceptions fail to point to any significant evidence of record that was overlooked in the Initial Decision.

As the proponent of a rule 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). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Preponderance of the evidence mean that the party with the burden of proof has presented evidence that is more convincing than that

PGW. Following the hearing, the presiding officer held the record open for the submission of late filed exhibits from both parties.

On August 9, 2013, the Commission issued the Initial Decision, which dismissed the Complaint, finding that the Complainant had failed to meet his burden of proof in showing that the Complainant was not responsible for payment of the outstanding account balance. PGW was ordered to credit the Complainant's account for \$85.82 in misapplied late payment charges. The Complainant was ordered to pay \$3,183.77 in monthly installments of \$66.33 each.

The Complainant filed exceptions to the Initial Decision on or about August 27, 2013 but failed to serve PGW. Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated August 30 2013 in this matter, this timely reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to address any error in fact or law contained in the Initial Decision refuting the conclusion that the Complainant failed to meet his burden of proof in showing that she was not responsible for the payment of the amount billed at the Service Address. The exceptions raise specific factual questions challenging specific aspects of PGW testimony and findings of the Initial Decision. The exceptions fail to raise any issue that shows the Initial Decision is in error.

The Complainant's Exceptions (summarized):

1. Referring to the Initial Decision, page 2, the exceptions continue to dispute PGW's calculations for the potential gas usage on the appliances at the Service Address.
2. Referring to the Initial Decision, pages 4 and 5, the exceptions dispute the Initial Decision's review of usage for 2004-2007 not showing all 12 months of usage for those years.
3. Referring to the Initial Decision, page 7, the exception questions why PGW personnel other than PGW witness Robert Keal, who visited the Service Address on March 26, 2013 were not present at court testify.
4. Referring to the Initial Decision, page 8, the exception challenges the fact that PGW applied a credit adjustment of \$2,537.71 on December 18, 2012.

presented by the other part. *Samuel J. Lansberry, Inc. v. Pa. PUC* 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. Den.*, 529 Pa., 654, 602 A.2d 863 (1992).

The Commission's decision must be supported by "substantial evidence," which consists of evidence that reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

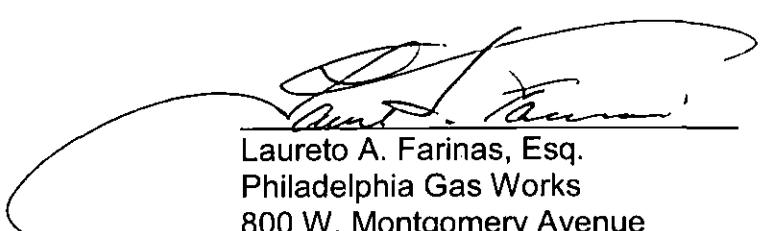
The record of this matter clearly shows that PGW properly billed the Complainant for each unit of gas consumed at the Service Address and applied each payment received from the Complainants. Further, in the Initial Decision page 4, the record reflects that PGW corrected any error in calculation and brought it to the attention of the presiding officer at the hearing of the matter. Therefore, the Commission should deny the Complainant's exceptions.

III. CONCLUSION

For the reasons stated above, the PGW requests that the Commission deny the Complainant's exceptions to the Initial Decision and adopt the Initial Decision issued August 9, 2013 in this matter as written dismissing the Complaint.

Respectfully submitted,

September 9, 2013



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

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CERTIFICATE OF SERVICE

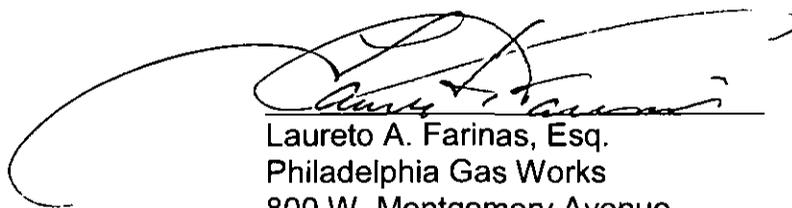
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Michael Prendergast
12101 Elmore Terrace
Philadelphia, PA 19154

September 9, 2013



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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Address **800 W MONTGOMERY AVE**

City **PHILADELPHIA** State **PA** ZIP **19122-2898**

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