



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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September 19, 2013

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

**Re: Hyacinth Anyiam v. PGW, Docket No. C – 2009 – 2139134**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.572 (e), the Philadelphia Gas Works ("PGW") hereby Answers the Complainant's petition for reconsideration and hearing, *nunc pro tunc* filed in the above captioned matter (the Petition) .

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

Sincerely,

A handwritten signature in blue ink that reads "Danielle Leva". The signature is fluid and cursive, written over a large, light blue graphic of a flame or leaf shape that is partially visible in the background.

Danielle Leva

Enclosure

cc: Administrative Law Judge Darlene Heep  
Hyacinth Anyiam (Regular Mail)  
Michael F. Schleigh, Esq. (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)  
Jack Irizarry (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hyacinth Anyiam	:	
	:	
v.	:	Docket No. C– 2009 – 2139134
	:	
Philadelphia Gas Works	:	

**Answer of Philadelphia Gas Works to the Complainant's  
Petition for Reconsideration and Rehearing *Nunc Pro Tunc***

Pursuant to 52 Pa. Code §5.572(e), the Philadelphia Gas Works (“PGW”) hereby answers the Complainant’s petition for reconsideration and hearing, *nunc pro tunc* filed in the above captioned matter (the “Petition”). PGW hereby answers the Petition and avers the following:

1. Denied in part. Admitted in part. PGW denies that the Petition is properly made pursuant to 1 Pa. Code §35.241(a). Although PGW admits that the Complainant intends to file its Petition for reconsideration and rehearing under 1 Pa. Code §35.241(a), *nunc pro tunc*, the Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.572(f), expressly supersede 1 Pa. Code §35.241 (relating to application for rehearing or reconsideration). By way of further answer, 52 Pa. Code §5.572(c) states that petitions for reconsideration and rehearing, *inter alia.*, shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final. In the instant matter, the Commission’s final order was entered on September 8, 2010. The Petition was filed on September 9, 2013, some three years following the Commission’s entering of the final order. Thus the Petition for reconsideration and rehearing is untimely under 52 Pa. Code §5.572(c) and should be denied. Pursuant to 52 Pa. Code §5.572(d) a petition for rescission or amendment may be filed at any time. For the reasons stated below, reconsideration, rehearing or rescission (if the Petition is deemed as such) should be denied.
2. Admitted.
3. Admitted.

4. Admitted in part, denied in part. PGW admits that the Complainant initiated this matter *pro se*. PGW denies the averment that an improperly calculated bill was based upon the condition of the gas fired hot water heater at the Complainant's service address. By way of further answer, during the period from September 2007 through February 2008 (6 months), the Complainant's gas bills were based upon estimated meter readings after which an actual meter reading was obtained from which PGW billed the account for previously unbilled service for that period.

5. Admitted. By way of further answer, by notice dated May 10, 2010 the Commission informed the Complainant of the date, time and location of the hearing scheduled for June 3, 2010. Also, by Prehearing Order issued May 10, 2010, the presiding officer advised the parties of the date and time of the hearing.

6. Denied emphatically. The Complainant did not check in with the Commission's "court" personnel who told him to stay in the waiting area. The Commission personnel's practice is to admit Complainants into the designated hearing room once they have identified themselves as having a Commission hearing. To the contrary, the Complainant simply sat in a waiting area designated for the Department of Public Welfare (on the same floor of the Commission's Philadelphia Office) and did not, as instructed, contact the Commission personnel for check-in.

7. Admitted. By way of further answer, the Complainant did not provide PGW with a copy of that document until March 13, 2013.

8. Denied. PGW lacks sufficient information to determine the truth of the averment concerning the Complainant's request for a new hearing having never been considered by the Commission. Therefore, PGW denies this averment.

9. Denied in part, admitted in part. PGW denies that the Commission issued the Initial Decision on June 9, 2010. The Commission issued an Initial Decision under a cover letter dated July 8, 2010 providing instruction to any party not in agreement with the Initial Decision of the right to file Exceptions to the Initial Decision within 20 days of the date of the cover letter. The presiding officer authored and dated the Initial Decision June 9, 2010. PGW admits that the Initial Decision dismisses the Complaint with prejudice for failure to appear at the

hearing as instructed. By way of further answer, the Commission entered the final order in that matter on September 8, 2010. The Initial Decision, its cover letter and the Commission final decision are attached hereto as Exhibit "A."

10. Denied. PGW lacks sufficient information to determine the truth of the averment concerning the Complainant's motive in failing to pursue the matter further after receiving the Initial Decision with the July 8, 2010 cover letter informing the Complainant of his right to file exceptions and receiving the Commission's final order dated September 8, 2010. Therefore, PGW denies this averment.

11. Denied. By virtue of his failure to pursue the appeal of the Initial Decision or Final Decision, the Complainant did not continue to dispute the past due balance on his PGW account.

12. Admitted. By way of further answer, PGW terminated gas service for nonpayment.

13. Admitted. By way of further answer, the formal complaint docketed at C-2012-2338734 ("2012 Action"), included the disputed bills contained in the matter that was dismissed by the Commission by final order dated September 8, 2010. The 2012 Action also includes the dispute of bills which were not part of the formal complaint dismissed by Commission final order dated September 8, 2010.

14. Admitted.

15. Denied. PGW lacks sufficient information to determine the truth of the averment concerning the Complainant's beliefs about the matter that have been barred by the Commission's statute of Limitations codified at 66 Pa. C.S.A. §3314 in the 2012 Action. Therefore, PGW denies this averment.

16. Admitted.

17. Admitted.

18. Denied. The requested relief for reconsideration and rehearing *nunc pro tunc* is inapplicable here. In essence, the Complainant seems to seek the rescission of the Commission's July 8, 2010 final order dismissing the above captioned matter and has not shown extraordinary reasons to warrant the grant of the requested relief. Further, the Petition fails to allege that there is new or further cumulative evidence which would form the basis of a re-hearing of the

matter. The Petition seeks relief some 3 years after the issue of the final order in the matter, which if granted, will prejudice PGW by the reopening of a matter which is more than three years old.

19. Denied. The Complainant failed to check in with the Commission staff who would have admitted him to the hearing room at the appropriate time.

20. Denied. The Complainant documented the fact that he appeared in the building on the day of the hearing (June 3, 2010) but did not respond appropriately with the filing of exceptions after issue of the Initial Decision on July 8, 2010 or file a petition in the nature of reconsideration after the issue of the Commission's final order on September 8, 2010.

21. Denied. The Complainant documented the fact that he appeared in the building on the day of the hearing (June 3, 2010) but did not respond appropriately with the filing of exceptions after issue of the Initial Decision on July 8, 2010 or file a petition in the nature of reconsideration after the issue of the Commission's final order on September 8, 2010.

22. Denied. PGW lacks sufficient information to determine the truth of the averment concerning the Complainant's beliefs about the matter that have been barred by the Commission's statute of Limitations codified at 66 Pa. C.S.A. §3314 in the 2012 Action. Therefore, PGW denies this averment.

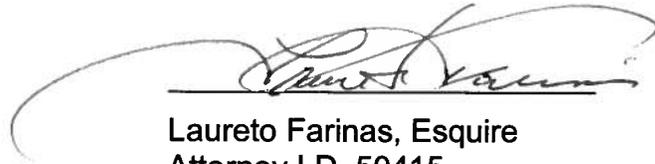
23. Denied. PGW lacks sufficient information to determine the truth of the averment concerning the availability of the allegedly carbonized hot water heater. Therefore, PGW denies the averment. By way of further answer, the operating conditions of the gas appliances at the Service Address are the responsibility of the property owner and not that of PGW. Even if the carbonization of the hot water heater caused it to operate inefficiently, using more gas, PGW is obligated to issue bills based upon the gas that passes through the meter.

24. Denied. The Petition presents no extraordinary circumstances and fails to allege that there is new or further cumulative evidence which would form the basis of a re-hearing of the matter.

**Wherefore**, PGW respectfully requests that this Commission deny the Complainant's request for an order vacating the Commission's final order of September 8, 2010 in this matter providing for reconsideration and rehearing.

Respectfully submitted,

September 19, 2013

A handwritten signature in black ink, appearing to read 'Laureto Farinas', is written over a horizontal line. The signature is fluid and cursive, with a large flourish extending to the left.

Laureto Farinas, Esquire  
Attorney I.D. 50415  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6982

# Exhibit A

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Hyacinth Anyiam

v.

Philadelphia Gas Works

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C-2009-2139134

**FINAL ORDER**

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Ky Van Nguyen dated June 9, 2010, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Respondent's Motion to Dismiss the complaint is granted.
2. That the complaint filed by Hyacinth Anyiam against Philadelphia Gas Works at Docket No. C-2009-2139134 is dismissed with prejudice.

BY THE COMMISSION,



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ENTERED: September 8, 2010



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: July 8, 2010

C-2009-2139134

HYACINTH ANYIAM  
4155 LANCASTER AVENUE  
PHILADELPHIA PA 19104

Hyacinth Anyiam  
V.  
Philadelphia Gas Works

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ky Van Nguyen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chiavetta  
Secretary

JF  
Encls.  
Certified Mail  
Receipt Requested  
LAURETO FARINAS ESQUIRE  
KRISTINE TROCK  
PHILADELPHIA GAS WORKS  
800 W MONTGOMERY AVENUE  
PHILADELPHIA PA 19122

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hyacinth Anyiam

v.

Philadelphia Gas Works

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:  
:  
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:

C-2009-2139134

**INITIAL DECISION**

Before  
Ky Van Nguyen  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

On October 28, 2009, Hyacinth Anyiam (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent) alleging a billing dispute. The Respondent filed an answer dated November 23, 2009 denying the material allegations of the complaint.

A Hearing Notice dated May 10, 2010 notified the parties that an initial hearing on the complaint was scheduled for the afternoon of June 3, 2010 in Philadelphia. It also notified them that they should be present when their case was called.

A Prehearing Order dated May 10, 2010 advised the parties of the date and time of the scheduled hearing and applicable procedural rules. It also advised the parties, among other things, that a request for a change of the scheduled hearing date must be submitted in writing no later than five business days before the hearing, that the case could be dismissed if they failed to obtain a continuance or failed to appear for the hearing, and that entities must be

represented by an attorney, otherwise no individuals can testify before the Commission even though they have a personal knowledge of the case.

On the date of the hearing, the Complainant failed to appear; Laureto Farinas, Esquire, appeared on behalf of the Respondent. He moved to dismiss the complaint. This motion will be granted in the ordering paragraph below.

The record closed at the conclusion of the hearing on June 3, 2010.

### FINDINGS OF FACT

1. The Complainant's mailing address is 4155 Lancaster Avenue, Philadelphia, PA.
2. The Complainant was provided a proper notice of the hearing.
3. The Complainant failed to appear at the hearing.

### DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),<sup>1</sup> provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the

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<sup>1</sup> Section 332(a) of the Public Utility Code provides:

(a) Burden of Proof. – Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than not” inquiry. Commonwealth v. \$6,425 Seized From Esquilin, 583 Pa. 544, 555, 880 A.2d 523, 529 (2005).

Under these principles the Complainant has the burden of proving by a preponderance of the evidence that the Respondent was responsible for the problems described in her complaint. The Complainant could not sustain the burden of proof because she did not appear at the hearing.

The Commission has ruled that a lack of compliance with an administrative law judge’s order or the Commission’s procedural requirements provides justification for the Commission to act against the non-complying party. Treffinger v. PPL Electric Utilities Corp., C-20027978, 2003 Pa. PUC Lexus 3 (March 3, 2003).

In addition, the Commission satisfied the requirement of giving administrative due process to the Complainant by providing timely notice of the hearing and the opportunity to be heard. Schneider v. Pa. PUC, 479 A.2d 10 (Pa. Cmwlth. 1984). The Commission’s Hearing Notice of May 10, 2010, which informed the parties of the day, date and time of the hearing in this case, was mailed to the Complainant at the address provided on the formal complaint form. The Commission’s Hearing Notice has not been returned by the United States Postal Service. Therefore it is presumed that the Complainant received the Commission’s notice of the hearing. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Judge v. Celina Mutual Ins. Co., 449 A.2d 658 (Pa. Super. 1982); Samaras v. Hartwick, 697 A.2d 71 (Pa. Super. 1997).

According to Section 1.24(a) and (b) of the Commission’s regulations, 52 Pa. Code §1.24(a) and (b), individuals and attorneys appearing before the Commission are under a duty to promptly report to the Commission’s Secretary a change in address which occurs during the course of a proceeding. Further, an entity must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted Pro Hac Vice. Otherwise, no

individuals, even an individual with personal knowledge of the case, may be allowed to testify on behalf of the entity. Torino Incorporated v. PECO Energy Company, Docket No. C-2008-2034595 (Pa. PUC February 2, 2010); Cars R Us c/o Holman Copeland v. Philadelphia Gas Works, Docket No. C-2008-2033437 (Pa. PUC February 4, 2010).

Once timely notice of a hearing and the opportunity to be heard have been provided, it is then the responsibility of the parties to be present and participate in the hearing. Craig Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106 (Pa. PUC October 25, 1993). The Commission has held that when a complainant fails to be present at a scheduled hearing, then the complaint is to be dismissed, with prejudice. Darling v. Philadelphia Electric Company, Docket No. F-00161139 (Pa. PUC November 16, 1993).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §701.
2. The Complainant has failed to carry her burden of proof.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Respondent's Motion to Dismiss the complaint is granted.

2. That the complaint filed by Hyacinth Anyiam against Philadelphia Gas Works at Docket No. C-2009-2139134 is dismissed with prejudice.

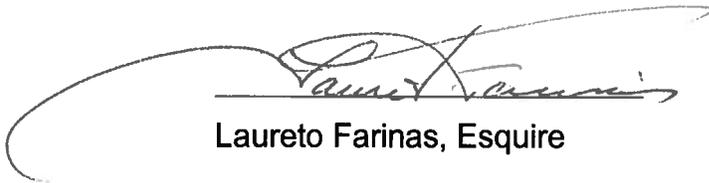
Date: June 9, 2010

\_\_\_\_\_  
Ky Van Nguyen  
Administrative Law Judge

**VERIFICATION**

I, Laureto Farinas, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

September 19, 2013

  
\_\_\_\_\_  
Laureto Farinas, Esquire

**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).

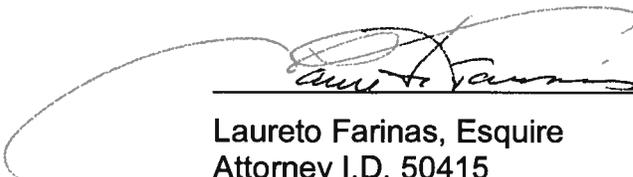
Service List:

For Complainant:

**FORRY ULLMAN**  
Michael F. Schleigh, Esq.  
Walnut Hill Plaza, Suite 450  
150 South Warner Road  
King of Prussia, PA 19406

[mschleigh@forryullman.com](mailto:mschleigh@forryullman.com)

September 19, 2013

A handwritten signature in black ink, appearing to read "Laureto Farinas", is written over a horizontal line. A long, sweeping flourish extends from the left side of the signature across the page.

Laureto Farinas, Esquire  
Attorney I.D. 50415  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
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(215) 684-6982