



PHILADELPHIA GAS WORKS

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October 9, 2013

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

Re: Marcus Brown v. PGW, Docket No. F - 2012 - 2326633

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 September 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

Enclosure

cc: Marcus Brown (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marcus Brown

v.

Philadelphia Gas Works

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Docket No. F – 2012 – 2326633

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

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated September 25, 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 September 9, 2013, in the above captioned matter ("Initial Decision").

I. Introduction

On September 24, 2012, the Complainant filed a complaint with the Commission against PGW alleging that there are incorrect charges on his account, claiming that there was a gas leak at the Complainant's residence at 5805 Brush Road, Philadelphia, PA (Service Address) for which the PGW and not the Complainant is responsible.¹ On October 18, 2012, the PGW filed an answer, denying that there are incorrect charges on the bill. PGW further denied that the Complainant's account balance is high because he did not make regular payments and that payment for any gas leaks after the gas meter at the Service Address is the Complainant's responsibility.²

An Initial Hearing in this matter was first convened on February 15, 2013 at 10:00 a.m. but the Complainant failed to appear timely. The hearing was rescheduled by hearing notice dated February 20, 2013, for April 30, 2013 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 Darlene D. Heep. The Complainant, Marcus Brown appeared *pro se* and testified in support of the complaint. PGW presented the testimony of witness, Wendy Vacca, Customer Review Officer – PGW, who sponsored four (4) exhibits.

On September 9, 2013, the Commission issued the Initial Decision, which dismissed the Complaint, finding *inter alia.*, that the Complainant had failed to meet his burden of

¹ Complaint

² PGW's Answer to the Complaint

proof in showing that Complainant was not responsible for payment of the outstanding account balance and that the bills at issue are for charges that arose before the Complainant contacted PGW about the smell of gas from pipes leading away from the meter supplying appliances at the Service Address.³The Complainant filed exceptions to the Initial Decision on or about September 19, 2013 but failed to serve PGW. Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated September 25, 2013 in this matter, this timely reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exception statement fails 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 he was not responsible for the payment of the amount billed at the Service Address. The exception statement fails to raise material 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 Exception Statement:

1. The Complainant's Exception states:

I Marcus Brown do not agree with the decision provided by you Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission. I am not a utility serviceman I could not and would never put some tape around a pipe to stop a gas leak. First of all it seemed to far-fetched and dangerous, and gas is something I will never play with, therefore, I did not do that, The serviceman from PGW did and he also told me that there were several leaks and he will take care of them. I then went back upstairs and when I arrived back in the basement he showed me where he applied this tape to and that everything was fine. I'm not saying we didn't use some of the gas but according to the serviceman "a good amount of gas was being lost due to the damaged pipes, I thank he for putting the tape on, I just want to be rightly charged not overcharged \$800. Plus for the gas service.

³ Initial Decision, Findings of Fact No. 10 and 11, p. 3

PGW's Reply

The Exceptions generically challenge the Complainant's responsibility for payment for gas services at the Service Address. The exception statement restates dissatisfaction with the Initial Decision by repeating the arguments made in the Complaint. These remain unsupported by evidence of record.

The exception statement fails to address why the Complainant is not responsible for payment for gas that passed through the meter, even if that gas was the result of leaks in the fuel line to the Complainant's gas appliances. Pursuant to 66 Pa. C.S. §102, "... the pipe and appurtenances of the gas utility which connect any main with either the point of connection of a customer's service line or the meter of the public utility if the utility owns all the pipe and appurtenances between its main and meter." The Initial Decision holds that in light of 66 Pa. C.S. §102, and PGW Tariff §9.4, this leaves the customer responsible for any lines or leaks beyond the meter in the home.⁴

The exception statement fails 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 means that the party with the burden of proof has presented evidence that is more convincing than that 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

⁴ Initial Decision, p. 5

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).

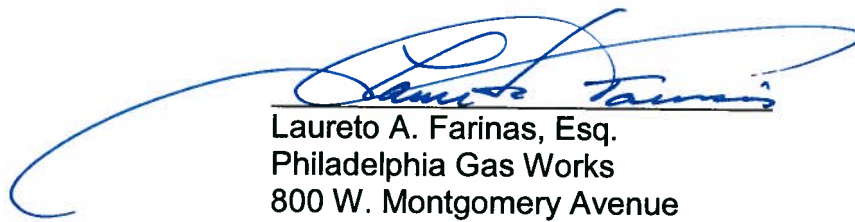
The record of this matter clearly shows that PGW properly billed the Complainant for each unit of gas consumed at the Service Address. Therefore, the Commission should deny the Complainant’s exception.

I. CONCLUSION

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

Respectfully submitted,

October 9, 2013



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

CERTIFICATE OF SERVICE

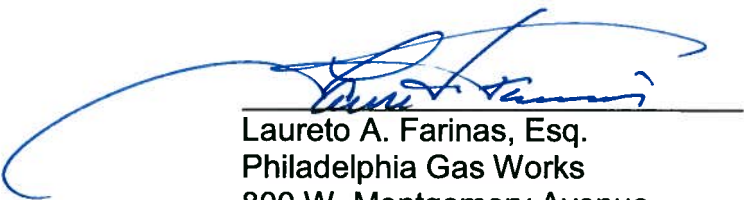
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Marcus Brown
5805 Brush Road
Philadelphia, PA 19138

October 9, 2013



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