



PHILADELPHIA GAS WORKS

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November 21, 2013

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

Re: Younes Chtioui v. PGW, Docket No. F - 2012 - 2327744

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 July 17, 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: Younes Chtioui (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Younes Chtioui

v.

Philadelphia Gas Works

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Docket No. F – 2012 – 2327744

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

Pursuant to 52 Pa. Code §5.535, the Secretary's letter dated November 12, 2013 setting forth a new date by which to file Reply Exceptions 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 July 17, 2013, in the above captioned matter ("Initial Decision" or "ID").

I. INTRODUCTION

On September 26, 2012, the Complainant filed a complaint with the Commission against PGW alleging that his tenant never applied for gas service to 1062 Tyson Avenue, 1st Floor, Philadelphia, PA (Service Address) even though she had moved into the Service Address in September 2008.¹ The Complainant alleged that PGW automatically opened an account in the Complainant's name in October 2010, the balance of which at the time of the dispute was \$1,693.43. The Complaint further alleges that PGW never called or sent the Complainant any correspondence regarding the matter.² The Complainant requests the removal of the disputed bill.

On October 24, 2012, PGW filed an answer, denying the material allegations of the Complaint.

By hearing notice dated January 9, 2013, the hearing in this matter was scheduled for March 13, 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 Christopher P. Pell. The Complainant, Younes Chtioui appeared *pro se* and testified in support of the complaint offering two exhibits that were admitted into the record.

¹ Complaint

PGW was represented by counsel and presented one witness, Wendy Vacca, Customer Review Officer – PGW who offered six exhibits that were admitted into the record. After the hearing, PGW submitted two additional exhibits on March 28, 2013 that were admitted into the record.

On July 17, 2013, the Commission issued the Initial Decision dismissing the Complaint on the grounds, inter alia, that the Complainant failed to carry his burden of proof and the PGW's LCP is essentially a contract for private services which only supplements the public services provided by the utility and that the Commission lacks jurisdiction to adjudicate claims involving PGW's notice to landlords regarding the existence and the benefits of LCP.³ The Complainant filed exceptions that were received by the Commission on August 5, 2013. The Complainant, however, failed to serve PGW. Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated November 12, 2013 in this matter, setting a new time to file reply exceptions, 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 he 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:

1. During the hearing on March 13, 2013, PGW was asked to show a proof that the key email was sent to me. PGW presented exhibit 7 which showed that they didn't have any way to prove that they sent me the e-mail. The key email would legally enabled PGW to open an account under my name within 10 days.

² Complaint

³ Initial Decision, p. 9, Conclusions of Law, Paragraphs 3 and 4.

2. The core of this case is my following statement: PGW never sent me the key e-mail. Anyone with a clear mind, would very quickly respond to PGW upon reception of such an email. I think I have a clear mind.
3. PGW failed to prove that they sent me the key email, simply because they never sent it. They have a huge IT department that could easily present evidence of every outgoing email. As a senior software engineer, I can confirm that there are many ways to prove the transmission of an outgoing email.
4. The PUC should side with the facts, and not with the large badly managed corporation. These days, all over the local news, I've watched stories of legal battles between landlords and PGW. In a local TV program, a lawyer for a landlord even proposed that PGW should be sold. I promote that PGW should be erased from the fact of Philadelphia and hopefully be replaced with a company that doesn't see landlords as milky cows.⁴

PGW's Reply

The Exceptions paragraphs restate the Complainant's dissatisfaction with PGW 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. The Exception paragraphs 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 party. *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 a 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 only factual issue raised in the exceptions is that the Complainant maintains that PGW failed to prove that PGW sent an e-mail to the Complainant regarding the status of the Service Address in the Landlord Cooperation Program (LCP). The Initial Decision clearly addresses this issue. The record evidence clearly demonstrates that the Complainant had use two different e-mail addresses to communicate with PGW.⁵ The Initial Decision specifically found that PGW supplied evidence demonstrating that it sent the Complainant an e-mail in October 2012 notifying the Complainant of the changes in the status of the service address in the LCP.⁶ On October 5, 2010, PGW sent an e-mail from PGW’s Landlord Cooperation Program (LCP) administrator to the Complainant at requesting that he either contact PGW to schedule a turn off or advise PGW of a new tenant. The e-mail stated that a failure to contact PGW within 10 days will result in the service being placed in the owner’s name, as stated in the Terms and Conditions of LCP.⁷ On October 29, 2010, PGW sent another e-mail to the owner, advising him that the service was placed in his name effective October 29, 2010 and that they were no longer in a cooperative status under the LCP.⁸

Based upon the preponderance of the evidence presented, the Initial Decision reasonably relies upon the record of this matter and clearly shows that PGW properly treated the Complainant under the terms and conditions of the LCP and appropriately billed the Complainant. Therefore, the Commission should deny the Complainant’s exceptions.

⁴ Complainant’s Exceptions

⁵ Complainant Exhibit – 1 and PGW Exhibit – 6.

⁶ Initial Decision p. 8; PGW Exhibit – 3

⁷ Tr. pp. 17 – 26, 39, 40, 47 and 48; PGW Exhibit – 6

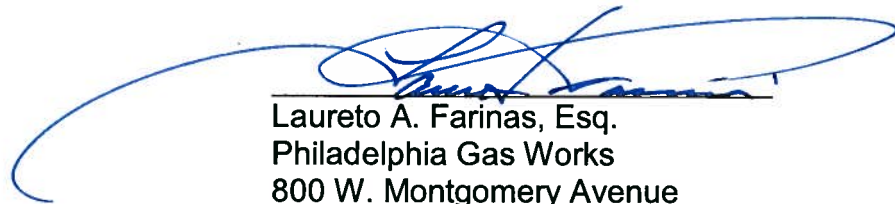
⁸ Tr. pp. 17, 39, 40, 47 and 48; PGW Exhibit – 1 and PGW Exhibit – 3

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 July 17, 2013 in this matter as written dismissing the Complaint.

Respectfully submitted,

November 21, 2013



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

CERTIFICATE OF SERVICE

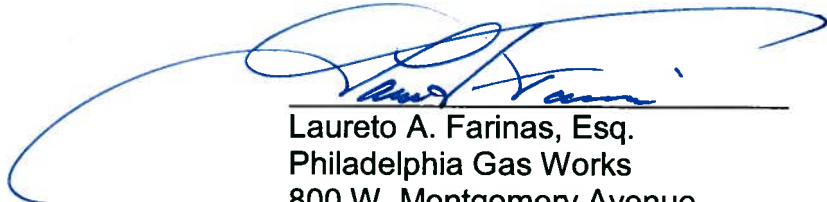
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

YOUNES CHTIOUI
810 NORTH FORKLANDING ROAD
MAPLE SHADE NJ 08052

November 21, 2013



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