



**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

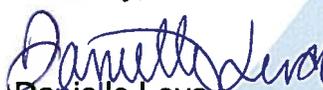
**Re: Alexander Smith. v. PGW, Docket No. F- 2012 - 2315538**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.501, and Prehearing Order No. 6, dated October 10, 2013 setting the briefing scheduled in the above captioned matter, the respondent the Philadelphia Gas Works (PGW) here files its Main 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: Josie B. H. Pickens, Esq. (Fed Ex and Email)  
Alexander Smith (Fed Ex)  
Administrative Law Judge Angela T. Jones (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ALEXANDER SMITH,**  
Complainant

v.

**PHILADELPHIA GAS WORKS,**  
Respondent

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**F – 2012 – 2315538**

**MAIN BRIEF OF  
PHILADELPHIA GAS WORKS**

Pursuant to 52 Pa. Code §5.501, and Prehearing Order No. 6, dated October 10, 2013 setting the briefing schedule in the above captioned matter, the Respondent the Philadelphia Gas Works (PGW) hereby files its Main Brief. A hearing of this matter was held on July 2, 2013 before Administrative Law Judge Angela T. Jones at in the Commission’s Philadelphia Office.

**I. Statement of Case**

This matter is a dispute of a bill for Unauthorized Usage (UU) discovered at 3348 “E” Street, Philadelphia, Pa. (Service Address) in the home of the Complainant, Alexander Smith. PGW issued a bill to the Complainant for \$6,443.27 based upon an analysis of historical usage information of the Service Address.<sup>1</sup> This bill represented unmetered usage for the period from November 15, 2007 through November 15, 2011 (disputed period). After further investigation and a visit to the Service Address on April 26, 2013, PGW recalculated the bill for UU as \$5,789.40 because PGW concluded that the gas range was not in use during the disputed period.<sup>2</sup>

On November 15, 2011, PGW visited the Service Address while investigating a street leak in the vicinity of the Service Address.<sup>3</sup> While in the Service Address the PGW service technician discovered bypass and meter tampering evidenced by the absence of the red caps that cover the screws that hold the Electronic Receiver Transmitter device (ERT) in place.<sup>4</sup> The ERT device was dislodged from its place connected to the rest of the

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<sup>1</sup> PGW Exhibit – 5

<sup>2</sup> Tr. pp 86 – 87, PGW Exhibits – 1 and 5

<sup>3</sup> Tr. pp. 138 – 140, PGW Exhibit – 5

<sup>4</sup> PGW Exhibit – 5, p. 1

meter and hanging at a 45 degree angle from its correct position.<sup>5</sup> PGW removed the meter (Meter No. 1595104) and terminated gas service.<sup>6</sup> The PGW service technician noted that the following appliances at the Service Address: a house heater of 10,000 BTU's, a hot water heater of 30,000 BTU's and a gas range of 65,000 BTU's.<sup>7</sup>

After taking the meter the PGW Meter Shop performed an inspection of the meter on January 27, 2012. The Meter Shop noted that the index read from the meter was 1987, the reading noted on the ERT of the automatic meter reading device (AMR) also was 1987.

The bill issued for the Unauthorized Usage was based upon the Complainant's gas usage from the period from July 5, 2001 through June 3, 2002.<sup>8</sup>

The Complainant's conducted discovery consisting of three (3) sets of interrogatories and requests for production of documents. In response PGW provided the Complainant with responses totaling approximately 223 pages of account information. These are PGW records, explanations of technical matters and photographs, all responsive to the discovery requests.

Since the commencement of this matter, the following dates have been scheduled for the Initial Hearing of this matter: December 7, 2012, January 30, 2013 and April 26, 2013. These were continued by agreement of the Parties to allow the Parties to discuss the possibility of settlement. By notice dated April 29, 2013, the Commission scheduled an Initial Hearing of this matter for July 2, 2013 before Administrative Law Judge Angela T. Jones (ALJ).

On July 2, 2013, ALJ Jones presided over the Initial Hearing that generated 229 pages of testimony. Counsel for the Complainant, Josie Pickens, Esq. presented the Complainant who provided testimony and sponsored 18 exhibits that were admitted to the record. Counsel for PGW presented the testimony of four PGW witnesses who sponsored seven exhibits that were admitted into the record. The ALJ Jones allowed additional time for the Complainant to submit an amended Complainant's Exhibit – 5.

By notice dated July 3, 2013, a Further Hearing was scheduled to allow the Parties to

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<sup>5</sup> Tr. p. 144

<sup>6</sup> PGW Exhibit – 5

<sup>7</sup> BTU is a British Termnal Unit. It refers to the maximum energy capacity of the appliance.

present testimony on the amended Complainant's Exhibit – 5, if necessary. The Parties agreed that a Further Hearing to present testimony on Complainant's amended Exhibit – 5 was unnecessary. ALJ Jones cancelled the October 8, 2013 Further Hearing.

By Order dated October 10, 2013, Administrative Law Judge set the briefing schedule ordering Main Briefs due on November 21, 2013 and Reply Briefs due on December 6, 2013.

## **II. Statement of the Questions:**

Whether PGW acted unreasonably or provided unreasonable service in violation of the Pennsylvania Public Utility Code when it found meter tampering at the Complainant's Service Address and billed the Complainant for gas used during the period of meter tampering based upon an estimate?

## **III. Summary of the Argument**

The Complainant failed to meet his burden of proof to show that PGW violated its obligation to provide adequate and reasonable service under the Public Utility Code. The Complainant failed to show that there was no meter tampering at the service address and the Complainant also failed to show that the methodology PGW used by which to calculate the bill for Unauthorized Usage, which was based upon its estimate of usage at the Service Address.

## **IV. Argument**

### **A. The Complainant Has Failed to Show that PGW Has Acted Unreasonably or Provided Unreasonable Service 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

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<sup>8</sup> PGW Exhibit – 5, Tr. pp. 100 - 104

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.

Pursuant to the Pennsylvania Public Utility Code at 66 Pa. C.S.A. §1501 - Character of service and facilities:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . .

In the record of the instant case, there is no evidence of any violation of the adequate and reasonable service standard regarding PGW's actions at the Service Address. The testimony of PGW witnesses, Anne Marie Cromley, Customer Review Officer, Timothy Sullivan, Superintendent – Revenue Protection & Meters, and Phillip Farinas, Field Service Technician, provide various facets of the circumstances of this matter that would lead the reasonable person to conclude that as a result of the tampering with the PGW meter, the Complainant obtained gas service that was unmetered.

2. The condition of the meter apparatus as found by PGW employees indicates that there was tampering with the meter.

In the course of investigating a leak in the area of the Service Address, PGW Field Service Technician, Phillip Farinas entered the Service Address and observed the

condition of the metering apparatus at the Service Address. In his testimony, PGW Field Service Technician Farinas describes that he found a dangerous situation in the basement of the Service Address. Following the correct protocols of safety, PGW Field Service Technician Farinas secured the area and was able to observe that the ERT device was “cocked at like a 45 degree angle.” In demonstrating the condition of the meter and position of the ERT device with the screws removed, he stated that in such a state the meter would not register gas usage. That is, in the state that he found it, the dials will not move when gas passes through it.<sup>9</sup>

The testimony of Timothy Sullivan, adds further clarity to the procedures that PGW undertakes to ensure safety and the accurate reporting of conditions when unauthorized usage is found. Witness Sullivan explains the PGW procedure in obtaining the information contained in PGW Exhibit – 5.<sup>10</sup> His testimony reviews various procedures that facilitate safety and the maintenance of meters. Sullivan confirms that after tampering a meter can be rendered unreliable even after gaining access to the Service Address.<sup>11</sup> Tampering, in effect, deactivated the meter from measuring gas passing through it, even though when tested, the meter could still measure gas accurately.<sup>12</sup>

### 3. The Metered Usage Patterns Support the Finding of Meter Tampering.

Usage information provided in the testimony of PGW witness Anne Cromley shows that for an extended period including the disputed period, usage information for the winter heating season. The low recorded usage during the heating season months in the years 2007 through 2011, given the condition of the meter found in 2011, indicate much unmeasured usage could be been passing through the meter.<sup>13</sup> Thus, the record evidence of this matter supports a reasonable conclusion that the unauthorized usage occurred at the Service Address resulting from meter tampering.

## **B. The Complainant is Obligated for the Payment of the Unmetered Gas Consumed by the Complainant's**

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<sup>9</sup> Tr. pp. 142 – 145

<sup>10</sup> Tr. pp. 194 – 200

<sup>11</sup> Tr. p. 200

<sup>12</sup> PGW Exhibit – 6

<sup>13</sup> Tr. pp. 92 – 94, PGW Exhibit – 1, pp. 6 – 10

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...

Thus, PGW is charged with the task of ensuring that it charges users of its service for all gas used. Additionally, the 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>14</sup>

According to 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.

1. PGW use of historical information is a reasonable method of arriving at the likely volume gas consumed during the period of UU.

The testimony of PGW witness Anne Cromley provides the specific process and justification for the use of historical information to arrive at a bill when PGW lacks a reliable. The PGW Tariff §8.3, authorizes that where the nature of the tampering interferes with PGW's metering of the gas used, PGW may estimate such charges. In this case PGW used the historical usage information from 2001/2002. Cromley testifies that this period is more reliable because there is no estimated meter reading during the period.<sup>15</sup>

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<sup>14</sup> Philadelphia Gas Works Gas Service Tariff – Pa. P.U.C. No. 2, §8.3 (emphasis added)

<sup>15</sup> Tr. pp. 121 – 125

2. PGW's calculation of the bill with the use of historical usage is reasonable.

In PGW Exhibit – 5, pages 2 through 7, provides the steps that PGW took in calculating the disputed bill. Simply, the gas use of the historical year (2001/2002) was obtained and treated as the standard usage. PGW's UU bill was for the period of four years. PGW generated the bill using the annual usage times four.<sup>16</sup>

3. The Complainant's inclusion of additional circumstances involving conservation gas use through the use of electric heaters is inconclusive.

The Complainant has provided testimony that during the disputed period, his gas usage was curtailed by his conservation practices including the use of kerosene and use of electric heaters. The information contained in the revised Complainant's Exhibit – 5 is inconclusive. The information fails to show any significant differences in electric use during the heating seasons.<sup>17</sup> It is insufficient to use the electric use information as substantial evidence to support the argument that the UU as billed is inaccurate.

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. 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

The fact that the electric usage seems to have increased during the heating seasons since the Complainant's gas service was terminated in 2011, serves to support the conclusion that something other than electricity was being used to heat the Service Address.

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<sup>16</sup> PGW Exhibit – 5

<sup>17</sup> Smith Revised Exhibit – 5

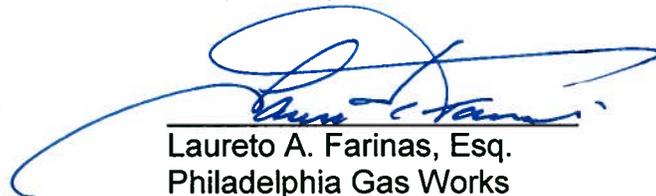
**V. CONCLUSION**

In this matter the Complainant has failed to meet his burden to show that there was no meter tampering and that PGW method for calculating the billing of the unmetered gas at the Service Address is unreasonable.

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 its updated calculation used to render the bill for Unauthorized Usage is correct and dismiss the Complaint.

Respectfully submitted,

November 21, 2013



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ALEXANDER SMITH,</b>	:	
Complainant	:	
	:	
v.	:	<b>F – 2012 – 2315538</b>
	:	
<b>PHILADELPHIA GAS WORKS,</b>	:	
Respondent	:	

**PHILADELPHIA GAS WORKS’  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Proposed Findings of Fact**

1. The Complainant is Alexander Smith who currently resides at 3348 “E” Street, Philadelphia, PA 19143 (Service Address).
  
2. The Respondent is the Philadelphia Gas Works, 800 W. Montgomery Avenue, Philadelphia, PA 19122.
  
3. On November 15, 2011, PGW visited the Service Address while investigating a street leak in the vicinity of the Service Address. (Tr. pp. 138-140)
  
4. While in the Service Address the PGW service technician discovered bypass and meter tampering evidenced by the absence of the red caps that cover the screws that hold the Electronic Receiver Transmitter device (ERT) in place. (PGW Ex. – 5)
  
5. The ERT device at the Service Address was dislodged from its place connected to the rest of the meter and hanging at a 45 degree angle from its correct position. (Tr. p. 144)
  
6. The condition of the metering apparatus showed signs of tampering.

7. PGW removed the meter (Meter No. 1595104) and terminated gas service.

8. The PGW service technician noted that the following appliances at the Service Address: a house heater of 10,000 British Thermal Units (BTU's), a hot water heater of 30,000 BTU's and a gas range of 65,000 BTU's. (PGW Ex. – 5)

9. After taking the meter the PGW Meter Shop performed an inspection of the meter on January 27, 2012. (PGW Ex. – 2, p .4)

10. The PGW Meter Shop noted that the index read from the meter was 1987, the reading noted on the ERT of the automatic meter reading device (AMR) also was 1987. (PGW Ex. – 2, p. 4)

11. PGW issued a bill to the Complainant for \$6,443.27 based upon an analysis of historical usage information of the Service Address.

12. The bill issued for the Unauthorized Usage was based upon the Complainant's gas usage from the period from July 5, 2007 through June 3, 2011. (PGW Ex. – 5, pp. 2-7)

13. After further investigation and a visit to the Service Address on April 26, 2013, PGW recalculated the bill for UU as \$5,789.40 because PGW concluded that the gas range was not in use during the disputed period. July 5, 2007 through June 3, 2011. (PGW Ex. – 5 pp. 2-7)

## **Proposed Conclusions of Law**

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Pursuant to 66 Pa. C.S.A. §332(a), the burden of proof in this proceeding is upon the Complainant.

3. The Complainant failed to meet his burden of demonstrating the PGW improperly found that there was meter tampering at the Complainants' residence, the Service Address.

4. According to the PGW Gas Service Tariff concerning meter tampering, 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. PGW Gas Service Tariff §8.3

5. The Complainant failed to meet his burden of demonstrating the PGW improperly billed him for gas service based upon its estimate.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ALEXANDER SMITH,**  
Complainant

v.

**PHILADELPHIA GAS WORKS,**  
Respondent

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**F – 2012 – 2315538**

**PROPOSED ORDER**

**IT IS ORDERED:**

1. That the Complaint of Alexander Smith against the Philadelphia Gas Works at Docket No. F-2012-2315538 is denied: and
2. That the Secretary's Bureau shall mark Docket No. F-2012-2315538 as closed.

Date: \_\_\_\_\_

\_\_\_\_\_  
Angela T. Jones  
Administrative Law Judge

**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:

For the Complainant:

By First Class U.S. Mail

Josie B. H. Pickens, Esquire (and by e-mail)  
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November 21, 2013



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