



PHILADELPHIA GAS WORKS

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November 29, 2013

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

Re: Frank Veasey v. PGW, Docket No. C - 2013 - 2356586

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 October 29, 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: Frank Veasey (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Veasey

v.

Philadelphia Gas Works

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Docket No. C – 2013 – 2356586

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

Pursuant to 52 Pa. Code §5.535, the Secretary’s letter dated October 29, 2013, cover of 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 October 29, 2013, in the above captioned matter (“Initial Decision”).

As of the date of this filing, PGW has not been served with a copy of the Complainant’s exceptions to the Initial Decision. Although the Complainant’s exceptions document includes a certificate of service and a service list, PGW has obtained the only copy it possesses from the Commission’s website.

I. INTRODUCTION

On March 11, 2013 the Complainant filed a formal complaint against PGW with the Commission alleging that his gas service was improperly terminated on August 24, 2012 and that PGW has refused to restore it despite the Complainant’s becoming current with this payments and having requested restoration based upon a Medical Certification. The Complainant requests relief in the form of [1] restoration of service, [2] a payment agreement, [3] compensation for fees and costs incurred [4] waiver of the requirement of a security deposit and [5] award of damages for medical treatment and other health related compensatory damages. The complaint is associated with the Complainant’s gas service at the Complainant’s residence 1306 S. Broad Street, Philadelphia, PA 19146 (Service Address).¹

On October 24, 2012, PGW filed an answer, denying the material allegations of the Complaint. PGW also filed Preliminary Objections to the request for relief in the form of compensation for damages on the grounds that the Commission lacks the authority to

¹ Complaint

award damages.

The Complainant's payment agreement consisting of the PGW Easy Way Budget plan was cancelled due to non-payment and the Complainant was required to pay in full.² After having been refused access to the Service Address to complete a termination of service on August 9, 2012, PGW terminated gas service from the curb of the Service Address on August 28, 2012.³

On September 5, 2012, the Complainant paid the outstanding balance of his account.⁴ On September 10, 2013 PGW issued a final bill on the account. On September 13, 2012, PGW received a Medical Certificate restoration request and on that same date PGW visited the Service Address to restore service. After several attempts PGW was unable to restore gas service to the Service Address because of the presence of hazardous conditions associated with the heater and chimney.⁵

By hearing notice dated May 10, 2013, the hearing in this matter was scheduled for July 11, 2013, at 10:00 a.m.

On May 31, 2013, the presiding officer issued an order granting PGW's Preliminary Objections, dismissing that portion of the Complaint concerning monetary compensation for damages. The hearing was held in this matter on the date scheduled in the Philadelphia Regional Office at 801 Market Street before Administrative Law Judge Angela T. Jones. The Complainant appeared *pro se* and testified in support of the complaint offering eight (8) exhibits that were admitted into the record.

PGW was represented by counsel and presented one witness, Anne Marie Cromley, Senior Customer Review Officer – PGW and Timothy Sullivan, Superintendent, Revenue Recovery and Meters – PGW, who offered five (5) exhibits that were admitted into the record.

On October 29, 2013, the Commission issued the Initial Decision dismissing the Complaint in its entirety on the grounds, inter alia, that the Complainant had failed to carry his burden of proof that PGW had inappropriately terminated his gas service for nonpayment, that PGW failed to notify the Complainant of the termination of gas

² Tr. pp. 102-103, 121

³ Tr. pp. 104-105, PGW Exhibit – 2 and PGW Exhibit – 3

⁴ PGW Exhibit – 1

⁵ PGW Exhibit – 3, PGW Exhibit – 4, Tr. pp.76 – 81

service, that PGW had violated a Commission statute, regulation or order by failing to restore gas service to the Service Address. The Complainant filed exceptions that were dated November 15, 2013 and received by the Commission on November 18, 2013.

As of the date of this filing, PGW has not been served with a copy of the Complainant's exceptions to the Initial Decision. Although the Complainant's exceptions document includes a certificate of service and a service list, PGW has obtained the only copy it possesses from the Commission's website.

Pursuant to 52 Pa. Code §5.535, and despite the conspicuous non-arrival of the Complainant's exceptions to PGW, this timely reply follows.

Complainant's Statement of Relief

At the beginning of the Complainant's exception document, the Complainant lists the various forms of relief sought since the commencement of this proceeding. The Complainant's exceptions, however, fail to address the order dismissing the denial of the relief concerning monetary compensation for lack of authority.⁶

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. 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. The Complainant claims that he was not served with PGW's Answer and Preliminary Objections and that his case was prejudiced.
2. The Complainant states that the inclusion of information of unpaid debt for the period from October through December 2012 serves to unduly influence the fact finder.
3. The Complainant takes exception to the finding that PGW did not receive a payment in time to render the termination notice unnecessary.

⁶ Order of May 31, 2013, sustaining PGW's Preliminary Objections

4. The Complainant takes exceptions to the finding that PGW's finding of hazardous conditions with regard to the house heater and chimney were valid.
5. The Complainant takes exception to the inclusion of the PGW testimony concerning the fact that usage continued to be registered at the Service Address up to the date of the hearing even though service had been terminated by PGW as it is prejudicial to the instant matter.

The Exceptions restate the Complainant's dissatisfaction with PGW and the Initial Decision by repeating the arguments made in the complaint. These are unsupported by evidence of record. The Exceptions fail to point to any significant evidence of record that was overlooked in the Initial Decision leading to a reasonable conclusion that the Complainant had met his burden of proof.

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 burned 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 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).

PGW's Reply Exception

1. Service of Process of Answer to Complaint and Preliminary Objection.

The Complainant failed to show how his case was prejudiced due to his claim of not being served with the Answer and Preliminary Objections. PGW has

served the Complainant in the usual way simultaneous with the filing of those pleadings with the Commission. As stated by Administrative Law Judge Jones that the Complainant new of the existence of the Answer and Preliminary Objections as early as May 31, 2013 with the Prehearing Order and the Order on the Preliminary Objections.⁷ The Complainant failed to raise any inquiry with PGW until the day of the hearing, July 11, 2013.

2. Information concerning unpaid debt from October through December 2012.

The Complainant's exception fails to demonstrate how the additional information concerning gas usage at the Service Address during that period serves to prejudice that fact finder of this matter. The Initial Decision is well supported by substantial evidence concerning the condition of the Service Address justifying PGW's refusal to restore gas service due to hazards and not any other factors.

3. Payment Received to Render the Termination of Service Unnecessary

The Complainant's exception fails to show how the receipt of partial payment rendered the termination of service unnecessary. The record reflects that the Complainant had not been making the full payment of his budget plan on a monthly basis. Having failed to do so, PGW requested payment in full. The Complainant did not make payment until after service was terminated.

4. Validity of Hazardous Conditions

The Complainant's exception fails to show that PGW's finding of hazardous conditions at the Service Address were invalid. The record of this proceeding reflects the testimony of PGW witness Sullivan, who provided extensive testimony on the conditions of the heater apparatus and chimney and the likely consequences of ignoring such conditions.⁸ The Complainant's testimony contains his perceptions of the representations of non-PGW service

⁷ Tr. p. 10

⁸ PGW Exhibit – 3 , PGW Exhibit – 4, Tr. pp. 73 – 93

professionals who allegedly assured the Complainant that the heater was safe. Not even the Complainant's testimony assures the safe condition of the chimney.

5. Inclusion of testimony of usage at the Service Address up to the hearing date is unduly prejudicial to the matter.


Similar to the second exception, PGW's testimony included the fact that it had found that usage continued to register on the meter at the Service Address even though service had been terminated. The exception fails to demonstrate how the additional information concerning gas usage at the Service Address during that period serves to prejudice that fact finder of this matter. The Initial Decision is well supported by substantial evidence concerning the condition of the Service Address justifying PGW's refusal to restore gas service due to hazards and not any other factors. The Initial Decision specifically found that PGW supplied evidence demonstrating that it had complied with the appropriate notices of termination and the hazardous conditions existing at the Service Address. Based upon the preponderance of the evidence presented, the Initial Decision reasonably relies upon the record of this matter in its conclusion that the Complainant failed to meet his burden of proof. 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 July 17, 2013 in this matter as written dismissing the Complaint.

Respectfully submitted,

November 29, 2013



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

CERTIFICATE OF SERVICE

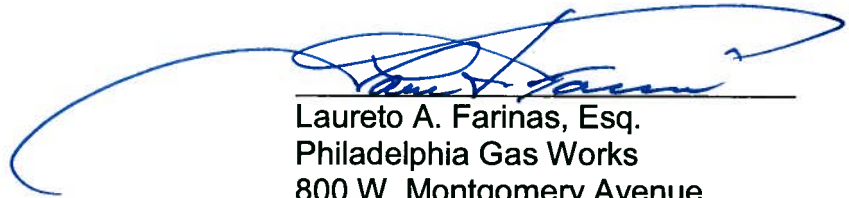
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Frank Veasey
P.O. Box 54603
Philadelphia, PA 19148

November 29, 2013



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