



**PHILADELPHIA GAS WORKS**

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December 6, 2013

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

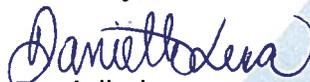
**Re: Alexander Smith. v. PGW, Docket No. F- 2012 - 2315538**

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 Reply 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**

**REPLY 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 Reply 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. The Parties' main briefs were filed on November 21, 2013.

**I. Introduction**

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

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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

(ERT) in place.<sup>4</sup> The ERT device was dislodged from its place connected to the rest of the 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.<sup>8</sup> 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.

## **II. Summary of the Counter-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 his alleged reliance on other forms of energy as a heating source proves that there was no meter tampering at the Service Address.

## **III. 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.**

As stated in PGW's Main Brief, 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 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

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<sup>4</sup> PGW Exhibit – 5, p. 1

<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.

<sup>8</sup> PGW Exhibit – 2, 4 of 7 (entry 1/27/2012)

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 . . .

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. 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.

1. The Complainant's Main Brief Mischaracterizes the role of the PGW system to detect meter tampering via ERT manipulation.

In its main brief the Complainant argues that PGW's system that is designed to detect meter tampering did not detect signs of tampering. This is asserted to support that

there was no tampering. Both PGW's response to an interrogatory submitted at Smith Exhibit – 15 and the testimony of PGW Witness Sullivan support the notion that the presence of tampering indicators may be a sign that something is wrong, hence Mr. Sullivan uses the term "anomaly," that requires further investigation. As Sullivan points out, tampering software is new technology and was being used for less than a year in November 2011.<sup>9</sup> Sullivan states further that the tamper count in this matter was not the indicator of a problem but rather the periods of zero usage would have caused PGW to visit the property.<sup>10</sup> The periods of zero usage would be a further indicator of the need for investigation. The Complainant's Main Brief places heavy reliance on the absence of tamper counts as vindicating the Complainant. The Complainant's Main Brief argues that the lack of tamper counts undermines PGW's contention that the counts are the equivalent of tampering.

The Complainant's Main Brief mischaracterizes Sullivan's explanation of the way in which the counts figure into an investigation. In Sullivan's responses as contained in Smith Exhibit – 15 and in his testimony, Sullivan states clearly that the tamper count is not the only way to find out what happened at a property.<sup>11</sup> The condition of the meter, however, figures prominently in PGW's conclusion that there was meter tampering at a property.<sup>12</sup>

By itself, the tampering indicators do not necessarily mean there is tampering. The absence of tempering indicators should not end a tampering inquiry. In this present case, the decisive investigation occurred on November 15, 2011, when PGW disconnected and partially disassembled condition of the meter.

## 2. PGW's finding of meter tampering is well supported.

Contrary to the Complainant's Main Brief, PGW's finding of meter tampering is more that sufficiently supported. The condition of the meter apparatus as found by PGW employees indicates that there was tampering with the meter. Central to the evidence in this matter is the eye witness testimony and personal knowledge of PGW Field Service

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<sup>9</sup> Tr. p. 206

<sup>10</sup> Tr. pp. 207 - 208

<sup>11</sup> Smith Exhibit – 15, Tr. pp. 211, 212

Technician, Phillip Farinas. In the course of investigating a leak in the area of the Service Address, PGW Field Technician, Farinas entered the Service Address and observed the condition of the metering apparatus at the Service Address. He describes that he found a dangerous situation in the basement of the Service Address. Following the correct protocols of safety, he secured the area and was able to observe that the ERT device was “cocked at like a 45 degree angle.”<sup>13</sup> 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>14</sup>

The testimony of Timothy Sullivan, adds further clarity and support to the finding of meter tampering at the Service Address. Witness Sullivan testimony as discussed above explains the PGW procedure in obtaining the information contained in PGW Exhibit – 5.<sup>15</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>16</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>17</sup>

The Complainant’s metered usage patterns further 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>18</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.

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<sup>12</sup> Tr. pp. 211, 212

<sup>13</sup> Tr. pp. 142 – 145

<sup>14</sup> Tr. pp. 142 – 145

<sup>15</sup> Tr. pp. 194 – 200

<sup>16</sup> Tr. p. 200

<sup>17</sup> PGW Exhibit – 6

<sup>18</sup> Tr. pp. 92 – 94, PGW Exhibit – 1, pp. 6 – 10

3. The Complainant's assertion that he did not tamper with the meter and that the decrease in gas use is due to changes in his reliance on non-gas appliances such as kerosene and electric heaters is inconclusive, at best.

In its Main Brief, the Complainant has provided electric usage information is proffered to show that the Complainant gas usage was curtailed by his conservation practices including the use of kerosene and electric heaters. The information contained in the revised Complainant's Exhibit – 5, as presented in the Complainant's Main Brief on page 19 is inconclusive at best, but provides some insight on the Complainant's reliance on electric as a heating source.

Since it is uncontroverted that there gas service was absolutely terminated on November 15, 2011 perhaps it is telling to review the Complainant electric consumption during the winter month following November 15, 2011.<sup>19</sup> With the exception of January 2012, the Complainant's electric consumption each month of the "Cold weather months" after the termination of gas service on November 15, 2011 is markedly higher than before.<sup>20</sup> Could kerosene become undesirable as a heating source after January 2012? One could reasonably conclude that the electric consumption from November 2011 through April 2013 reflects the Complainant's true reliance on electricity as a heating source and that the relatively lower electric consumption prior to November 2011 reflects some reliance on electric and some on gas. The Complainant's assertion that electric use information is substantial evidence to support the argument that the billed amount is inaccurate is inconclusive.

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 than a mere trace of evidence is required or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. V. Pa. P.U.C., 489

The Complainant's Main Brief argues that the Complainant did not tamper with the gas meter and therefore is not responsible for the unauthorized usage at the Service Address. The brief argues that support this argument is found in the Commission's

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<sup>19</sup> Complainant's Main Brief, p. 19

<sup>20</sup> Complainant's Main Brief, p. 19

decision in Mullins v. PGW, PUC, Docket No. C-2011-226640 (Rewrite Opinion and Order entered October 2, 2012). In Mullins, the complainant prevailed because she was credible in her testimony not with regard to meter tampering but rather her testimony that she contacted PGW to ask for the discontinuance of gas service and that PGW records indicated that the gas service should have been discontinued within the following two years.<sup>21</sup> With the finding of that fact, the Complainant was released from responsibility for payment for gas usage during the disputed period.

Wholly distinguishable from Mullins, the evidence of record in the instant matter reveals that more than one fact that the Complainant must overcome. First, the Complainant does not rebut the evidence of the condition 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.<sup>22</sup> Service Technician provides unequivocal testimony that there was no mistaken memory or confusion with respect to his recollection of the events with the discovery of meter tampering at the Complainant's Service Address.<sup>23</sup>

The Complainant's Main Brief also states that responsibility for unauthorized usage is found typically when the Complainant admitted to the UU. In the cases of Odom v. PGW, Docket No. F-2012-2284230 (order entered November 6, 2012); Orlando Rivera v. PGW, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012) and Roosevelt Taylor v. PGW, Docket No. C-2009-2140196, (Opinion and Order entered April 4, 2011) the Complainant asserts that liability for meter tampering is found when the complainant in each of those cases simply that they did not tamper with the meter without offer more evidence. As with the instant matter, all complainants baldly assert merely that they did not tamper with the meter. Despite the Complainant Smith's attempt to distinguish the instant matter from those cases, the evidence proffered to support the notion of no tampering lacks credibility. The evidence of the Complainant's use of other

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<sup>21</sup> Mullins v. PGW, PUC Docket No. C-2011-226640 (Rewrite Opinion and Order entered October 2, 2012), Initial Opinion as adopted, p. 8

<sup>22</sup> Tr. pp. 142 – 145

forms of heat, the asserted lack of tampering detection by the electronic PGW program and the assertion that a break-in was committed at the Service Address, fails to compare with the weight of the PGW evidence. The fact remains that PGW witness Farinas found the meter in a tampered state. Gas was flowing. PGW has presented evidence of more than co-equal weight that rebuts the Complainant's case.

**B. The Complainant Has Failed to Prove that the Alteration to the Meter was Caused by a Third Party Without His Consent.**

The Complainant's main brief argues that the Complainant did not tamper with the gas meter and therefore is not responsible for the unauthorized usage at the Service Address. The brief argues that support this argument is found in the Commission's decision in Mullins and that Mullins had demonstrated that there had been a squatter at the Mullins' service address.<sup>24</sup> Mullins prevailed because she was credible in her testimony not with regard to meter tampering but rather her testimony that she contacted PGW to ask for the discontinuance of gas service and that PGW records indicated that the gas service should have been discontinued within the following two years. With the finding of that fact, the Complainant was released from responsibility for payment for gas usage during the disputed period.

The facts of Mullins have no bearing on the instant matter. In the Mullins, the break-in involved a squatter who purported to have used gas service while at the property. Smith Exhibit – 6, (Police Report) at best, shows that there was a break-in at the Service Address, but has no mention that the incident, which occurred on February 1, 2010, involved an extended use of gas service. The only factual connection to the meter tampering was that a common tool, a screw driver was used to gain entry to the Complainant's home. The similar tool would have to have been used to disconnect the meter. There is no nexus between the break-in and the meter tampering.

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<sup>23</sup> Tr. pp. 151 – 152

<sup>24</sup> Mullins v. PGW, PUC Docket No. C-2011-226640 (Rewrite Opinion and Order entered October 2, 2012), Initial Decision as adopted p. 8

#### IV. 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,

December 6, 2013



Laureto A. Farinas, Esq.  
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**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

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December 6, 2013

  
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