



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
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E-mail: danielle.leva@pgworks.com

January 30, 2014

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

RECEIVED

JAN 30 2014

Re: Kisha Dorsey v. PGW, Docket No. F - 2012 - 2313679 PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.5572, the Philadelphia Gas Works ("PGW") hereby files its reply to the Complainant's filed letter received and time stamped by the Commission (Special Agent) on December 9, 2013 (dated December 3, 2014), which was deemed a Petition for Reconsideration by the Commission (Petition).

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,

A handwritten signature in black ink that reads "Danielle Leva".

Danielle Leva

Enclosure

cc: Kisha Dorsey (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 30 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Kisha Dorsey

:
:
:
:
:
:

v.

Docket No. F – 2012 – 2313679

Philadelphia Gas Works

Philadelphia Gas Works
Reply to Complainant's Filing Deemed Petition for Reconsideration

Pursuant to 52 Pa. Code §5.5572, the Philadelphia Gas Works, ("PGW") hereby files its reply to the Complainant's filed letter received and time stamped by the Commission (Special Agent) on December 9, 2013 (dated December 3, 2013), which was deemed a Petition for Reconsideration by the Commission (Petition).

As of the date of this filing, PGW has not been served with a copy of the Complainant's Petition. The Petition fails to include a Certificate of Service, noting service upon PGW. PGW has obtained the only copy it possesses from the Commission's website. PGW only learned about it as it had been placed on the Commission agenda for the February 6, 2014 Public Meeting. PGW respectfully requests that the Commission deny the reconsideration of the above captioned matter. In support of its request, answer accordingly.

I. Introduction

In November 22, 2013, the Commission entered a final order in the above captioned matter that was an appeal of a decision of the Bureau of Consumer Services decision refusing to provide a payment agreement to a customer who had a large outstanding balance (\$6,737). Of that amount, \$1,042 was the accumulation of delinquent payments while enrolled in PGW's Customer Responsibility Program (CRP). The remaining \$5,659 of the outstanding balance was accumulated while the Complainant was on the General Service Rate Residential and not enrolled in CRP.

The Complainant filed a formal complaint and a telephonic hearing was held on May 10, 2013. On July 17, 2013, the Commission issued an Initial Decision, which provided that the Complainant was not entitled to a payment agreement on her CRP arrears, but was entitled to a payment agreement on the non-CRP balance.

In its November 22, 2013 Final Order, the Commission reversed the Initial Decision in part, finding that the Complainant was not entitled to a payment agreement on the

non-CRP balance. Thus, the Commission required that the Complainant must make payment of the entire balance of \$6,737 in full. The Commission found that as she did not merit a payment agreement on any portion of her balance due to her lack of good faith effort to make payments over the years. The Commission found that she made only sporadic payments while enrolled in CRP and defaulted in two 5 year PGW payment agreements and that the last payment to PGW that made as of the date of the May 2013 hearing was on October 3, 2011.¹

II. PGW Answer to Reconsideration Arguments

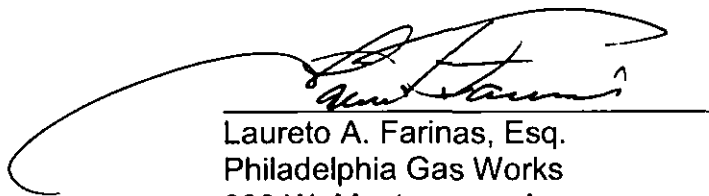
In the Petition, the Complainant re-states her financial and health status, which were raised at the hearing of this matter. Further the Complainant proposes her own payment agreement which fails to address the obligations to pay even in full her CRP arrears. The Petition fails to address the lack of good faith evident in her payment patterns irrespective of her enrollment in the low income program, CRP or a traditional payment agreement. The Complainant's arguments for reconsideration fail to raise any new or novel arguments, which were not previously considered by the Commission. These do not meet the established standard that would warrant the reconsideration of the Commission's Final Order and Decision in this matter.

I. CONCLUSION

For the reasons stated above, the PGW requests that the Commission deny the Complainant's request for reconsideration and rehearing of this matter and affirm its Final Order and Opinion of November 22, 2013 as written, dismissing the Complaint.

Respectfully submitted,

January 30, 2014



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

¹ PGW Exhibit – 1,

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12/3/13

JAN 30 2014

F 2012-2313679

Pennsylvania
Public Utility Commission
P.O. Box 3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I Kisha Dorey am appealing the decision to
 over turned based on past payment history
 I can guarantee a one time monthly payment
 and been so worried about my health more than
 anything else Yes I am below poverty living I
 need my Gas bill to stay on due to my health prob
 I will show you starting this month I will
 pay ten percent of my income which is 32.00
 plus another 32. every 2 weeks its possibly
 my income will change due to my health issues
 lord willing I think its very unfair to not
 give me this chance I'm poor I have nothing
 no assets or anything or I would have paid off
 the C.A.P. I would like to pay 10% of what
 it would be paying of 316.00 dollars I believe
 which would mean for 13 months I owe you 32.
 X13 thirteen (PGW.) months which adds up to be
 four hundred and 26 dollars in which was paid
 with 1. heap grants prior to that 2011 I would have
 owed eight hundred & forty dollars which also
 was paid thru programs if you do the

pen 1/6

SECRETARY'S BUREAU

DEC 10 PM 12:21

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with this is what I owe \$ 7.22.00. Seven hundred
22 dollars but I might be wrong since my income
was 248.00 since 2011-2012 2012-to the present
all bills are paid in full this is a mistake that
P.G.W. forgot to inform the P.U.C Commissioner

I am requesting a phone call or a new
case regarding the over payment
the P.G.W. is saying I owe

based on Cap Rate I owe nothing besides 7.22
unless they can show me other proof besides
the faulty high Gas bill I was given ^{K.O} when
the utility was shut off. in 2011 my income
was 248.50 and the rate would have been fifty a
month for ~~2011~~ ^{K.O} 2011-2012 can someone here
and ask pgw about this I need a new case
or an appeal and this is my appeal thank you

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2013 DEC 10 PM 12:21

PA REC
SECRETARY'S BUREAU

Justa
Dewey
12/3/13

Kisha Dersey, F-2012-2313679
241 West Abbottsford Ave.
Phila Pa 19144
Re. regarding An Appeal

PHILADELPHIA PA 19104

06 DEC 2013 PM 5 L



RECEIVED
OFFICE OF C.A.L.J.
13 DEC -9 PM 10:56
PA PUC

Special Agent T. Nancy A. Hunt
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Room B-20, North office Building
Harrisburg, Pa 17105-3265

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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

JAN 30 2014

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Public Meeting held October 31, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown; Statement

Kisha Dorsey

F-2012-2313679

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Special Agent (SA) Tiffany A. Hunt, issued on July 17, 2013, in the above-captioned proceeding. Exceptions have not been filed. However, we exercise our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the SA's Initial Decision, consistent with this Opinion and Order.

History of the Proceeding

On July 29, 2012, Kisha Dorsey (Ms. Dorsey or Complainant) filed a Formal Complaint¹ with the Commission against Philadelphia Gas Works (PGW or Respondent) which alleged, *inter alia*, an inability to pay her gas utility bills and that she received a notice her utility service was being terminated. As relief, Ms. Dorsey requested a payment agreement. On August 2, 2012, PGW filed an Answer to the Complaint. In its Answer, PGW denied the material allegations of the Complaint and provided additional allegations of fact regarding the Complainant's payment history and prior payment arrangements

The SA convened the Initial Hearing telephonically on January 28, 2013, at 10:00 a.m. Prior to the start of the hearing, the Parties settled the Complaint. On that same day, PGW filed a Certificate of Satisfaction with the Commission. By letter dated February 6, 2013, Ms. Dorsey timely objected to the Certificate of Satisfaction and the hearing was rescheduled.

The SA again convened the Initial Hearing via telephone on May 10, 2013, at 10:00 a.m.² The Complainant appeared *pro se* and testified on her own behalf. The Respondent was represented by counsel and presented the testimony of one witness who sponsored six exhibits, which were admitted into the record. The record closed on May 10, 2013.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a).

¹ The Complaint was a timely appeal of a decision by the Commission's Bureau of Consumer Services in Case No. 2947534.

² A tape recording of the hearing was made, no court reporter being present.

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The SA made twenty-four Findings of Fact and reached five Conclusions of Law. I.D. at 3-5; 8. We shall adopt and incorporate herein by reference the SA's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Additionally, we note that any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Initial Decision the Special Agent found that the Complainant's past due balance included arrearages accrued under Customer Assistance Program (CAP) rates as well as arrearages accrued under regular tariffed rates. She denied the Complainant's request for a payment agreement on the portion of her account balance that is subject to CAP rates but granted the Complainant's request for a payment agreement on the portion of her account balance that is not subject to CAP rates.³ As of the date of the hearing, the Complainant's account balance with PGW was \$6,737.08, which included \$1,042.92 in CAP/CRP arrearages. The Complainant's arrearage is "mixed" in that it includes both CAP and non-CAP amounts.

For the reasons set forth at pages 6-7 of the Initial Decision, we agree with denying the Complainant's request for a payment agreement for the CAP/CRP portion of her arrearages. However, we do not agree with giving the Complainant, who has a troubled payment history, a payment agreement for the non-CAP/CRP portion of her arrearages.

Recently, in *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Order entered September 12, 2013) (*Hewitt*), the Commission addressed whether we have authority under Section 1405(c) of the Code to establish a payment agreement for the non-CAP portion of a "mixed" arrearage. In *Hewitt*, we

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concluded that the Commission has such authority. However, we declined to establish a payment agreement in that case, based on Ms. Hewitt's poor payment history and her inability to keep prior Company-issued payment agreements. *Hewitt* at 10.

Here, we also must decide whether to exercise our authority and issue a payment agreement to Ms. Dorsey for the non-CAP portion of a "mixed" arrearage. We decline to issue a payment agreement here, given the Complainant's poor payment history and her inability to keep prior payment agreements with PGW. While enrolled in PGW's CRP from December 2008 to July 2011, the Complainant made only sporadic payments. PGW Exhibit 1. Moreover, since being removed from PGW's CRP in July 2011, the Complainant defaulted on two company-issued payment agreements providing her with 59 and 60 months respectively to pay her past due balance. PGW Exhibit 3. We note that as of the hearing date in May 2013, the last payment made by the Complainant to PGW was on October 3, 2011, which was approximately 18 months before the hearing.⁴ PGW Exhibit 1.

Conclusion

Based on our review of the record and the applicable law, we shall modify the SA's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

⁴ In 2012, a total of \$870 in LIHEAP assistance was credited to Complainant's account. PGW Exhibits 1, 5.

IT IS ORDERED:

1. That the Initial Decision of Special Agent Tiffany A. Hunt, issued July 17, 2013, is modified, consistent with this Opinion and Order.
2. That the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 31, 2013

ORDER ENTERED: November 22, 2013

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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 31, 2013

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John F. Coleman, Jr., Vice Chairman
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Gladys M. Brown; Statement

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IT IS ORDERED:

1. That the Initial Decision of Special Agent Tiffany A. Hunt, issued July 17, 2013, is modified, consistent with this Opinion and Order.
2. That the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 31, 2013

ORDER ENTERED: November 22, 2013

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:

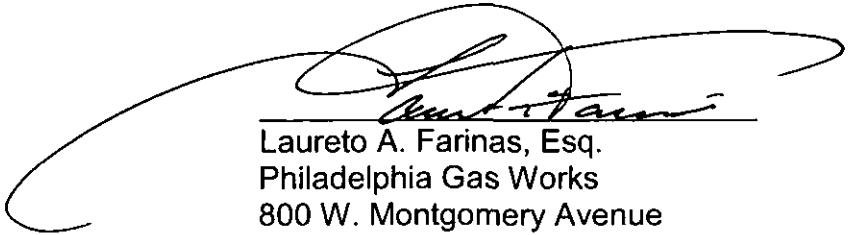
Ms. Kisha Dorsey
241 West Abbottsford Avenue
Philadelphia, PA 19144

January 30, 2014

RECEIVED

JAN 30 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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

00044

00200

FedEx Package
Express **US Airbill**

FedEx
Tracking
Number

8029 9475 3543

SPH1

Form
ID No

0215

Recipient's Copy

1 From
Date 1-30-11

Sender's Name _____ Phone _____

Company PHILADELPHIA GAS WORKS

Address 800 W MONTGOMERY AVE
Dept./Floor/Suite/Room _____

City PHILADELPHIA State PA ZIP 19122-2899

2 Your Internal Billing Reference

3 To Recipient's Name Sec Rosemary Chiovetta Phone _____

Company PA PVC

Address 4087S North St
We cannot deliver to P.O. boxes or P.O. ZIP codes _____ Dept./Floor/Suite/Room _____

Address _____
Use this line for the HOLD location address or for continuation of your shipping address

City Harrisburg State PA ZIP 17105

0108077832



8029 9475 3543

4 Express Package Service * To most locations.
NOTE: Service order has changed. Please select carefully. Packages up to 150 lbs. For packages over 150 lbs, use the FedEx Express Freight US Airbill.

Next Business Day

FedEx First Overnight
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected

FedEx Priority Overnight
Next business morning * Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected

FedEx Standard Overnight
Next business afternoon * Saturday Delivery NOT available

2 or 3 Business Days

FedEx 2Day A.M.
Second business morning * Saturday Delivery NOT available.

FedEx 2Day
Second business afternoon * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected

FedEx Express Saver
Third business day * Saturday Delivery NOT available

5 Packaging * Declared value limit \$200

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver

No Signature Required
Package may be left without obtaining a signature for delivery

Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery for residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?
One box must be checked.

No Yes As per attached Shipper's Declaration. Yes Shipper's Declaration not required

Dry Ice Device, 9, UN 1845 _____ x _____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. Cargo Aircraft Only

7 Payment Bill to: _____ Enter FedEx Acct. No. or Credit Card No. below. _____ Obtain recip Acct. No

Sender Acct. No. on Section 1 will be billed Recipient Third Party Credit Card Cash/Check

Total Packages _____ Total Weight _____ lbs. _____ Credit Card Acct. _____

Your liability is limited to US\$100 unless you declare a higher value. See the current FedEx Service Guide for details.

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