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March 14, 2014

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

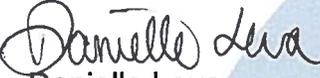
Re: Michael Prendergast v. PGW, Docket No. F - 2012 - 2317187

Dear Secretary Chiavetta:

Pursuant to 66 Pa. C.S. §703 (f) and (g) and 52 Pa. Code §5.5572, the Philadelphia Gas Works ("PGW") hereby files its Petition for Reconsideration (Petition) of the Commission's final Opinion and order in the above captioned matter entered February 27, 2014.

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: Michael Prendergast (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca
Denise Adamucci
Raquel Guzman
Tyra Jackson

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Prendergast

v.

Philadelphia Gas Works

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Docket No. F – 2012 – 2317187

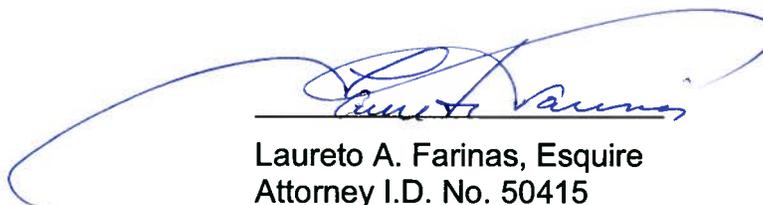
NOTICE TO PLEAD

To: Michael Prendergast, Complainant.

Pursuant to 52 Pa. Code §§5.101 and 5.572(e), you are hereby notified to file a written response to the enclosed Petition for Reconsideration within ten (10) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

March 14, 2014



Laureto A. Farinas, Esquire
Attorney I.D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Prendergast

v.

Philadelphia Gas Works

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Docket No. F – 2012 – 2317187

**Philadelphia Gas Works
Petition for Reconsideration**

Pursuant to 66 Pa. C.S. §703(f) and (g) and 52 Pa. Code §5.5572, the Philadelphia Gas Works (“PGW”), hereby files its Petition for Reconsideration (“Petition”) of the Commission’s final Opinion and Order in the above captioned matter entered February 27, 2014, from its Public Meeting held February 20, 2014 (“Opinion and Order”) on the grounds that the Commission lacks authority under 66 Pa. C.S. §1401, et seq. (“Chapter 14”) and the facts of this case to award compensatory damages in the form of a “conservation credit” representing 20% of the disputed bill and that the awarding of such credit is unsupported by evidence of record in this proceeding.

In support of its Petition, PGW avers the following:

1. On February 27, 2014, the Commission entered its Opinion and Order, a final order in the above captioned matter that is an appeal of a decision of the Bureau of Consumer Services (“BCS”) decision dated June 15, 2012 in BCS No. 2966648. This matter involved the Complainant’s dispute of a bill issued on March 27, 2012 for the period from March 11, 2008 through March 26, 2012 for previously unbilled usage in the amount of \$6,429.40.
2. The Initial Decision in this matter was issued on August 9, 2013 and found, *inter alia*, that PGW properly calculated the unbilled usage, which usage resulted from a meter malfunction that was occasioned by magnetic interference that occurred for the period from June 2006 through March 2012. The malfunction affected the accuracy of the Encoder Recorder Transmitter (“ERT”), which electronically transmits meter readings to PGW facilities for the calculation of customer bills.

3. The Initial Decision found that PGW previously made adjustments to the disputed bill to reflect the most recent four years of gas usage and to reflect changes in the rates in effect during the previously unbilled period. These adjustments reduced the bill by \$3,233.63 resulting in a bill of \$3,269.59.

4. The Initial Decision then ordered PGW to remove \$85.82 in late payment charges assessed on July 12, 2012 from the bill because the appeal period had not expired at the time of the assessment of those charges. This reduced the bill for previously unbilled service to \$3,183.77, for which the Initial Decision ordered that the Complainant pay in monthly installments of \$66.33 for 48 months.

5. The Initial Decision and the record from which it was made contain neither the discussion nor the provision of relief in the form of a twenty percent (20%) "conservation credit" (the "Conservation Credit").

6. The BCS informal decision at BCS Case No. 2966648, from which is matter is an appeal, mentions only that the Complainant declined a 20% adjustment offered by the BCS.

7. The findings of the Initial Decision are well supported by evidence of record.

8. In the Opinion and Order, the Commission concurred with the Initial Decision that the Complainant failed to meet his burden of proving that PGW unjustly or unreasonably back billed him for prior usage.¹ Aside from the issue concerning the \$85.82 in late payment charges, the Commission found that PGW properly billed the Complainant for previously unbilled usage only for a four-year period and that the Complainant must pay his outstanding bill in accordance with the Commission's regulations through the provision of an amortized payment agreement pursuant to 52 Pa. Code §56.14(2).²

9. The Opinion and Order states that while the Commission agrees with the Initial Decision that PGW properly billed the Complainant for previously unbilled usage, it held the view that for the period from June 2006 through March 2012, the Complainant did not receive adequate price signals related to his gas consumption.³ As a result the Commission modified the Initial Decision to award the Conservation Credit of 20% to the remaining disputed bill as an addition to the revenue credit adjustments that PGW

¹ Opinion and Order p.13

² Id.

³ Opinion and Order p. 14

had already made.⁴

10. PGW believes that in this case, the Conservation Credit constitutes impermissible compensatory damages. The Conservation Credit as applied here does not represent a correction of a bill to reflect actual usage as may be applied in cases where there is a miscalculation of a rate or a fast meter. In this instance, the Conservation Credit serves not to correct any actual error, but is rather a reduction in the bill that permits the customer to pay less than what that customer actually used. It is stated to be compensation for the missed opportunity to conserve consumption and the inconvenience of the bill for previously unbilled service. This type of remedy is “compensatory damages,” the authority for which the Commission lacks under its enabling legislation.

11. 66 Pa. C.S. §1401, et seq., (“Chapter 14”) sets forth the parameters of payment agreements, and Commission waivers of charges on customer accounts (for late payment charges), Chapter 14 contains no authorization for the reduction of charges for gas usage in the nature of the Conservation Credit.

12. In spite of the Commission’s rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, only the Courts of Common Pleas in Pennsylvania have original jurisdiction to entertain suits for compensatory damages against public utilities. *Elkin v. Bell Tel. Co.*, 420 A.2d 371 (1980)

13. Further, Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. (See also, *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (1977) and *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984).) Thus, the Commission is without authority to award compensatory damages in this appeal.

14. A public utility is entitled to full payment for service provided to customers, and all customers are obligated to pay for the utility service provided to them. Otherwise, a customer’s unpaid bills are included in the utility’s uncollectible expenses and ultimately paid for by other utility customers. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Bolt v. Duquesne Light*

⁴ Id.

Company, Docket No. Z-8712758 (Order entered April 8, 1988)

15. The Commission, having determined that in the instant matter PGW properly billed the Complainant for previously unbilled usage for a four-year period and that the Complainant must pay his outstanding bill in accordance with the Commission's regulations, should have refrained from awarding the Conservation Credit.

16. PGW believes that the Opinion and Order in this matter erroneously relies upon *Nona Lewis v. Philadelphia Gas Works*, Docket No. F-2010-2171442 (Order entered July 15, 2011) as precedent and authority to award the Conservation Credit. The Conservation Credit referenced in Lewis originated by agreement with PGW in limited circumstances after the Commission obtained jurisdiction over PGW in 2000. By way of further background, PGW had been winding down its program to replace or retrofit PGW meters with Automatic Meter Reading devices ("AMRs"). That program began in the mid-1990's. Due to the lack of customer availability and access to service addresses, there remained a significant number of PGW meters that had not been replaced or retrofitted with an AMR. As a result, a significant number of PGW customer accounts without AMRs began to bill with estimated meter readings. After PGW obtained access and AMR installation occurred, those customers received make-up bills. For several years following 2000, a significant number of PGW informal and formal complaints concerned this type of bill for previously unbilled service. To conserve resources in the disposition of the complaints stemming from the new category of bills for previously unbilled service, PGW agreed to accept the short term twenty percent (20%) credit to be implemented by the BCS to the make-up bill (now the "Conservation Credit") along with the requisite payment agreement.

17. The originally agreed upon, temporary twenty percent (20%) reduction employed in the AMR cases, served as a way of satisfying the customer with a remedy for the inconvenience of the bill for previously unbilled service. It prevented some portion of the informal complaints from becoming formal complaints. In those limited cases, PGW agreed with BCS that it would not dispute the 20% discount as "damages" as it was a way of PGW voluntarily providing customer satisfaction.

18. As the number of complaints involving this kind of bill for previously unbilled service has decreased with full AMR saturation, PGW has requested that the BCS stop

the use of the Conservation Credit mechanism, and it has largely done so, it is also important to note that to the best of PGW's knowledge, the BCS does not apply the Conservation Credit to make-up bills of all jurisdictional utilities, rather, only to PGW's make-up bills.

19. The Initial Decision in the Lewis case notes that PGW had applied the 20% credit from the decision on the informal complaint, that PGW did not object and that the Administrative Law Judge agreed with the determination. The Commission's Order and Opinion in the Lewis case, while providing some analysis of the Complainant's consumption following the receipt of bills based upon actual gas use, states that the 20% credit is "an appropriate amount to compensate Ms. Lewis for any additional gas she may have consumed..." Unlike in the instant matter, however, PGW consented to the compensation afforded Ms. Lewis. PGW's forbearance in objecting to the application of the 20% credit in *Lewis* does not enable the Commission to apply such compensatory damages unilaterally.

20. The Commission cannot fashion a remedy to provide compensatory damages when the authority to award damages was not provided in its enabling legislation. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (1977) and *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984)

21. Even if the Commission had authority to unilaterally grant damages in the form of the Conservation Credit, its application in this case is not supported by the record evidence. The Initial Decision and the supporting record contains no analysis or discussion of the Complainant's hypothetical lesser usage had the Complainant been issued bills based upon actual usage during the disputed period. The record contains no evidence or discussion of the Complainant's usage after the meter exchange in order to determine whether the full twenty percent (20%) Conservation Credit awarded to the Complainant is supported by a decrease in the Complainant's usage now that the Complainant is potentially able to judiciously manage consumption. The Commission discusses the Conservation Credit for the first time in the Opinion and Order and merely refers to the lack of adequate price signals related to the Complainant's gas

consumption. In this regard the Commission's application of the Conservation Credit is arbitrary and unsupported by the evidence.

22. 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).

23. In sum, PGW has raised new and novel arguments, which were not previously considered by the Commission in this matter relating to the origin of the Conservation Credit the statutory authority to provide compensatory damages in the form of a Conservation Credit and the lack of support of record evidence in the Commission's application of the Conservation Credit. These arguments meet the established standard that would warrant the reconsideration of the Commission's Opinion and Order in this matter.

WHEREAS, for the reasons stated above, the PGW requests that the Commission reconsider its Opinion and Order in the above captioned matter with respect to the application of the Conservation Credit and affirm the Initial Decision issued on August 9, 2013 as written, dismissing the Complaint.

Respectfully submitted,

March 14, 2014



Laureto A. Farinas, Esq.
Counsel for Philadelphia Gas Works

CERTIFICATE OF SERVICE

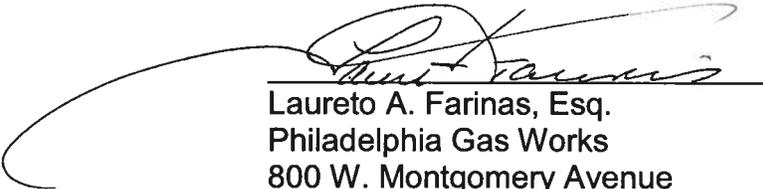
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Michael Prendergast
12101 Elmore Terrace
Philadelphia, PA 19154

March 14, 2014


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