



**PHILADELPHIA GAS WORKS**

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April 1, 2014

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

**Re: Titus Wright v. PGW, Docket No. C- 2013 - 2368462**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.501, and Briefing Order, dated March 11, 2014 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: Titus Wright (Fed Ex)  
Administrative Law Judge Kandace F. Melillo (Regular Mail)  
Linda Pereira (PGW Mail)  
Wendy Vacca (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Titus Wright,  
Complainant**

**v.**

**Philadelphia Gas Works,  
Respondent**

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**Docket No. C – 2013 – 2368462**

**MAIN BRIEF OF  
PHILADELPHIA GAS WORKS**

Pursuant to the Administrative Law Judge’s Briefing Order, dated March 11, 2014, in the above captioned matter the Respondent the Philadelphia Gas Works (PGW) hereby files PGW’s Main Brief. A hearing of this matter was held on January 29, 2014.

**I. Statement of Case**

This matter is a dispute of bills received for service at the Complainant’s previous address (1137 Pratt Street, Philadelphia, Pennsylvania or “Pratt Street Address”) which are part of the Complainant’s account for gas service at his current address 907 Bridge Street, Philadelphia, Pennsylvania (“Current Address”). The Complainant requests an adjustment of the balance of his account at the Current Address to correct the disputed bills incurred at the previous address. The Complaint states that the December 2010 and January 2011 bills were too high.<sup>1</sup>

Previously, the Complainant filed two (2) formal complaints with the Commission at Docket Nos. F-2010-2192191 and C-2011-2225996.<sup>2</sup> These involved disputes of the bills for the bills for the winter period 2010 – 2011. In these matters PGW and the Complainant reached an amicable settlement of both dockets on September 29, 2011.<sup>3</sup>

By notice dated August 15, 2013, the Commission scheduled an Initial Telephonic Hearing of this matter for November 12, 2013 before Administrative Law Judge Kandace F. Melillo. At a settlement conference held immediately prior to the Initial Telephonic

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<sup>1</sup> Complaint, Paragraph 4  
<sup>2</sup> PGW Exhibit – 10  
<sup>3</sup> PGW Exhibit – 1

Hearing the parties settled the matter. The settlement was followed the filing of a Certificate of Satisfaction on the same date. The Complainant by letter dated November 16, 2013, the Complainant object to the November 12, 2013 settlement. By notice dated November 22, 2013, the Commission rescheduled the Initial Telephonic Hearing for January 29, 2014.

On January 29, 2014, Administrative Law Judge Kandace F. Melillo presided over the Initial Telephonic Hearing of this matter that generated 123 pages of testimony. The Complainant testified on his own behalf and sponsored five (5) exhibits that were admitted to the record. PGW presented the testimony of one witness Ms. Linda Pereira, Senior Customer Review Officer – PGW, who sponsored ten (10) exhibits that were admitted to the record in support of the accuracy of all bills issued to the Complainant for gas service at the Pratt Street Address and the Complainant's Current Address. The bills were based upon actual meter readings and all payments were received and correctly applied to the Complainant's PGW account.<sup>4</sup>

At the conclusion of the hearing and by Order dated March 11, 2014, Administrative Law Kandice F. Melillo set the briefing schedule with Main Briefs due on April 1, 2014 and Reply Briefs due on April 11, 2014.

## II. **Summary of the Argument:**

The Complainant failed to meet its burden of proof to show that PGW violated its obligation to provide adequate and reasonable service under the Public Utility Code. The Complainant did not show that the PGW bills issued to him at any time, particularly the bills for the winter season of 2010 – 2011 were inaccurate and that the amicable settlement reached on the disputed bills of the winter season of 2010 -2011 should not be honored.

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<sup>4</sup> PGW Exhibit - 7

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 Form of Inaccurate Charges for Gas Service or Failure to Honor an Amicable Settlement Agreement Resolving Disputed Bills for the 2010-2011 Winter Season.**

1. The Complainant has the burden of proof in this matter to show the provision of unreasonable service.

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 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, shows that the PGW honored the amicable settlement agreement dated September 29, 2011, reached in the Complainant's two

previous formal complaints and that even the disputed for the 2010 – 2011 winter season were based upon actual meter readings and accurate.

2. On September 29, 2011, the Parties resolved the Complainant's dispute of bills for the 2010 – 2011 winter season.

It is uncontroverted that the Complainant and PGW reached an amicable settlement on September 29, 2011.<sup>5</sup> Further the record clearly reflects that in the instant matter, the Complainant sought to revisit the dispute of the bills for the Docket Nos. F-2010-2192191 and C-2011-2225996.<sup>6</sup> The Complainant did not object to the amicable settlement reached by letter dated September 29, 2011. Pursuant to the Commission's regulation at 52 Pa. Code §5.24(b), when resolving a complaint, a utility is permitted to file a Certificate of Satisfaction indicating that a complaint has been addressed. The Complainant has ten (10) days to file an objection to that Certificate. If no objection is filed, the matter is closed. With respect to the resolution of the matters involving the 2010 – 2011 winter season, the Complainant did not file the appropriate timely objection to that settlement.

The Commission's decision in *Mario DeVito v. Philadelphia Gas Works*, Docket No. C-2012-2300430 lends guidance in this matter<sup>7</sup>. In *Devito*, an Initial Decision dismissing the matter was issued on June 26, 2012, sustaining Preliminary Objections. The parties originally the Complainant sought to file exceptions. By August 3, 2012, the parties in *DeVito* settlement the matter amicably. In closing the matter, the Commission vacated the Initial Decision as the parties settled and no party objected to the settlement.

Thus, the record evidence of this matter, clearly establishes that the Certificate of Satisfaction filed for the September 29, 2011 settlement provides notice of the Complainant's right to object in writing within ten (10) days. The Complainant had an opportunity to object to that settlement but did not. The Complainant should not be permitted to renew the dispute of the bills for the 2010 – 2011 winter season, and obtain

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<sup>5</sup> PGW Exhibit – 1

<sup>6</sup> PGW Exhibit – 10

<sup>7</sup> *Mario DeVito v. Philadelphia Gas Works*, Pa. PUC December 5, 2012, WL 116998, Docket No. C-2012-2300430 (Entered December 5, 2012) p. 4.

an Initial Decision, simply by filing the same dispute under a new docket number. Thus, the Complaint should be dismissed.

3. Even if the Complainant is able to re-dispute the bills originally complained of under his previous Complaints, the bills are correct.

The record evidence of this matter shows that the bills rendered to the Complainant are correct. PGW Exhibits 3, 7 and 8 show that the Complainant's bills were based upon actual meter readings, all payments made to the account were correctly applied and further the meter at the Pratt Street Address was tested for accuracy and found to be accurately.<sup>8</sup>

Despite the Complainant's assertions of limited use of gas during the heating seasons, the Complainant failed to substantiate those assertions with credible evidence.

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 Thus, the Complainant's assertions of limited gas use should be disregarded.

#### **IV. CONCLUSION**

In this matter the Complainant has failed to meet his burden to show that PGW has acted unreasonably or provided unreasonable service violating the Public Utility Code §1501 in the form of inaccurate charges for gas service or for failure to honor an amicable settlement agreement resolving disputed bills for the 2010-2011 winter season.

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.

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<sup>8</sup> PGW Exhibit – 8, p. 1 of 7

Respectfully submitted,

April 1, 2014



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. Titus Wright  
907 Bridge Street  
Philadelphia, PA 19124

(By express mail)

April 1, 2014



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