



PHILADELPHIA GAS WORKS

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April 3, 2014

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 §5.61, the Philadelphia Gas Works ("PGW") hereby files the original of its Exceptions to the Initial Decision issued March 14, 2014, 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: Alexander Smith (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

**EXCEPTIONS OF
PHILADELPHIA GAS WORKS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.533, and the Secretary’s letter dated March 14, 2014 in the above captioned matter, the Respondent the Philadelphia Gas Works (PGW) hereby files its Exceptions to the Initial Decision issued on March 14, 2014.

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.¹ 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.²

On November 15, 2011, PGW visited the Service Address while investigating a street leak in the vicinity of the Service Address.³ 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 (ERT) in place.⁴ 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.⁵ PGW removed the

¹ PGW Exhibit – 5

² Tr. pp 86 – 87, PGW Exhibits – 1 and 5

³ Tr. pp. 138 – 140, PGW Exhibit – 5

⁴ PGW Exhibit – 5, p. 1

⁵ Tr. p. 144

meter (Meter No. 1595104) and terminated gas service.⁶ 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.⁷

After taking the meter the PGW Meter Shop performed an inspection of the meter on January 27, 2012. 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.

The bill issued for the Unauthorized Usage was based upon the Complainant's gas usage from the period from July 5, 2001 through June 3, 2002.⁸ (PGW Ex 5 pp. 2-7)

Since the commencement of this matter, the following dates have been scheduled for the Initial Hearing of this matter: December 7, 2012, January 30, 2013 and April 26, 2013. These were continued by agreement of the Parties to allow the Parties to discuss the possibility of settlement. By notice dated April 29, 2013, the Commission scheduled an Initial Hearing of this matter for July 2, 2013 before Administrative Law Judge Angela T. Jones (ALJ).

On July 2, 2013, ALJ Jones presided over the Initial Hearing that generated 229 pages of testimony. Counsel for the Complainant, Josie Pickens, Esq. presented the Complainant who provided testimony and sponsored 18 exhibits that were admitted to the record. Counsel for PGW presented the testimony of four PGW witnesses who sponsored seven (7) exhibits that were admitted into the record. The ALJ Jones allowed additional time for the Complainant to submit an amended Complainant's Exhibit – 5.

By notice dated July 3, 2013, a Further Hearing was scheduled to allow the Parties to present testimony on the amended Complainant's Exhibit – 5, if necessary. The Parties agreed that a Further Hearing to present testimony on Complainant's amended Exhibit – 5 was unnecessary. ALJ Jones cancelled the October 8, 2013 Further Hearing.

By Order dated October 10, 2013, Administrative Law Judge set the briefing schedule ordering Main Briefs due on November 21, 2013 and Reply Briefs due on December 6, 2013.

⁶ PGW Exhibit – 5

⁷ BTU is a British Termnal Unit. It refers to the maximum energy capacity of the appliance.

⁸ PGW Exhibit – 5, Tr. pp. 100 - 104

On March 14, 2014, the Commission issued the Initial Decision, which dismissed the Complaint, finding *inter alia.*, that the Complainant had failed to meet his burden of proof in showing that the amount billed for unauthorized gas use is incorrect but that the Complaint was denied in all other parts. The Initial Decision found that the period of Unauthorized Usage was for the period from February 1, 2010 through November 15, 2011 (21 ½ months) and not the four year period of the disputed bill for Unauthorized Usage. Pursuant to 52 Pa. Code §5.535, this timely reply follows.

II. Exceptions

1. PGW takes exception to the finding in the Initial Decision, page 20, that the period of Unauthorized Usage was for only a 21 ½ month period from February 1, 2010 through November 15, 2011 and commenced with the burglary that occurred at the Complainant's Service Address on that date.⁹

In finding that the period of Unauthorized Usage only occurred for a 21 ½ month period from February 1, 2010 through November 15, 2011, the Initial Decision ignores several key facts of record for the years prior to February 1, 2010. 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.¹⁰ Rather, the Initial Decision attempts to draw the arbitrary line for commencement of meter tampering and Unauthorized Usage with the occurrence of the burglary at the Service Address.¹¹ Further, the testimony of PGW witness Timothy Sullivan indicates that while a burglary to steal pipes is understandable because of the piping has salvageable value, the tampered meter apparatus "ERT" head is plastic and has no salvageable value.¹² Thus, while there was a burglary at the Service Address on February 1, 2010, the usage evidence and testimony of PGW witness Cromley support the fact that tampering with the ERT may well have predated the

⁹ Initial Decision p. 20

¹⁰ Tr. pp. 92 – 94; PGW Exhibit – 1, pp. 6 – 10

¹¹ Initial Decision p. 20

¹² Tr. p. 196; Initial Decision, Findings of Fact No. 57, p. 14

burglary, notwithstanding the fact that both the burglary and tampering were both carried out with a screwdriver, a common household tool.

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).

Thus, the record evidence of this matter shows that it is more likely than not that the unauthorized usage that occurred at the Service Address predates the day of the burglary, February 1, 2010.

2. PGW takes exception to the finding in the Initial Decision, page 19, that the Complainant's post Unauthorized Usage termination electric usage supports the notion that no meter tampering occurred before February 1, 2010.

The Complainant has provided testimony that during the disputed period, his gas usage was curtailed by his conservation practices including the use of kerosene and use of electric heaters. The information contained in the revised Complainant's Exhibit – 5 is inconclusive. The Initial Decision states that the electric usage patterns trend to show that the electric usage is higher in the winter months than in the warm months, but that the trend brakes down in the 2009 to 2010 heating season.¹³ Complainant's inclusion of additional circumstances involving conservation gas use through the use of electric heaters is inconclusive.

It is insufficient to use the electric use information as substantial evidence to support the argument that the Unauthorized Usage as billed is inaccurate. The fact that the electric usage seems to have increased during the heating seasons since the Complainant's gas service was terminated in 2011, serves to support the conclusion that something other than electricity was being used to heat the Service Address for the period before November 2011.¹⁴ It is reasonable to conclude from the evidence of record

¹³ Initial Decision, p. 19

¹⁴ Id.

that the substance other than electricity used to heat the service address for the period before November 2011 was unauthorized gas use.

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

3. PGW takes exception to the Initial Decision Findings of Fact No. 21, stating that when enrolled in a CAP utility payment program, the Complainant's "...bill did not reflect his usage."¹⁵

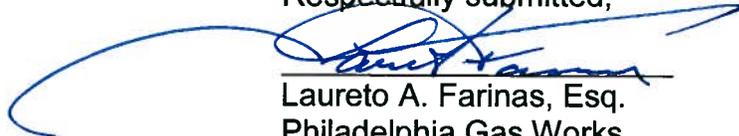
To correct the record, this statement seems to suggest that PGW customers enrolled in the Customer Responsibility Program ("CRP") (generally "CAP programs do not receive usage information on their bill. Although the CRP customer's bill reflects a "Please Pay" amount based upon income, that CRP customer's usage information is included on each bill.

III. Conclusion

For the foregoing reasons, PGW respectfully requests that the Commission grant PGW's Exceptions, 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.

April 3, 2014

Respectfully submitted,



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 1912

¹⁵ Initial Decision, Findings of Fact No. 21, p. 8

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).

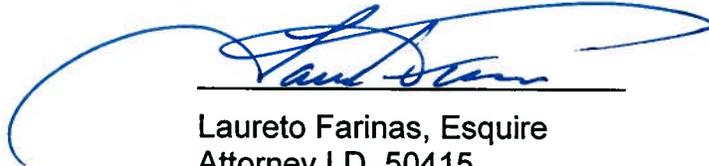
Service List:

For Complainant:

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April 3, 2014



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