

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDER SMITH	:	
Complainant	:	
	:	
v.	:	F-2012-2315538
	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	

**COMPLAINANT ALEXANDER SMITH’S REPLY TO EXCEPTIONS OF
PHILADELPHIA GAS WORKS**

Pursuant to 52 Pa. Code § 5.535, the Complainant Alexander Smith hereby files his reply to the Exceptions of Philadelphia Gas Works to the Initial Decision.

INTRODUCTION

In this matter, Complainant Alexander Smith (“Complainant”) disputes that he engaged in meter tampering/unauthorized use at 3348 E Street in Philadelphia (“service address” or “property”) and that he is responsible for payment of charges associated with unauthorized use of gas service at his property from November 15, 2007 to November 15, 2011 (“disputed period”). Complainant filed the underlying Formal Complaint (“Complaint”) on July 9, 2012. An Initial Hearing was held on July 2, 2013 before Administrative Law Judge Angela T. Jones (“ALJ”). At the hearing, Complainant presented his testimony and eighteen exhibits in support of his Complaint. The Respondent Philadelphia Gas Works (“PGW”) presented four witnesses and seven exhibits.

On March 14, 2014, the ALJ issued an Initial Decision (“I. D.”) granting the Complaint with respect to incorrect billing charges but denying it in all other parts. Complainant filed timely Exceptions to the I. D. on April 3, 2014. In his Exceptions, Complainant asserted that the ALJ erred in finding that Complainant failed to sustain his burden of showing that unauthorized use did not occur; erred in concluding that Complainant failed to prove that PGW’s Tariff was applied incorrectly, and erred in

ordering that the period from July 4, 2003 through July 7, 2004 be used as the basis for estimating any post February 1, 2010 unbilled usage. PGW also filed Exceptions to the I. D. on April 3, 2014.

Complainant replies to PGW Exceptions as follows:

REPLY TO PGW'S EXCEPTIONS

I. The record evidence does not support PGW's contention that unauthorized use occurred at the service address from 2007 to 2011.

PGW contends that the ALJ erred in reducing the period of unauthorized use from 48 months as alleged by PGW, to 21 ½ months, the period from the burglary at Complainant's property in February 2010 until removal of the meter in November 2011. PGW Exceptions at 3-4. Contrary to PGW, Complainant contends that the ALJ was correct in determining that no unauthorized use occurred prior to the burglary.¹

In its first exception, PGW asserts that the I. D. ignores evidence of Complainant's diminished gas use from November 2007 to February 2010 and PGW testimony regarding the salvageable value of an ERT head. PGW Exceptions at 3-4. PGW further asserts that the record evidence shows that it is more likely than not that unauthorized use occurred at the service address prior to February 1, 2010. PGW Exceptions at 4. PGW's first exception should be denied because Complainant has produced substantial evidence to show that reductions in his gas heating use predate November 15, 2007, when the disputed period began, and were caused by Complainant's conservation of gas and reliance on non-gas appliances. Complainant Exceptions 2-8.

The record evidence establishes that Complainant did not engage in unauthorized use of gas at the service address. In her Findings of Fact, the ALJ specifically found that Complainant used an electric hot water heater which was installed by the Philadelphia Housing Development Corporation when his house was rewired in 1999 (Finding of Fact # 4); Complainant has used a microwave and electric frying pan for cooking since his gas range was removed from the fuel line by PGW in 2006 (Finding of Fact #

¹ As set forth in Complainant's Exceptions, Complainant contends that there is no record evidence to show that Complainant benefited from *any* unmetered gas use during any period of time and that the ALJ's finding that *any* unauthorized use of gas occurred is in error.

5); Complainant used a kerosene heater as an alternate source of heat (Finding of Fact # 6); Complainant's use of his gas furnace varied over the years with higher use occurring while Complainant was enrolled in PGW's CAP in the 1990s and diminished use, conservation, and reliance on non-gas appliances in the years following Complainant being laid off from his job in 2005 (Finding of Fact # 7); Complainant conserved gas between 2006 and 2009 by spending time at his girlfriend's house (Finding of Fact #8); Complainant stopped using gas altogether and exclusively used kerosene and electric radiator as sources for heat after he was laid off again in 2009 (Finding of Fact #9); Complainant made purchases of gas for the kerosene heater from 2007 through 2011 (Finding of Fact #10). I. D. at 6-7. This record evidence amply rebuts PGW's assertion that reductions in gas use during the disputed period were caused by unauthorized use.

PGW also asserts that the I. D. ignores record evidence regarding the salvageable value of an ERT. PGW Exceptions at 3. The ALJ, who heard all the testimony, was entitled to conclude that Complainant's credible, substantiated testimony regarding his use of alternative heating sources and his conservation efforts compelled the conclusion that prior to February 2010, the ERT was unimpaired and transmitting accurate information concerning Complainant's monthly gas usage.² Moreover, the PGW testimony regarding the salvage value of an ERT, without more testimony concerning the burglar's actions at the time of the break-in, presented no credible basis for a finding in PGW's favor that the burglar would not have altered the ERT.

II. The Complainant produced substantial evidence to show that variations in his heating use during the disputed period were caused by conservation of gas and reliance on non-gas appliances and not unauthorized use.

In its second exception, PGW asserts that Complainant's electric use data following the disputed period supports its claim that meter tampering/unauthorized use occurred throughout the whole disputed period. PGW Exceptions at 4 -5. Specifically, PGW contends that increased electric use during the cold weather months following the disputed period is evidence in support of unauthorized use of gas service.

² As set forth in Complainant's Exceptions, Complainant contends that the ALJ erred in failing to include the effect of these conservation efforts in calculating the new estimated bill from February 2010-November 2011.

PGW Exceptions at 5. PGW's second exception should be denied because the record evidence tends to show that it is more likely than not that Complainant's gas heat use variation was caused by Complainant's conservation of gas and reliance on non-gas appliances. Complainant's Exceptions 2-8. The only evidence of tampering adduced by PGW in this matter is undocumented witness testimony that the ERT was in an altered state on the day the meter was removed from the property. At the heart of this matter is the fact that PGW's evidence that unauthorized use actually occurred, either before or after the burglary, is weak – based only on the questionable memory of one PGW witness without any contemporaneous documentary support. In these circumstances, PGW's reference to Complainant's gas use history is insufficient to make its case where, as here, Complainant has provided a reasonable, lawful explanation for variations in his use during the disputed period.

The ALJ correctly determined that Complainant's electric use data provided conclusive evidence of his heating habits from the beginning of the disputed period in November 2007 to the time of the burglary in February 2010. The ALJ found that Complainant's electric use was higher in cold months than in warm months in two of the four disputed years. I. D. at 19. She also found that increased electric use in cold weather months continued after PGW removed its meter. I. D. at 19. PGW contends that this latter pattern of increased electric use in cold weather months following the disputed period supports the conclusion that "something other than electricity was used to heat the Service Address for the period before November 2011." PGW Exceptions at 4. Unfortunately for PGW's claim, the record shows that that "something" was not unauthorized or unbilled natural gas, but kerosene. Tr. 17-18; Smith Exhibit 4. Further, the electric use data for cold weather months following the removal of the meter is consistent with Complainant's increased electric use during the cold weather months of the disputed period.³ If PGW were correct, the usage data would show a significant spike in electric use in the cold weather months following the removal of the meter, but this is simply not borne out by the evidence. PGW's assertion that Complainant benefited from copious amounts of unmetered gas heat during the heating

³ See I. D. at 19. Complainant's electric use in cold weather months following the disputed period: 407 kWh (11-12), 613 kWh (12 -13) versus Complainant's electric use in cold weather months of the disputed period: 535 kWh (07-08), 604 kWh (08-09), 136 kWh (09-10), 338 kWh (10-11).

seasons of the disputed period is in conflict with the electric use data. There is no explanation for increases in Complainant's electric use in cold weather months other than the one supported by Complainant's testimony that he used an electric radiator in his bedroom during the cold weather months of the disputed period.⁴ Finally, the ALJ's finding regarding the conclusiveness of the electric use data is supported by her numerous Findings of Fact regarding Complainant's conservation of gas and reliance on non-gas appliances during the disputed period. I. D. at 6-7.

III. The ALJ correctly determined that the 2001-2002 billing year, when Complainant was enrolled in PGW's Customer Assistance Program ("CRP") was not an appropriate basis for estimating Complainant's normal usage during the later disputed period.

In its third Exception, PGW asserts that the ALJ's Finding of Fact is incorrect regarding whether a CRP customer receives usage information on the bill because this information is included on each bill. PGW Exceptions at 5. PGW's third Exception should be denied because there is no error in the ALJ's finding regarding CRP.

In her Finding of Fact No. 21, the ALJ states:

When the Complainant was a CAP customer, his bill did not reflect his usage. He was billed an amount that was less than what he would have been billed for his usage. Tr. 128.

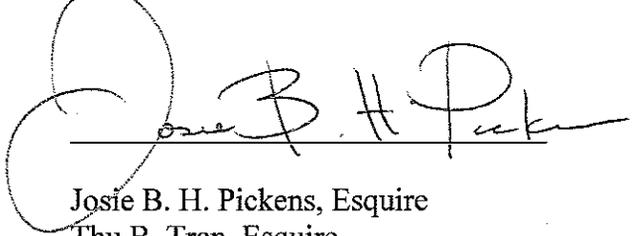
The first sentence of the ALJ's Finding of Fact is clearly explained by the second. The ALJ did not find that a CRP bill fails to contain information about actual usage, but instead found that Complainant was not charged for actual usage during the time he was enrolled in CRP. The ALJ found Complainant's argument convincing that when he was a CRP customer, he likely used more gas because his CRP amount due was fixed and not based on his actual gas use. I. D. at 26. For this reason, as well as others, the ALJ properly concluded that the CRP billing year was not appropriate as the basis for an estimate of Complainant's normal gas usage. I.D. at 26.

⁴ At the initial hearing, PGW sought to elicit testimony from the Complainant regarding other electric appliances at the service address. None of that testimony tended to show that there were other appliances that would have increased Complainant's electric use solely during cold weather months. Complainant testified that in addition to the electric radiator, the following electric appliances were at the service address during the disputed period: a disconnected washing machine, one 19 inch television, a VCR, a stereo, and a refrigerator. Tr. 66-75.

CONCLUSION

For all the foregoing reasons, Complainant Alexander Smith respectfully requests that the Commission deny PGW's Exceptions to the Initial Decision and grant the Complainant's Exceptions for the reasons set forth therein.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Josie B. H. Pickens", is written over a horizontal line. The signature is stylized with large loops and a cursive-like flow.

Josie B. H. Pickens, Esquire
Thu B. Tran, Esquire

Attorneys for Complainant
Alexander Smith

April 14, 2014