



PHILADELPHIA GAS WORKS

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April 14, 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 §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its reply to the Complainant's exceptions to the March 14, 2014, Initial Decision 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)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDER SMITH,
Complainant

v.

PHILADELPHIA GAS WORKS,
Respondent

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F – 2012 – 2315538

**PHILADELPHIA GAS WORKS
REPLY TO THE COMPLAINANT’S EXCEPTIONS 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 Reply to the Complainant’s 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

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

meter and hanging at a 45 degree angle from its correct position.⁵ PGW removed the 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 (ALJ) Angela T. Jones.

On July 2, 2013, ALJ Jones presided over the Initial Hearing that generated 229 pages of testimony. Counsel for the Complainant, Josie Pickens, Esq. represented 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, ALJ Jones set the briefing schedule ordering Main Briefs due on November 21, 2013 and Reply Briefs due on December 6, 2013.

⁵ Tr. p. 144

⁶ PGW Exhibit – 5

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

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. On April 3, 2014 the Parties filed exceptions to the Initial Decision. Pursuant to 52 Pa. Code §5.535, PGW replies to the Complainant's exceptions.

II. Exceptions

1. **Complainant's Exception: The ALJ erred in finding that Complainant failed to sustain his burden of showing that the unauthorized usage did not occur.**

PGW's Reply:

This exception states that the ALJ erred in finding that the Complainant failed to meet its burden of proof in showing that UU did not occur.

In the record of this case, clearly shows that there is no evidence of any violation of the adequate and reasonable service standard regarding PGW's actions at the Service Address. The evidence of record does easily support the conclusion that UU occurred at the Service Address. The testimony of PGW witnesses, Anne Marie Cromley, Customer Review Officer, Timothy Sullivan, Superintendent – Revenue Protection & Meters, and Phillip Farinas, Field Service Technician, provide various facets of the circumstances of this matter that would lead the reasonable person to conclude that as a result of the tampering with the PGW meter, the Complainant obtained gas service that was unmetered. Such testimony provides the substantial basis of the ALJ's reasoning.

Despite the Complainant's argument that the conclusion of meter tampering and UU is speculative, the condition of the meter apparatus as found by PGW employees indicates that there was tampering with the meter. In the course of investigating a leak in the area of the Service Address, PGW Field Service Technician, Phillip Farinas entered the Service Address and observed the condition of the metering apparatus at the Service

⁸ PGW Exhibit – 5, Tr. pp. 100 - 104

Address. In his testimony, PGW Field Service Technician Farinas describes that he found a dangerous situation in the basement of the Service Address. Following the correct protocols of safety, PGW Field Service Technician Farinas secured the area and was able to observe that the ERT device was “cocked at like a 45 degree angle.” In demonstrating the condition of the meter and position of the ERT device with the screws removed, he stated that in such a state the meter would not register gas usage. That is, in the state that he found it, the dials will not move when gas passes through it.⁹

The testimony of Timothy Sullivan, adds further clarity to the procedures that PGW undertakes to ensure safety and the accurate reporting of conditions when unauthorized usage is found. Witness Sullivan explains the PGW procedure in obtaining the information contained in PGW Exhibit – 5.¹⁰ His testimony reviews various procedures that facilitate safety and the maintenance of meters. Sullivan confirms that after tampering a meter can be rendered unreliable even after gaining access to the Service Address.¹¹ Tampering, in effect, deactivated the meter from measuring gas passing through it, even though when tested, the meter could still measure gas accurately.¹²

The historic gas usage patterns support the finding of meter tampering and UU. Usage information provided in the testimony of PGW witness 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.¹³ The Complainant argues usage patterns reflect a reduction in usage as attempts to conserve consumption of gas for various reasons since 2002. Thus, the record evidence of this matter supports a reasonable conclusion that the unauthorized usage occurred at the Service Address resulting from meter tampering.

⁹ Tr. pp. 142 – 145

¹⁰ Tr. pp. 194 – 200

¹¹ Tr. p. 200

¹² PGW Exhibit – 6

¹³ Tr. pp. 92 – 94, PGW Exhibit – 1, pp. 6 – 10

2. Complainant's Exception: The ALJ erred in concluding that the Complainant failed to prove that the Tariff at issue was applied incorrectly.

PGW's Reply:

Despite the conclusion drawn by the Complainant in this case, the facts do not show that meter tampering was effectuated by a third party without the Complainant's consent. The Initial Decision concludes (incorrectly) that meter tampering and unauthorized usage began with the break-in at the Service Address in February 2010.¹⁴ Stopping short of saying that the Complainant did not tamper, the Initial Decision concludes only that tampering began on the date of the burglary. Therefore the Initial Decision does not apply the PGW Tariff incorrectly.¹⁵

3. Complainant's Exception: The ALJ erred in ordering that the bill be calculated using the period from July 4, 2003 through July 7, 2004 as the basis for estimating Complainant's post February 1, 2010 usage.

PGW's Reply:

The historic gas usage patterns support the finding that the best "sample year" upon which to base the estimation of UU is July 2001 through July 2002 (and not July 2003 through July 2004) and is supported by the testimony of PGW witness Cromley. PGW use of historical information is a reasonable method of arriving at the likely volume gas consumed during the period of UU.

The testimony of PGW witness Cromley provides the specific process and justification for the use of historical information to arrive at a bill when PGW lacks a reliable. The PGW Tariff §8.3, authorizes that where the nature of the tampering interferes with PGW's metering of the gas used, PGW may estimate such charges. In this case PGW used the historical usage information from 2001/2002. PGW witness Cromley testifies that this period is more reliable because there is no estimated meter reading during the period.¹⁶

¹⁴ See: PGW's Exhibitions, Exception 1, filed April 3, 2014

¹⁵ Initial Decision, p 20

¹⁶ Tr. pp. 121 – 125

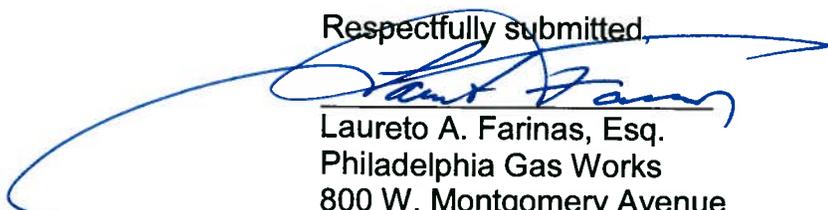
In PGW Exhibit – 5, pages 2 through 7, provides the steps that PGW took in calculating the disputed bill. Simply, the gas use of the historical year (2001/2002) was obtained and treated as the standard usage. PGW’s UU bill was for the period of four years. PGW generated the bill using the annual usage times four.¹⁷

III. Conclusion

For the foregoing reasons, PGW respectfully requests that the Commission deny the Complainant’s exceptions, sustain 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 14, 2014

Respectfully submitted,



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

¹⁷ PGW Exhibit – 5

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).

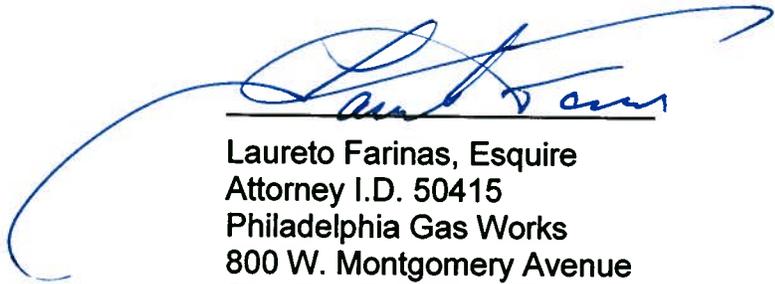
Service List:

For Complainant:

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April 14, 2014



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