



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.leva@pgworks.com

August 11, 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 §5.535, the Philadelphia Gas Works ("PGW") hereby files its reply to the Complainant's exception letter to the June 17, 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: Titus Wright (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Titus Wright

v.

Philadelphia Gas Works

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:
:
:
:

Docket No. C – 2013 – 2368462

**PHILADELPHIA GAS WORKS’
REPLY TO COMPLAINANT’S EXCEPTIONS**

Pursuant to 52 Pa. Code §5.535, the Secretary’s letter received on or about July 30, 2014 (dated August 30, 2014) which is attached hereto as Appendix “A,” in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files its reply to the Complainant’s exception letter to the Initial Decision issued June 17, 2014, in the above captioned matter (“Initial Decision”). PGW also objects to Complainant’s exception letter dated July 13, 2014, as it was filed untimely pursuant to 52 Pa. Code §5.533.

I. INTRODUCTION

This matter is a dispute of bills received for service at the Complainant’s previous address at 1137 Pratt Street, Philadelphia, Pennsylvania (“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.¹

Previously, the Complainant filed two (2) formal complaints with the Commission at Docket Nos. F-2010-2192191 and C-2011-2225996.² 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, 2011.³ PGW filed a Certificate of Satisfaction on September 29, 2011 in these matters to which the Complainant did not object.⁴

¹ Complaint, Paragraph 4

² PGW Exhibit – 10

³ PGW Exhibit – 1

⁴ Tr. 46, 48; PGW Exhibit 1 and PGW Exhibit 10

By notice dated August 15, 2013, the Commission scheduled an Initial Telephonic Hearing of the instant matter for November 12, 2013 before Administrative Law Judge Kandace F. Melillo ("ALJ"). At a settlement conference held immediately prior to the Initial Telephonic 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 objected 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, the ALJ 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.⁵

During the Complainant's evidentiary presentation, the Complainant admitted that he had not objected to the previous Certificate of Satisfaction at Docket Nos. F-2010-2192191 and C-2011-2225996, regarding the high bills in the present case, even though he was uncomfortable with that settlement. He also acknowledged that his account had been credited with \$498.13 as part of that settlement.⁶

PGW moved to dismiss the Complaint summarily through an oral motion, made at the hearing prior to the presentation of its case. The basis for that motion was that the disputed matters set forth in the Complaint at Docket No. C-2013-2368462 were raised in the prior complaints that were settled through an unopposed Certificate of Satisfaction.

At the conclusion of the hearing and by Order dated March 11, 2014, the ALJ set the briefing schedule with Main Briefs due on April 1, 2014 and Reply Briefs due on April

⁵ PGW Exhibit - 7

⁶ Tr. 46, 48

11, 2014. PGW filed its main brief timely. The Complainant did not file a brief.

On June 17, 2014, the Commission issued the Initial Decision with a cover letter stating that:

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of records, **within twenty (20) days** of the date of this letter.

(Secretary's Initial Decision June 17, 2014 cover letter, emphasis included)

Thus, exceptions to the Initial Decision were to be filed on or before July 7, 2014.

The Initial Decision granted PGW's motion to dismiss the Complaint with prejudice. The Initial Decision found that PGW had already removed \$205.42 in late payment charges from Complainant's account, related to the earlier time when the Complainant's account was in dispute.

The Initial Decision further found that while PGW briefed the merits of the high bill complaint issue, it was not necessary to reach this issue as the Complaint was being dismissed under Public Utility Code, 66 Pa.C.S. § 316 and the applicable case law. A utility may file a Certificate of Satisfaction in a case, indicating that a complaint has been satisfactorily resolved. A complainant then has ten (10) days in which to object to the Certificate, and if no objection is filed, the matter is closed. 52 Pa.Code § 5.24(b). Section 316 of the Public Utility Code at 66 Pa.C.S. 316, operates to preclude litigants from pursuing the same claims that have been conclusively resolved before the Commission, through an unobjected to Certificate of Satisfaction. A complainant cannot accept a prior settlement credit in a case, fail to object to the Certificate of Satisfaction, and then file a second complaint to pursue the same claims.

On or about July 13, 2014, the Complainant submitted his Exception letter to the Commission. By letter dated July 22, 2014, which is attached hereto as Appendix "B," the Commission returned the Exception letter to the Complainant requested that he sign the document and indicated that the Commission received the unsigned Exception letter on July 18, 2014. The Complainant's exception letter is dated July 13, 2014. The Commission stamped the signed Complainant's exception letter as received by the Commission on July 28, 2014. (See Appendix B.)

On Thursday, July 17, 2014, PGW received the Complainant's Exception letter whereupon PGW field a request for an extension of time to file a reply as counsel for PGW was on vacation and out of the county which is attached hereto as Appendix "C." On July 28, 2014, PGW submitted a letter in response to the Complainant's Exception letter, objecting to its filing as untimely which is attached hereto as Appendix "D."

Pursuant to the Secretary's letter received on or about July 30, 2014 (dated August 30, 2014) PGW replies to the Complainant's Exception letter.

II. OBJECTION TO UNTIMELY FILING OF EXCEPTION LETTER

Pursuant to 52 Pa. Code §5.533 and the Secretary's letter dated June 17, 2014, the Complainant's exceptions to the Initial Decision in this matter should have been filed by July 7, 2014. The Complainant's exception letter is dated July 13, 2014, some 6 days following the deadline for exceptions. The Secretary's letter received on or about July 30, 2014 (dated August 30, 2014, Appendix "A") falsely states that the Complainant's Exceptions were timely filed but the defect was merely that the Complainant failed to serve other parties to the proceeding. In fact, the Complainant's Exception letter was dated July 13, 2014, six days after the deadline for filing exceptions pursuant to 52 Pa. Code §5.533 and the Secretary's letter dated June 17, 2014. The Commission should reject the Complainant's filing dated July 13, 2014.

III. PGW'S REPLY TO EXCEPTION

Even if the Commission agrees to consider the Complainant's filing, it fails to establish any argument for reversing the finding of the Initial Decision that the Complainant's dispute had been properly resolved under a previous docket number and the Complainant did not object to the settlement of that matter. The Complainant is not entitled to revisit the disputed matter. The Exception letter merely reiterates the generic disagreement with the bills that were the subject of the dispute that was settled (and not objected to) prior to the filing of the Complaint in the instant matter.

The Exception letter fails to demonstrate that the Initial Decision is unsupported by substantial evidence. Each finding of the Initial Decision is well supported by evidence of record. The exceptions fail to point to any significant evidence of record that was overlooked in the Initial Decision.

As the proponent of a rule order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Preponderance of the evidence mean that the party with the burden of proof has presented evidence that is more convincing than that presented by the other part. *Samuel J. Lansberry, Inc. v. Pa. PUC* 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. Den.*, 529 Pa., 654, 602 A.2d 863 (1992).

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).

The Exception letter fails to overcome the fact that 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, 2011.⁷ 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-2011-2225996.⁸ 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.

⁷ PGW Exhibit – 1

⁸ PGW Exhibit – 10

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

A utility may file a Certificate of Satisfaction in a case, indicating that a complaint has been satisfactorily resolved. A complainant then has ten (10) days in which to object to the Certificate, and if no objection is filed, the matter is closed. 52 Pa.Code § 5.24(b).

Section 316 of the Public Utility Code, 66 Pa.C.S. 316, operates to preclude litigants from pursuing the same claims that have been conclusively resolved before the Commission, through an unobjected to Certificate of Satisfaction. *James E. Creehan v. Duquesne Light Company*, Docket No. C-2012-2297124, Opinion and Order entered May 23, 2013; *Lorrie Reynolds v. PPL Electric Utilities Corporation*, Docket No. C-2011-2255268, Opinion and Order entered January 5, 2012.

A complainant cannot accept a prior settlement credit in a case, fail to object to the Certificate of Satisfaction, and then file a second complaint to pursue the same claims. *James E. Creehan v. Duquesne Light Company*, Docket No. C-2012-2297124, Opinion and Order entered May 23, 2013.

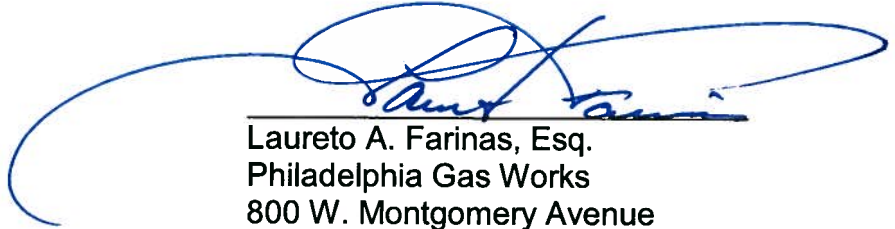
The Commission should deny the Complainant's Exception letter and dismiss Complainant's Formal Complaint at Docket No. C-2013-2368462 with prejudice as it is the same as the Formal Complaints filed at Docket Nos. F-2010-2192191 and C-2011-2225996, that were resolved through an unobjected to Certificate of Satisfaction. 66 Pa.C.S. § 316; *James E. Creehan v. Duquesne Light Company*, Docket No. C-2012-2297124, Opinion and Order entered May 23, 2013; *Lorrie Reynolds v. PPL Electric Utilities Corporation*, Docket No. C-2011-2255268, Opinion and Order entered January 5, 2012.

IV. CONCLUSION

For the reasons stated above, PGW requests that the Commission reject the Complainant's Exception letter as untimely and/or deny Complainant's exception and dismiss the Complaint in this matter.

Respectfully submitted,

August 11, 2014



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

Appendix A



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 30, 2014

ALL PARTIES OF RECORD

Re: Titus Wright vs Philadelphia Gas Works
Docket Number: C-2013-2368462

To Parties of Record:

On July 28, 2014, Titus Wright filed Exceptions to the Initial Decision of Administrative Law Judge Kandace F. Melillo in the above captioned matter. Our review of the filing revealed that no certificate of service or other indication that the parties of record to the case were served with the Exceptions. Therefore, we have enclosed a copy of the Exceptions for your review. This shall constitute service of the Exceptions for purposes of 52 Pa. Code §5.533.

Pursuant to 52 Pa. Code §5.535, you shall have until August 11, 2014 to file Reply Exceptions. Although the Exceptions were timely-filed, due to the failure of Titus Wright to provide service on all the parties of record to the case, and in order to avoid prejudice to any party, we shall deem the filing date of the Exceptions to be the above date served for purposes of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), relating to the time for the Commission to consider the Exceptions.

Sincerely,

Rosemary Chavetta
Secretary

Enclosure
nvl

cc: All Parties of Record
Document Folder

Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105
Administrative Law Judge
Hon. Kandace F. Milillo

Titus C. Wright
907 Bridge Street
Philadelphia, PA 19124
In Re: C-2013-2368462

COPY

Mr. Laureto A. Farinas, esq.
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122

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

July 13, 2014

C-2013-2368462

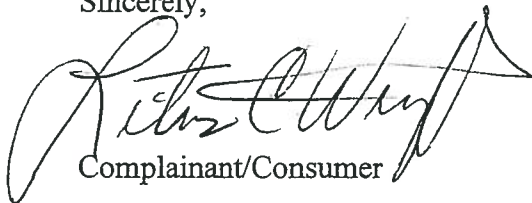
RE: Titus Wright v. PGW Docket No. C-2013-20132368462

Dear Honorable Kandace F. Milillo:

Per to the recent document received on 6/22/14. This is an exception to your Order dismissing my case with extreme prejudice. I feel the burdon of proof should have been assumed by the defendent and not the complainant. These bills are outrageous and I consider it robbery by price gouging.

I completely disagree with the final ruling. Thank you for your effort in attempting to bring this to justice but I need to take this issue to small claims court. There needs to be a reasonable and fair settlement concerning this case. As a customer of PGW I feel extremely frustrated in this matter. I will continue to persue this matter in a different legal forum.

Sincerely,



Complainant/Consumer

Cc: (3)

2014 JUL 28 AM 11:23
PA.P.U.C.
SECRETARY'S BUREAU

128591

Appendix B



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

July 22, 2014

IN REPLY PLEASE
REFER TO OUR FILE NUMBER
C-2013-2368462

**TITUS WRIGHT
907 BRIDGE STREET
PHILADELLPHIA PA 19124**

Dear Mr. Wright:

We are returning your Exceptions received on July 18, 2014 to you because it is required for us to have an original signature in order to process your filing. Please sign and date in ink as indicated by the tab stating 'Sign Here', then return to the address listed at the top of this letter within 10 days.

When you return your signed Exceptions to us, please send a copy to the attorney for Philadelphia Gas Works at the address shown below. Philadelphia Gas Works will then have ten days to file Replies to Exceptions.

Once we receive your filing with your original signature we will be able to process as needed. If you do not return within 10 days your filing will be considered unfiled.

Thank you for your attention to this matter.

Very truly yours,

Rosemary Chiavetta
Secretary

Enclosures

RC:ss

cc: Laureto Farinas
Philadelphia Gas Works
800 W. Montgomery Ave
Philadelphia PA 17105

**Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105
Administrative Law Judge
Hon. Kandace F. Milillo**

**Titus C. Wright
907 Bridge Street
Philadelphia, PA 19124
In Re: C-2013-2368462**

**Mr. Laureto A. Farinas, esq.
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122**

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

July 13, 2014

RE: Titus Wright v. PGW Docket No. C-2013 - 20132368462

Dear Honorable Kandace F. Milillo:

Per to the recent document received on 6/22/14. This is an exception to your Order dismissing my case with extreme prejudice. I feel the burdon of proof should have been assumed by the defendent and not the complainant. These bills are outragious and I consider it robbery by price gouging.

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Sincerely,

Titus C. Wright
Complainant/Consumer

Cc: (3)

Titus Wright
7/24/14

**PLEASE SIGN
& DATE**

RECEIVED
2014 JUL 18 AM 10:54
PA P.U.C.
SECRETARY'S BUREAU

Appendix C



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.leva@pgworks.com

July 17, 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:

This is to request an extension of time to reply to the Complainant's exceptions in the above reference matter. Philadelphia Gas Works ("PGW") received today, July 17, 2014, the Complainant's exceptions, which were due July 7, 2014. The exceptions are 5 days late from the date written and 10 days late from the due date of July 7, 2014, as shown on the attached document.

Also, I am currently out of the country on vacation. I expect to return Tuesday, July 22, 2014.

Therefore, PGW respectfully requests an additional 10 days from today to respond the exceptions, if necessary.

Thank you for your assistance in the matter.

Sincerely,

Laureto Farinas 184
Laureto Farinas

Enclosure

cc: Titus Wright (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105
Administrative Law Judge
Hon. Kandace F. Milillo**

**Titus C. Wright
907 Bridge Street
Philadelphia, PA 19124
In Re: C-2013-2368462**

**Mr. Laureto A. Farinas, esq.
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122**

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

July 13, 2014

RE: Titus Wright v. PGW Docket No. C-2013 - 20132368462

Dear Honorable Kandace F. Milillo:

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I completely disagree with the final ruling. Thank you for your effort in attempting to bring this to justice but I need to take this issue to small claims court. There needs to be a reasonable and fair settlement concerning this case. As a customer of PGW I feel extremely frustrated in this matter. I will continue to persue this matter in a different legal forum.

Sincerely,

Titus C. Wright

Complainant/Consumer

Cc: (3)

Appendix D



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Laureto A. Farinas, Senior Attorney
Legal Department
Direct Dial: 215-684-6982
FAX: 215-684-6798
E-mail: laureto.farinas@pgworks.com

July 28, 2014

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

RE: Titus Wright v. Philadelphia Gas Works, Docket No. C-2013-2368462

Dear Secretary Chiavetta:

This is to object to the untimely filing as of the Exceptions of the Complainant in the above referenced matter. Pursuant to 52 Pa. Code §5.533 and the Secretary's letter dated June 17, 2014, the Complainant's exceptions to the Initial Decision in this matter should have been filed by July 7, 2014. The Complainant's exception letter is dated July 13, 2014, some 6 days following the deadline for exceptions. The Commission should reject the Complainant's filing dated July 13, 2014.

The Commission's docket information lacks the record of receiving the Complainant's exceptions even as filed on July 13, 2014 or thereafter, seeming to indicate that the Commission has not accepted the filing of the exception letter. Even if the Commission agrees to consider the Complainant's filing, it fails to establish any argument for reversing the finding of the Initial Decision that the Complainant's dispute had been properly resolved under a previous docket number and the Complainant did not object to the settlement of that matter. The Complainant is not entitled to revisit the disputed matter.

If you need additional information about this matter, please contact me at my direct-dial number above. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laureto Farinas', is written over a large, faint blue graphic of a flame or gas burner. Below the signature, the name 'Laureto Farinas' is printed in a black, sans-serif font.

Laureto Farinas

cc: Linda Pereira (PGW Mail)
Tiffany Higgins
Wendy Vacca

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).

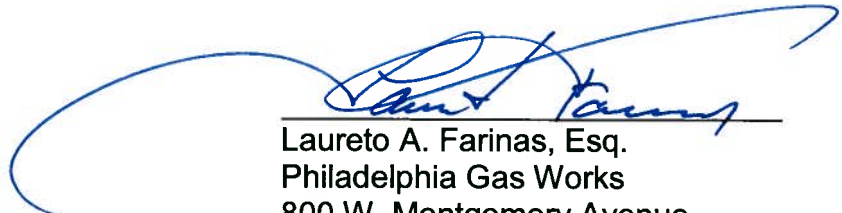
Service List:

For Complainant:

Mr. Titus Wright
907 Bridge Street
Philadelphia, PA 19124

(By express mail)

August 11, 2014



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