



PHILADELPHIA GAS WORKS

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August 27, 2014

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

Re: Marcus Love v. PGW, Docket No. F - 2013 - 2355580

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its exceptions to the August 7, 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: Marcus Love (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marcus Love

v.

Philadelphia Gas Works

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Docket No. F – 2013 – 2355580

**Philadelphia Gas Works' Exceptions
to the Initial Decision, dated August 7, 2014**

Pursuant to 52 Pa. Code §5.533, the Secretary's letter dated August 7, 2014, transmitting the Initial Decision in the above captioned matter ("Initial Decision"), the Philadelphia Gas Works, ("PGW") hereby files its exception to the Initial Decision, which, *inter alia.*, sustains in part and denies in part the Complaint of Marcus Love, Complainant, against PGW and determines that the Complainant is responsible for the bill issued by the Company but is entitled to a 20% "Conservation Credit." PGW takes exception to the awarding of the 20% Conservation Credit to reduce the disputed bill by \$1,307.09 as such an award is the impermissible grant of damages and is otherwise unsupported by record evidence.

I. INTRODUCTION

On March 11, 2013, the Complainant filed a formal Complaint against PGW with the Pennsylvania Public Utility Commission ("Commission") alleging that there were incorrect charges on his gas bill from Respondent. The Complainant alleged that PGW installed a faulty meter in his residence and did not find the issue until four years later. This formal Complaint is an appeal to the informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3032047. On April 22, 2013, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated May 3, 2013, notified the parties that an initial hearing was scheduled for Friday, July 12, 2013, at 10:00 a.m. before Administrative Law Judge Marta Guhl ("ALJ"). The hearing convened as scheduled on July 12, 2013. PGW presented was one witness. The Complainant was not present. The hearing proceeded without the Complainant and PGW moved to dismiss the matter for lack of

prosecution.¹

On July 23, 2013, the ALJ received correspondence from the Complainant indicating the reason for his lateness for the hearing on July 12, 2013. PGW did not object to the request. The ALJ granted the request for a further hearing and a Hearing Notice was issued on August 13, 2013 for a further hearing on Tuesday, November 26, 2013 at 10:00 a.m.

The hearing convened as scheduled. The Complainant appeared *pro se*, and provided testimony in support of the Complaint. Complainant also sponsored three (3) exhibits, all of which were admitted into the record. PGW presented the testimony of one witness who sponsored six (6) exhibits, all of which were admitted into the record. The evidentiary hearing generated 130 pages of testimony in transcript.²

By order of March 6, 2014, the ALJ reopened the record indicating that she wanted late-filed exhibits from PGW in order to complete the record. PGW's late-filed exhibits were due on April 7, 2014 and any objections from the Complainant were due on April 21, 2014. On April 7, 2014, PGW filed Late-Filed Exhibit Nos. 7, 8 and 9. On April 14, 2014, the Complainant filed an objection to the ALJ requested Late-Filed Exhibits. The Late-Filed Exhibits were admitted into the record over the Complainant's objection.³

On August 7, 2014, the Commission issued the Initial Decision and found, *inter alia*, that PGW properly issued a bill for previously unbilled usage, which usage resulted from a meter malfunction for the period from May 26, 2009 through September 21, 2012 in the amount of \$6,535.45.⁴ The malfunction affected the accuracy of the Encoder Recorder Transmitter ("ERT"), which electronically transmits meter readings to PGW facilities for the calculation of customer bills. The Complainant received bills of 40 months of "0" usage at the Service Address.⁵

The Initial Decision found that the Complainant failed to meet his burden of proving that PGW unjustly or unreasonably back billed him for prior usage.⁶ The Initial Decision found that the Complainant carried his burden of proof to establish that PGW incorrectly

¹ Initial Decision, p. 2

² Initial Decision, pp. 2-3

³ Initial Decision, p. 7

⁴ Tr. pp. 72, 113 and PGW Exhibits 1 and 3

⁵ Tr. p 76; PGW Exhibit 2 and Initial Decision p. 10

⁶ Initial Decision p. 10

calculated his bill for previously unbilled services by failing to provide the Complainant with a Conservation Credit pursuant to the Commission's decision in Michael Prendergast v. Philadelphia Gas Works, Docket No. F-2012-2317187 (Opinion and Order Entered February 27, 2014)⁷ Thus, the Initial Decision ordered that PGW issued the Complainant a 20% conservation credit in the amount of \$1,307.09.⁸

I. EXCEPTION

1. PGW takes exception to the Initial Decision's finding that the Complainant carried his burden of proof in showing that the bill for previously unbilled service should have included a conservation credit.⁹

PGW believes that in this case, the conservation credit constitutes impermissible compensatory damages. The conservation credit as applied here does not represent a correction of a bill to reflect actual usage as may be applied in cases where there is a miscalculation of a rate or a fast meter.

In this instance, the conservation credit serves not to correct any actual error, but is rather a reduction in the bill that permits the customer to pay less than what that customer actually used. It serves to compensate the customer for the missed opportunity to conserve consumption and the inconvenience of the bill for previously unbilled service. This type of remedy is "compensatory damages." In spite of the Commission's rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, only the Courts of Common Pleas in Pennsylvania have original jurisdiction to entertain suits for compensatory damages against public utilities. *Elkin v. Bell Tel. Co.*, 420 A.2d 371 (1980)

Since the issue of the Initial Decision, the Commission has issued an Opinion and Order in the Michael Prendergast v. Philadelphia Gas Works, Docket No. F-2012-2317187 (Opinion and Order Entered August 21, 2014)¹⁰ In that opinion, the Commission found that it does have the authority award the conservation credit under its equitable powers, but remanded the matter back to the Office of Administrative Law

⁷ Initial Decision p. 19, Conclusion of Law, Paragraph 8

⁸ Initial Decision p. 21, Ordering Paragraph 3

⁹ Initial Decision, p. 19, Conclusion of Law, Paragraph 8

Judge for further analysis of usage to determine the appropriate amount of conservation credit to apply.

2. PGW takes exception to the Initial Decision's finding that the Complainant in the instant matter merits a conservation credit of 20% without additional analysis.¹¹

The Initial Decision and the record from which it was made fails to support the award of the conservation credit in the amount of 20%. The Initial Decision contains no analysis of the Complainant's hypothetical lesser usage had the Complainant been issued bills based upon actual usage during the disputed period, save the inclusion of the lack of price signals. The record contains the fact that the Complainant had 40 months of "0" usage but there is no evidence or discussion of the Complainant's usage after the meter exchange in order to determine whether the full twenty percent (20%) Conservation Credit awarded to the Complainant is supported by a decrease in the Complainant's usage now that the Complainant is potentially able to judiciously manage consumption. In this regard, the application of the Conservation Credit is arbitrary and unsupported by the evidence.

In *Prendergast*, the Commission has remanded the matter back to the ALJ for further hearings as deemed necessary to determine the level of conservation credit sufficient to remedy the inaccurate price signals. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a 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).

¹⁰ Issued August 21, 2014, PGW considers its appellate rights in *Prendergast v. PGW*, Docket F-2012-2317187

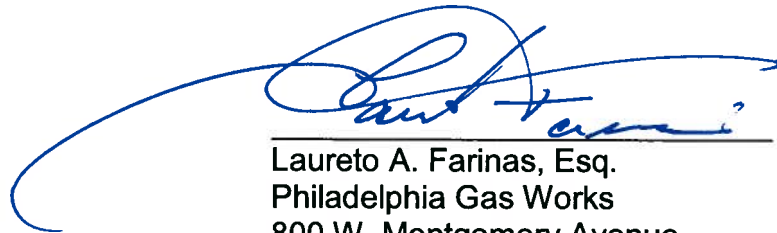
¹¹ Initial Decision, p. 21, Ordering Paragraph 3

II. CONCLUSION

For the reasons stated above, PGW requests that the Commission sustain its Exceptions and issue a decision modifying the Initial Decision by removing the application of the "Conservation Credit," awarded or, in the alternative, to remand the matter for further hearing and determination of the appropriate application of the conservation credit.

Respectfully submitted,

August 27, 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).

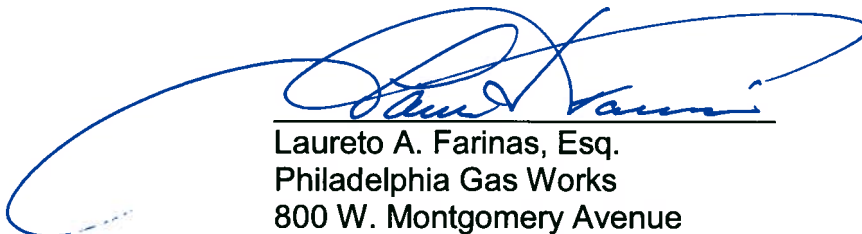
Service List:

For Complainant:

Mr. Marcus Love
1376 Dyre Street
Philadelphia, PA 19124

(By express mail)

August 27, 2014


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