



PHILADELPHIA GAS WORKS

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September 15, 2014

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

Re: Darnell Fassett v. PGW, Docket No. F- 2014 - 2408541

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.501, and the order dated August 22, 2014 setting the briefing scheduled in the above captioned matter, the respondent the Philadelphia Gas Works (PGW) here files its Brief.

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: Darnell Fassett (Hand DeliverY((Fed Ex)
Administrative Law Judge Angela T. Jones (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darnell Fassett

v.

Philadelphia Gas Works

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:
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:
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Docket No. F - 2014 - 2408541

**BRIEF OF
PHILADELPHIA GAS WORKS**

The Respondent, the Philadelphia Gas Works (PGW), hereby files its Brief pursuant to Administrative Law Judge Angela T. Jones' Order dated August 22, 2014, that a brief be submitted in the above captioned matter.

I. Statement of Case

This matter involves gas service at a premises belonging to the complainant, Darnell Fassett (the "Complainant") at 2537 N 26th Street, Philadelphia, Pennsylvania (the "Premises"). The Complainant is requesting a payment arrangement on a PGW bill that was issued in March of 2013 for unauthorized usage. The Complainant would also like gas service restored to the Premises.

The Complainant purchased the Premises on January 4, 1982¹ and eventually established gas service at the Premises.² Subsequently, Ms. Brenda Grey, the Complainant's girlfriend, established gas service in her name at the Premises.³ On May 20, 2002, PGW terminated the gas service to Ms. Grey.⁴ The gas was shut off at the curb box.⁵ Ms. Grey was the last customer of record at the Premises and there was no authorized usage after the gas was shut off in May of 2002.⁶

On March 13, 2013, PGW was called to the Premises for a gas leak and gas theft was discovered.⁷ Once it was discovered that there was theft occurring at the Premises,

¹ PGW Exhibit – 1, p.1

² Tr. p. 21

³ Id.

⁴ Tr. p. 43

⁵ Id.

⁶ Id.

⁷ Tr. pp. 43-44

Nicholas Simeo, an employee with PGW's Revenue Protection Unit, was called to the scene to investigate.⁸ Present during Mr. Simeo's investigation was a heavy-set African-American male resembling the Complainant and who was identified as the owner of the Premises.⁹ As part of his investigation, Mr. Simeo noted that the meter was completely removed from the piping and that there was a flex connector bypass from the gas inlet to the gas outlet.¹⁰ Mr. Simeo testified that it is impossible for the meter to record gas usage in this condition as it was not connected to anything.¹¹ While still at the Premises,, Mr. Simeo terminated the gas service to the Premises and made a Theft Report via telephone.¹²

After discovering the theft, PGW generated a bill for unauthorized usage in the amount of \$5,541.01.¹³

On March 3, 2014 the Complainant filed the Complaint against PGW in the instant matter requesting a payment arrangement and that gas service be restored to the Premises.

On August 20, 2014, an evidentiary hearing was held in this matter. The Complainant stated that he was not contesting the fact that there was unauthorized usage at the Premises, but that he knew anything about it.¹⁴ At the hearing, the Complainant testified on his own behalf and stated that he lived in the property from the time he purchased it until he moved in with his girlfriend in 2009.¹⁵ He then testified that after moving in with his girlfriend, he rented the house to a woman with three children.¹⁶ He testified that he told this woman she had 30 days to move out sometime in November of 2013, that she was gone by the end of November, and that he moved back into the

⁸ Tr. p. 69

⁹ Tr. pp. 78-79

¹⁰ Tr. pp. 74-77

¹¹ Tr. p. 76

¹² PGW Exhibit – 5, p. 1

¹³ PGW Exhibit – 5, pp.1-4

¹⁴ Tr. pp. 5-6

¹⁵ Tr. pp. 10-11

¹⁶ Tr. pp. 11-12

Premises at the beginning of December 2013.¹⁷ The Complainant offered no other witnesses or documents as evidence.

At the hearing, PGW was represented by attorney Graciela Christlieb, who offered the testimony of two PGW witnesses – Wendy Vacca and Nicholas Simeo. Ms. Vacca testified to how the bill for unauthorized usage was generated and Mr. Simeo testified to his theft investigation.

At the conclusion of the hearing, PGW was asked to submit a brief and was informed that an Order would be forthcoming.¹⁸ Order #4, outlining the parameters of the requested brief was issued on August 22, 2014. The Order states that “PGW has stated that the commission is prohibited from ordering a payment arrangement because theft of service occurred” and goes on to request by what authority PGW makes such a claim. In order to proceed with the brief as ordered, PGW must first clarify its position.

II. Summary of PGW’s Position

Under 52 Pa. Code §56.98, a public utility may immediately terminate service for a number of reasons, including unauthorized use. Once service has been terminated for unauthorized use, it is PGW’s policy to require payment of the full bill, including any charges for unauthorized use, as a condition of restoration of service. Payment arrangements are not offered by PGW on balances that are the result of unauthorized usage. This policy applies in those unauthorized usage situations where the applicant exercised dominion and control over the premises to the extent that he either knew or should have known that the theft was occurring. Notwithstanding, where it is clear from the evidence that the applicant was not responsible for theft, it is not PGW’s policy to deny service to an applicant or hold such applicant accountable for the bill for unauthorized usage. Moreover, PGW does not presume to dictate to the Commission what it can or cannot do in terms of issuing payment arrangements. The Commission’s authority in such matters is clearly established. .

However, in the instant case, a determination was made by PGW that the Complainant is responsible for the theft and, as such, must make full payment of the bill

¹⁷ Tr. p. 14

¹⁸ Tr. pp. 106-107

for unauthorized usage as a condition of restoration of service. PGW's determination was borne out during the evidentiary hearing held on August 20, 2014. During the course of that hearing, PGW established that the Complainant had dominion and control over the property to the degree that he knew or should have known that theft was occurring. The Complainant is the owner of the property.¹⁹ He acknowledged that he lived there from at least the time of purchase until he allegedly moved out in 2009 to live with his girlfriend for four (4) years from 2009 until 2013. Further, his testimony regarding the alleged period of absence from 2009 to 2013 was far from convincing: when asked, the Complainant was unable to give the exact address where he resided and was unsure as to even the correct name of the street where the house was.²⁰ During the hearing, it was established that, even when he was allegedly not living at the Premises, it was nevertheless the Complainant's mailing address and he had utilities in his name the entire time it was supposedly being rented to someone else.²¹ The Complainant had no written agreement to rent the Premises, nor was he licensed to act as a landlord.²² When asked by the Court whether he had pursued the "tenant" for the amount of the bill for unauthorized usage, the Complainant testified that "she was long gone" by that time.²³ However, on cross examination, the Complainant testified that the discovery of the gas meter bypass was the reason he had to evict his "tenant" and that he was informed of the bill for the unauthorized usage at that time.²⁴ Most notably, the Complainant's testimony asks that it be believed that he lived in the Premises without gas from 2002, when the gas service was shut off by PGW,²⁵ until 2009 despite the fact that the house heater, hot water heater and stove all were gas appliances.²⁶ The Complainant failed to provide any testimony as to how he was going about his day to day living from 2002 – 2009 or any steps that he had to take to ensure that the pipes in the Premises did not freeze during that time. The complainant did, however give some indication when he was asked if the Premises had

¹⁹ Tr. p. 10
²⁰ Tr. pp. 10-11
²¹ Tr. p. 23 & p. 26
²² Tr. pp. 22-23
²³ Tr. p. 16
²⁴ Tr. p. 27
²⁵ Tr. p. 43
²⁶ Tr. pp. 16-17 & p. 42

gas service the entire time he lived there and he testified that it did.²⁷ According to PGW, there should not have been gas service at the Premises for over a decade of that time.²⁸

III. Authority

A review of the applicable authority indicates that the Commission has a fairly unlimited ability to issue payment arrangements for Complainants whether they are culpable for theft of service or not. However, the Commission has chosen to exercise this ability very judiciously and, in the past, has only issued payment arrangements in situations where there complainant is not responsible for theft of service or unauthorized use. It is reasonable, from a public policy standpoint, to require a customer who is responsible for theft to make payment on the back-bill in full in order to discourage such actions in the future.

Moreover, the right to a payment arrangement is not absolute.²⁹ It is entirely within the discretion of the Commission to determine, on a case by case basis, whether a payment arrangement should be issued pursuant to the guidelines of Chapter 14.³⁰ In the past, the Commission has limited the exercise of this discretion only on behalf of those customers claiming an inability to pay who have demonstrated some evidence of good-faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control. See, *George Crawford v. National Fuel Gas*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007) at 15, 16. Neither of those circumstances is presented by the Complainant in the instant case.

IV. Conclusion

The Commission has the authority to issue a payment arrangement to a complainant whether they are culpable for theft of service or not. In the instant case, PGW has presented sufficient evidence to rebut the Complainant's case and establish that he had

²⁷ Tr. p. 10

²⁸ Tr. p. 43

²⁹ The Public Utility Code permits the Commission to grant one payment agreement and dictates its terms. 66 Pa.C.S.A § 1405(b). Absent a change in income, the Commission cannot grant a second or subsequent payment agreement, if the customer defaults on the first payment agreement. 66 Pa.C.S.A. § 1405(d). But, the Commission has no authority to grant a payment arrangement on Customer Assistance Program (CAP) arrears. 66 Pa. C.S. § 1405(c).

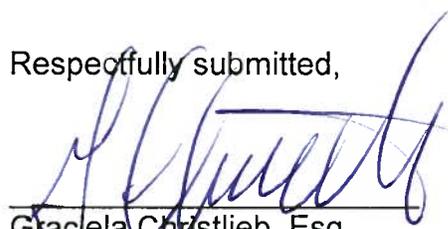
³⁰ See footnote ²⁹, *supra*.

dominion and control over the property to the degree that he knew or should have known that the theft was occurring and is, as such, responsible.

Therefore, Complainant's Formal Complaint at Docket No. F-2014-2408541 should be dismissed with prejudice as the Complainant has failed to meet his burden of proof. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlt. 2001). The Commission should follow its policy of not issuing payment agreements to complainants who are responsible for theft of service or unauthorized use.

September 15, 2014

Respectfully submitted,



Gracela Christlieb, Esq.
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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

Darnell Fassett
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September 15, 2014



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