

February 4, 2015

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

VIA ELECTRONIC FILING

**RE: LiRon Anderson-Bell v. Philadelphia Gas Works
Docket No. C-2014-2438475**

Dear Secretary Chiavetta,

Enclosed for filing with the Pennsylvania Public Utility Commission is my Main Brief in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely Yours,



LiRon K. Anderson-Bell

Enclosure

cc: Administrative Law Judge Angela T. Jones
Graciela Christlieb, Esquire
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LiRon Anderson-Bell

v.

Philadelphia Gas Works

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:
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Docket No. C-2014-2438475

**MAIN BRIEF
OF
LIRON ANDERSON-BELL**

LiRon K. Anderson-Bell
6339 Sherwood Road
Philadelphia, PA 19151

Dated: February 4, 2015

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I. INTRODUCTION

On August 19, 2014, I filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) a Formal Complaint (Complainant Exhibit 1) against Philadelphia Gas Works (“PGW”). The complaint requested that PGW restore gas service to my home, 6339 Sherwood Road, Philadelphia, Pennsylvania (“service address”), as they had shut it off on August 19, 2014 after PGW technicians performing installation of a new gas meter in my home found a concealed bypass configuration in my basement. The bypass was an inherited condition that I was not aware of when I purchased my home. The house came equipped with two water heaters in the basement as well as an HVAC system. The HVAC system and one of the water heaters were supplied gas via the bypass. Upon finding the bypass and issuing me a Post Termination Notice (PGW Exhibit 7), a PGW technician stated that I would be billed for gas usage on appliances that were unmetered during my time living in the house. In reaction to this statement, I included in my complaint a challenge to the amount and time period of the makeup bill.

On September 9, 2014, PGW filed an Answer to my Formal Complaint in which they stated that on August 22, 2014, a makeup bill in the amount of \$6,360.65 was issued to me for bypass usage from August 19, 2010 through August 19, 2014. PGW’s Answer also requested that the PUC find against me and dismiss the Formal Complaint.

This proceeding was assigned to Administrative Law Judge (“ALJ”) Angela T. Jones, who issued a Prehearing Order on October 2, 2014 that set a date of November 7, 2014 for the Initial Hearing. On October 31, 2014 I sent a letter via email and First-Class mail to the ALJ’s office requesting a continuation of the case to allow me additional time to conduct discovery and research caselaw related to my Formal Complaint. On November 12, 2014, the ALJ issued a

Hearing Cancellation/Reschedule Notice, indicating that the Initial Hearing had been rescheduled for December 19, 2014. The Initial Hearing convened as scheduled.

II. SUMMARY

I respectfully submit that while PGW has noted that prior PUC decisions such as *Roderick Berry v. Philadelphia Gas Works*, Docket No. F-01184412, 2004 Pa. PUC LEXIS 27 (Order entered April 15, 2004) and *Angie's Bar v. Duquesne Light Company*, 72 Pa. P.U.C. 213, (1990), and Public Utility Code regulations such as 52 Pa. Code 56.14 established that PGW is entitled to a makeup bill covering up to four years of unbilled service, the nuances of my case are unlike billing complaints the PUC has previously encountered and may warrant an assessment independent of existing caselaw.

Specifically, I submit that it is unreasonable for me to pay a makeup bill covering a four-year period because I placed calls to PGW customer service in late summer 2003 and winter 2004 alerting them that the gas bills I was receiving were unusually low. I contend that PGW could have discovered the bypass as early as August 2003 if they had sent technicians to follow up on these billing concerns. I would also like to note, as mentioned in the Introduction, that there were only two gas appliances in my home serviced by the bypass. My remaining gas appliances were properly metered and generated a PGW bill every month from the time I moved into the house (Initial Hearing Transcript, Page 71 includes a discussion of my metered appliances). I have paid all of my PGW bills in full and on time since establishing service.

If the PUC determines that existing caselaw and Public Utility Code statutes or rules do cover the circumstances of my case, and determines that I am responsible for paying a makeup

bill to PGW, I ask that the makeup bill take the following into account:

(1) The bypass at my home was corrected on September 29, 2014. I ask that the makeup bill be calculated with consideration of my current fully metered usage as a point of comparison.

(2) I am willing to pay for previously unbilled gas service, but I ask that the makeup bill be limited to two months after PGW service was established at my home. That time period is long enough for PGW to have investigated my calls regarding unusually low gas billing, discovered the bypass, and for me to have corrected it.

(3) I also respectfully request that the PUC consider issuing a conservation credit on the makeup bill. A conservation credit could account for steps I was unable to take to conserve my gas usage, because I did not receive accurate bills for the time period the bypass was in place.

As a final point of Summary, I respectfully request that PGW be fined for inconvenience they have caused me, the poor customer service they have displayed, and for unsafe conditions my family and my neighborhood lived under while the bypass was in my home.

III. DETAILED POINTS OF VIEW

A. Application of Conservation Credit

At the December 19, 2014 Initial Hearing for my case, the ALJ indicated that the PUC has in some cases provided a conservation credit to a makeup bill to make it more affordable for the Complainant (Initial Hearing Transcript Page 172, Lines 24-25; Page 173, Lines 1-2: "I am aware that the Commission has provided a conservation charge credit when a makeup bill is being used to try to get the makeup bill more manageable for the Complainant.").

I have identified four cases that support the provision of a conservation credit; two from the jurisdiction of the PUC and two from the jurisdiction of the New York Public Service

Commission. The cases under the jurisdiction of the PUC are *Nona Lewis v. Philadelphia Gas Works*, Docket No. F-2010-2171442 (Order entered July 15, 2011), in which a 20% conservation credit was determined appropriate, and *Michael Prendergast v. Philadelphia Gas Works*, Docket No. F-2012-2317187, in which the amount of the conservation credit to be applied is not final, but the PUC did affirm that a conservation credit should be applied. The cases under jurisdiction of the New York Public Service Commission are *Highland Car Service, Inc. and Consolidated Edison Company of New York, Inc.*, Case 07-G-0988 and *Carol Campolo and Niagara Mohawk Power Corporation*, Case 00-E-0848. Both provide for a 25% conservation adjustment in circumstances where the customer would have otherwise conserved and the makeup billing was not the fault of the customer.

B. Requirement of Safe and Reasonable Service

Section 1501 of the Public Utility Code requires that all utilities must provide safe and reasonable service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service...

66 Pa.C.S.A § 1501. *Haynesworth v. Philadelphia Gas Works*, Docket No. C-2013-2388558, 2014 Pa. PUC LEXIS 370, *17 (Order entered July 22, 2014) notes that the statutory definition of "service" is broadly construed to include billing. The term service is defined by statute in the

Public Utility Code and is “used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .” 66 Pa. C.S.A. § 102.

I contend that from the time the bypass was installed at the service address until the removal of the bypass on August 19, 2014, PGW did not meet the requirements of Section 1501 of the Public Utility Code. It has been established that I inherited the bypass (Initial Hearing Transcript Page 184, Line 1-5: “(2) We already have established there was a bypass. The (3) Complainant is not arguing that.”), and that I could not have known it was there or corrected it because it was concealed within a cement wall (PGW Exhibit 2, Page 8 of 12). This is of great concern to me because a leak, rupture or other dangerous condition involving the bypass might have gone undiscovered.

It has also been established that PGW has the means to determine when a customer installs a bypass (Initial Hearing Transcript Page 150, Questioning of Ms. Vacca, a senior customer review officer at PGW: “If the customer decided to put up a bypass one month, you would see the usage decline, and there was no dip, severe dip in usage.”).

Further, it was PGW’s determination that the bypass represented an unsafe condition requiring that my gas service be terminated, and the bypass equipment be removed from my home (PGW Exhibit 7 – PGW Post Termination Notice; Initial Hearing Transcript Pages 134-140, Questioning of Mr. Cole, a field technician).

As stated earlier, I believe PGW would have discovered the bypass if they had heeded the multiple calls I made to them in 2003 and 2004 about my unusually low bills and investigated with a service call to my home. I also submit that PGW's failure to note, or failure to investigate, the dip in gas usage at the service address at the time the bypass was installed led to the prolonged existence of unsafe conditions that could have resulted in disaster at any point during the existence of the bypass.

I also wish to note the pattern of poor customer service from PGW during the course of this case. My service was terminated on August 19, 2014, and while it was re-established the following day, I was not contacted about the amount of my makeup bill until 20 days later, on September 8, 2014, when Tyra Jackson of PGW called me to say that PGW had calculated our make-up bill for the unmetered service as \$6,360.65, which we could pay in a lump sum or in 48 monthly installments of \$148.00 (Initial Hearing Transcript, Page 147-149).

PGW has also on more than one occasion attempted to mislead me about the calculation of the makeup bill in this case. On September 18, 2014, I received a call from Wendy Vacca with PGW, asking if I planned to accept their "payment offer" or go ahead with the PUC hearing. In this call, I asked Ms. Vacca how the makeup bill was calculated. She said that it was based on PGW's own formulas and algorithms, and that "the full amount they could have assessed me was over \$18,000.00," but that in the interest of good customer service, PGW would accept \$6,360.65 (Initial Hearing Transcript, Page 147-149). The assertion that PGW could have assessed me over \$18,000.00 is not only incorrect according to 52 Pa. Code 56.14, which establishes a four-year limit for makeup bills for unbilled service, but also felt like an attempt to

bully me into immediately agreeing to the makeup bill.

On October 21, 2014, I contacted Ms. Vacca regarding possible mediation with PGW, indicating that I was willing to pay for two to three months of unbilled gas service based on having tried to alert PGW shortly after establishing gas service to the unusually low gas bills for my home. She reiterated the incorrect assertion made September 18, 2014 that PGW could have charged me over \$18,000.00 for 11 years of bypassed service, and that in the interest of good customer service they had offered the make-up bill of \$6,360.65. She stated that we should proceed to the PUC hearing if those terms were not acceptable. I told Ms. Vacca that I was in favor of proceeding to the hearing and asked if she could send me a summary of all of my interactions with customer service since establishing service to my home. Ms. Vacca said that I might have to subpoena that information. Later that afternoon she left me a voicemail saying that she was advised by PGW's legal department to tell me to follow the procedures set out in the Prehearing Order for requesting documents from them. I found it disappointing and unhelpful that PGW would not provide the summaries to me, especially since the ALJ indicated in the October 2, 2014 Prehearing Order that all parties were encouraged to cooperate in informal information exchanges and in conducting discovery. I was unable to get the summaries until I directly requested it of Graciela Christlieb, Esquire of PGW on October 31, 2014.

It should also be noted that my PGW customer record (PGW Exhibit 5) appears to be incomplete. It should show my calls to PGW in 2003 and 2004 to advise them of my unusually low gas bill, but there is no notation of the complaint calls, nor any record of my telephone contact to establish gas service with PGW. This irregularity was also discussed at the December 19, 2014 Initial Hearing (Initial Hearing Transcript, Re: Cross-Examination of Ms. Vacca, Page

162-164).

C. Makeup Bill Requirements

Utility companies have an obligation to provide a bill once every billing period to customers as part of their service requirements, must provide actual meter readings except where estimates are provided for under the regulations, and must investigate a dispute regarding a bill. 52 Pa. Code §§ 56.11, 56.12, 56.23. Pursuant to 52 Pa. Code § 59.23, "[i]n the event of a dispute between a customer and a public utility respecting a bill, the utility shall immediately make the investigation required by the particular case and report the result of the investigation to the customer." 52 Pa. Code § 59.23.

PGW has consistently failed to meet their obligation to provide me with accurate billing; I indicated the basis for this assertion earlier in Requirement of Safe and Reasonable Service, where I noted that I believe the presence of the concealed bypass in my home prevented me from receiving an accurate bill. PGW has also failed to meet the requirements of 52 Pa. Code § 59.23; as indicated in the Summary, I placed calls to PGW customer service in late summer 2003 and winter 2004 alerting them that the gas bills I was receiving were unusually low, but they made no investigation.

Even as part of discovery in this case, billing irregularities have persisted and PGW has been misstated their resolution. Specifically, PGW provided me with an erroneous estimated makeup bill by not removing the customer charges that I had already paid (Initial Hearing Transcript Page 157, Questioning of Ms. Vacca: "A. On this document, it's \$6,360.65. However, PGW had determined that this customer had been already billed the customer charge over the period, so we manually, because you can't override the boxes in here, we manually

deducted the customer charge, which was \$588 over the period, and the customer was re-billed for the period, \$5,772.65.”). PGW has said that they presented evidence of a revised calculation of \$5,772.65 (Tr. 158-160) to me in December 2014, but it should be noted that they did not remove the customer charge until I raised the issue with them in my discovery. Further, in my December revised bill, PGW did not incorporate my actual bill amounts into the bill calculation. I think these points call into question whether PGW’s calculation of the makeup bill is accurate.

D. Civil Penalties

I respectfully request that PGW be fined for not meeting the requirements of Section 1501 of the Public Utility Code, and on the basis of the points outlined above in Detailed Points of View, B - Requirement of Safe and Reasonable Service.

The PUC has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. 52 Pa. Code § 69.1201(c) and *Haynesworth v. PGW, supra*, contain interpretation of factors and standards as follows:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may

only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

IV. CONCLUSION

I believe that it is unreasonable for me to pay a PGW makeup bill covering four years of unbilled gas service. I placed calls to PGW customer service in late summer 2003 and winter 2004 alerting them that the gas bills I was receiving were unusually low. PGW could have

discovered the bypass that I inherited from a previous owner of my home if they had sent technicians to follow up on my billing concerns. I ask that my makeup bill be limited to two months after PGW service was established at my home. That time period is long enough for PGW to have reviewed the initial concerns I raised, come to investigate, discovered the bypass, and for me to have corrected it.

Respectfully Submitted,

A handwritten signature in blue ink, reading "LiRon K. Anderson-Bell", written over a horizontal line.

LiRon K. Anderson-Bell
6339 Sherwood Road
Philadelphia, PA 19151

Dated this 4th day of February 2015.

Certificate of Service

RE: LiRon Anderson-Bell v. Philadelphia Gas Works
Docket No. C-2014-2438475

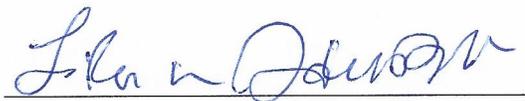
I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

SERVICE BY OVERNIGHT MAIL

Administrative Law Judge Angela T. Jones
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SERVICE BY EMAIL AND FIRST-CLASS MAIL

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LiRon K. Anderson-Bell
6339 Sherwood Road
Philadelphia, PA 19151

Dated this 4th day of February 2015.