



PHILADELPHIA GAS WORKS

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February 6, 2015

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

Re: LiRon Anderson-Bell v. PGW, Docket No. C- 2014 - 2438475

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.501, and the order dated January 15, 2015 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: LiRon Anderson-Bell (FedEx)
Administrative Law Judge Angela T. Jones (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LiRon Anderson-Bell

v.

Philadelphia Gas Works

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Docket No. C - 2014 - 2438475

**BRIEF OF
PHILADELPHIA GAS WORKS**

Pursuant to Order #3 dated January 15, 2015, the Respondent, the Philadelphia Gas Works (PGW) hereby files its Brief. A hearing of this matter was held on December 19, 2014.

I. Introduction

This matter involves a make-up bill that was issued to the Complainant after a gas meter bypass was discovered at the Complainant's address, 6339 Sherwood Road, Philadelphia, Pennsylvania (Service Address).

The Complaint established service at the Service Address on June 27, 2003. On August 19, 2014, PGW was at the Service Address for a meter exchange. Upon arrival, the PGW technician discovered a bypass built into the head of the service before the meter bar. The bypass was located behind a wall. The bypass had a 125,000 British thermal unit (Btu) house heater and a 40,000 Btu water heater attached to it. The gas service to the Service Address was shut off and an investigation was initiated.

On August 20, 2014, PGW contacted the Complainant and advised her that a determination had been made that the bypass was an inherited condition and that gas service to the Service Address would be restored that day.

On August 20, 2014, PGW restored gas service to the Service Address.

On August 21, 2014, PGW determined that the make-up bill for the previously unbilled usage at the Service Address would take into account the 125,000 Btu house heater as well as the 40,000 Btu water heater and only extend back for a four year period due to the bypass being an inherited condition.

On August 22, 2014, PGW billed the Complainant \$6,360.65 for the previously unbilled usage from August 19, 2010 at index 0 to August 19, 2014 at index 3829. That same day, Tyra Jackson, the Director of Regulatory Compliance, contacted the Complainant; she explained the charges and offered to amortize the make-up bill. The amount of the make-up bill was adjusted in December 2014 to remove the Customer Charge (\$588.00), leaving the make-up bill at \$5,772.65.

On August 25, 2014 the Complainant filed the Complaint against PGW in the instant matter under Docket No. C-2014-2438475.

II. **Summary**

Under 52 Pa.Code § 56.14 and the case law addressing it, PGW is entitled to collect on the make-up bill for previously unbilled services that was issued to the Complainant; the law provides for a four-year period for make-up bills where the customer has not been involved with theft of service or other culpable acts leading to the under billing, which is the situation in the instant case.

III. **Detailed Point of View**

- A. Under 52 Pa.Code § 56.14, PGW is entitled to collect on the make-up bill that was issued to the Complainant.**

The provisions of § 56.14 require:

“When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least \$ 50, whichever is greater:

(1) The public utility shall explain the bill to the customer and make a reasonable attempt to amortize the bill.

(2) The period of the amortization may, at the option of the customer, extend at least as long as:

(i) The period during which the excess amount accrued.

(ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.”

In the instant matter, PGW rendered a make-up bill for previously unbilled public utility service that encompassed the 4 years prior to when the bypass was discovered.

Pursuant to § 56.14, PGW contacted the Complainant, explained the charges, and attempted to amortize the bill by offering the Complainant a 48 month payment arrangement. Tr. 148-149.

B. Under prior Commission decisions, PGW is entitled to collect on the bill for previously unbilled services that was issued to the Complainant.

The issue of billing for previously unbilled utility services is one that has been addressed by the Commission on multiple occasions. Seminal cases *Angie’s Bar v. Duquesne Light Company*, Docket No. C-881881, Opinion and Order entered March 27, 1990 (*Angie’s Bar*) and *Roderick Berry v. Philadelphia Gas Works*, Docket No. F-

01184412, Opinion and Order entered April 15, 2004 (*Berry*) establish that where it is determined that a customer has used a utility supplied by a utility company, that company is entitled to payment for the service and that, in cases where there is no theft or other culpable acts leading to the under billing, the utility company may backbill for a four year period.

Angie's Bar and *Berry* have been quoted and cited in recent Commission decisions that uphold a utility company's ability to collect on make-up bills. In *Pierre Alexandre v. Philadelphia Gas Works*, Docket No. C-2012-2337351, July 10, 2013 (*Alexandre*) the complainant asserted "that he should not be responsible for gas usage not captured and billed due to PGW's faulty meter. He does not dispute using the gas but contends that he should not have to pay for problems with PGW's equipment of which he had no knowledge and for which he had no responsibility." After examining 52 Pa.Code § 56.14 and the state of the case law on the subject, including *Berry*, the Court determined that the Complainant was responsible for the make-up bill and added:

"This is simply a case of a customer objecting to receiving a large make-up bill. During testimony, it became clear that Complainant does not actually deny that he used the gas as billed; Complainant questions being held responsible for a very large cumulative bill that was issued as a result of the failure of Complainant's remote reading device.

Complainant's frustration is understandable. Mr. Alexandre timely pays his bill from PGW upon receipt. However, the law allows PGW to bill and collect for gas used but for which he was not previously billed."

In *Robyn Irving v. Philadelphia Gas Works*, Docket No. C-2011-2279259, Opinion and Order entered February 6, 2014 (*Irving*), a make-up bill was generated after it was discovered that the Complainant was being under billed due to PGW having incorrectly

programed the Complainant's meter. The Commission held that PGW was entitled to be paid for the gas used, adding that:

"We understand the Complainant's frustration. Here we have a responsible utility ratepayer who has been diligent in timely paying her gas bills. Despite her best efforts, unexpectedly she is presented with an additional bill for several thousand dollars due to an equipment error that recorded only one-half the customer's actual usage. The customer has done nothing wrong, either through acts of commission or omission and views the Company's attempt to recoup its losses as a penalty. However, upon review of the Exceptions, the evidence of record and the applicable law, we find that the ALJ has correctly concluded that, based on prior Commission decisions, PGW is entitled to be paid for the gas actually used. *Roderick Berry v. Philadelphia Gas Works*, Docket No. F-01184412, 2004 Pa. PUC LEXIS 27 (Order entered April 15, 2004). We also concur with the ALJ's conclusion that prior Commission decisions limit a utility's right to issue make-up bills to a four-year period where the customer has not been involved with theft of service or other culpable acts leading to the under billing. *Roderick Berry; Angie's Bar v. Duquesne Light Company*, 72 Pa. P.U.C. 213, 1990 Pa. LEXUS 4 (1990). Accordingly, the record indicates that PGW appropriately billed the Complainant for unbilled service for the four-year period between July 31, 2007 and July 28, 2011."

The instant matter is similar to *Alexandre* and *Irving* in that the Complainant is frustrated at having recieved an additional bill for several thousand dollars, but it is also similar in that the Complainant used and benefitted from the gas being supplied by PGW for the years for which she is being billed.

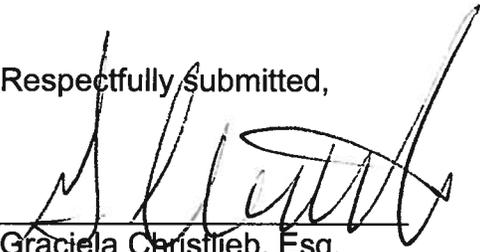
IV. Conclusion

From 2003 to 2014, a bypass built into the Complaint's basement supplied PGW gas to a water heater and a heating unit that served to heat the entire home. During that time, the Complainant and her family used the water heated by that gas and benefitted from a house kept warm by that gas. During that period of time, the bypass prevented PGW from metering that gas and subsequently charging for that gas. In August of 2014,

the bypass was discovered. The matter was investigated and resolved in less than 72 hours and, in the end, PGW issued a make-up bill going back 4 years as is provided for under the law.

February 6, 2015

Respectfully submitted,



Graciela Cristlieb, Esq.
Philadelphia Gas Works
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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

LiRon Anderson-Bell
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February 6, 2015



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