



**PHILADELPHIA GAS WORKS**

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July 13, 2015

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

**Re: James T. Counsel III v. PGW, Docket No. C - 2014 - 2438368**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files its reply to the Complainant's exceptions to the June 28, 2015, 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: James T. Counsel III (Regular Mail)  
Linda Pereira (PGW Mail)  
Wendy Vacca (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**James T. Counsel, III**

v.

**Philadelphia Gas Works**

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**Docket No. C – 2014 – 2438368**

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

Pursuant to 52 Pa. Code §5.535, the Secretary’s letter dated June 24, 2015 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 8, 2015, in the above captioned matter (“Initial Decision”).

**I. INTRODUCTION**

This matter is a dispute in which the Complainant alleged that there are incorrect charges on his bills from PGW. As relief, he requested that Commission adjust the billed amount of \$12,138.28, and provide him with a payment agreement. PGW filed a timely Answer denying the material allegations of the Complaint.

The matter concerns the following facts. On March 3, 2009, a PGW technician visited the apartment building where the Complainant resided on Park Avenue in order to turn on gas service to Apartment # 5A.<sup>1</sup> While at the building, the technician noticed that Meter # 1792689 serving the Complainant’s residence (Apartment # 2B) was missing its ERT head, but that gas was still flowing through that meter.<sup>2</sup> The ERT head is the recording device powered by a battery and attached to PGW’s gas meters.<sup>3</sup> The ERT device is attached to the rotary index, forming a single unit within PGW’s gas meters. The technician removed Meter # 1792689 and installed locking plugs inlet to outlet.<sup>4</sup> The technician left a post-termination notice at the property.<sup>5</sup> The technician prepared a “Theft Reporting Sheet,” which listed the following gas appliances in The Complainant’s residence: a 75,000 BTU house heater, a 30,000 BTU automatic water

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<sup>1</sup> Tr. 59, PGW Exhibit 3

<sup>2</sup> Tr. 55-56, 60, PGW Exhibit 3

<sup>3</sup> Tr. 58, and 67-68.

<sup>4</sup> Tr. 57, PGW Exhibit 3

<sup>5</sup> Tr. 68, PGW Exhibit 3

heater, and a 54,000 BTU automatic gas range.<sup>6</sup> On March 6, 2009, PGW called the Complainant about the discovery of unauthorized service at his Park Avenue address.<sup>7</sup> PGW informed the Complainant that he would be billed \$7,603.01 for 3872 CCF of gas used between March 3, 2005, and March 3, 2009. PGW informed The Complainant that the \$7,603.01 bill was based on historic usage at the property, and that he would need to pay a security deposit of \$330.00, a reconnection fee of \$123.23, in addition to the \$7,603.01 and any past due bills, in order to get service reconnected at the Park Avenue address.<sup>8</sup> On April 14, 2009, PGW issued a bill to the Complainant for the \$7,603.01. In December 2009, the Complainant moved to his residence on Champlost Avenue.<sup>9</sup> At the Champlost address, the Complainant discovered that gas service was already on and under someone else's name.<sup>10</sup> The Complainant did not apply to have the gas service for the Champlost address placed in his name until he was instructed to do so.<sup>11</sup>

On August 20, 2012, the Complainant visited the PGW Center City Customer Service Center to apply for gas service at the Champlost Avenue address. The Complainant presented a lease date of January 1, 2010. PGW informed the Complainant that he would be backbilled as of his lease date. In September and October of 2012, the Complainant contacted PGW about a possible foreign load in his gas line.<sup>12</sup> On October 25, 2012, a PGW technician visited the Complainant's residence and performed a foreign load investigation. No foreign load was detected in the Complainant's gas line.<sup>13</sup>

On November 26, 2012, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), BCS Case No. 3047198, disputing a total outstanding account balance of \$11,733.66.<sup>14</sup>

On January 30, 2013, BCS issued a decision in BCS Case No. 3047198 dismissing the informal complaint after finding that PGW's bills were correct as rendered

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<sup>6</sup> Tr. 58, PGW Exhibit 3

<sup>7</sup> Tr. 26-27, 51, PGW Exhibit 1

<sup>8</sup> Tr. 28, 33-35, 71-72, PGW Exhibits 1 and 3

<sup>9</sup> Tr. 11

<sup>10</sup> Tr. 9, 11

<sup>11</sup> Id.

<sup>12</sup> Tr. 27, PGW Exhibit 1

<sup>13</sup> PGW Exhibit 1

and that the Complainant was responsible for payment of the outstanding balance in his PGW.<sup>15</sup>

After placing gas service in his name for the Champlost address, The Complainant made no payments towards his account with PGW.<sup>16</sup> On August 22, 2013, PGW terminated the Complainant's gas service at the Champlost address for non-payment. The Complainant is no longer a customer of PGW.<sup>17</sup> The Complainant's total outstanding balance with PGW is \$12,432.99, which consists of the \$7,603.01 balance from his Park Avenue address, and the \$4,829.98 balance accumulated in his Champlost address.<sup>18</sup>

By Hearing Notice dated September 29, 2014, an initial hearing was scheduled for Monday, November 10, 2014. The initial hearing convened as scheduled. The Complainant appeared *pro se* and testified in support of the Complaint. Laureto Farinas, Esq. represented PGW, and presented the testimonies of Wendy Vacca, Senior Customer Review Unit Officer with PGW in charge of reviewing and investigating formal and informal complaints filed with the Commission, and that of Timothy Sullivan, Superintendent of Revenue Protection for the Respondent. The PGW witnesses sponsored five (5) exhibits, which were admitted into the record.

At the conclusion of all testimony, PGW moved to dismiss the portion of the Complaint concerning the \$7,603.01 amount billed to Complainant in April of 2009 for previously unbilled services due to theft, on the grounds that the statute of limitations on these claims had run.

On June 8, 2015, the Commission issued the Initial Decision dismissing the Complaint against PGW at the above referenced docket in its entirety, with prejudice.

Pursuant to 52 Pa. Code §5.535, the Secretary's letter dated June 24, 2015, the Commission granted the Complainant's request for an extension of time in which to file Exceptions to July 2, 2015 and ordered a concomitant extension of time in which to file Reply Exceptions by Monday July 13, 2015.

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<sup>14</sup> Tr. 28-29, PGW Exhibits 1 and 5

<sup>15</sup> Tr. 37, PGW Exhibits 1 and 5

<sup>16</sup> PGW Exhibit 2

<sup>17</sup> Tr. 7-8

<sup>18</sup> Tr. 31

## II. PGW'S REPLY TO EXCEPTION

The Exception letter merely reiterates the generic disagreement with the bills and account balance that are the subject of the dispute. 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 burned 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).

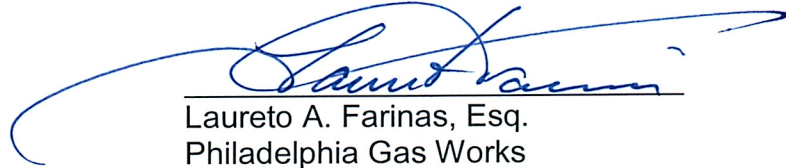
The Exception letter fails to establish an error in the Initial Decision concerning the operation of the statute of limitations in this matter. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose. 66 Pa.C.S. § 3314(a). The statute of limitations can be tolled by the filing of an informal complaint with the Commission, and by the doctrine of equitable estoppel. *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992), *Lester Ely v. Pennsylvania American Water Company*, C-20055616 (Order entered July 10, 2006). By law a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. P.U.C. 637 (1982).

**III. CONCLUSION**

For the reasons stated above, PGW requests that the Commission deny Complainant's exception and dismiss the Complaint in this matter.

Respectfully submitted,

July 13, 2015



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

**CERTIFICATE OF SERVICE**

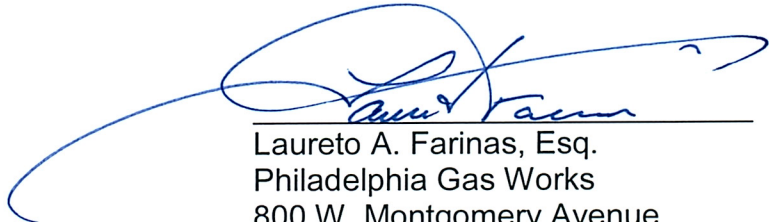
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. James T. Counsel, III  
1514 Champlost Avenue  
Philadelphia, PA 19141

July 13, 2015



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