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July 27, 2015

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

JUL 27 2015

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Albert Buoncristiano v. PGW, Docket No. P-2015-2493209

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.572 (e), the Philadelphia Gas Works ("PGW") hereby files its Answer to the Complainant's Petition for Rescission of the November 5, 2014 Order and Opinion 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: Paul T. Sonowski, Esq
Albert Buoncristiano
Linda Pereira

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert Buoncristiano

v.

Philadelphia Gas Works

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:
:
:
:

Docket No. P-2015-2493209
(regarding Docket No. F-01061153)

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JUL 27 2015

**Answer of
Philadelphia Gas Works
To Complainant's Petition for Rescission**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.572(e), in the above captioned matter, the Philadelphia Gas Works ("PGW") hereby files its Answer to the Complainant's Petition for Rescission of the November 5, 2004 Order and Opinion in the above captioned matter which was made at the Commission's Public Meeting held November 4, 2004 and entered on November 5, 2004 (the "Petition"). The Complainant's Petition for Rescission in this matter was filed on July 16, 2015, some 10 years and eight months following the entry of the Commission's final order.

I. Introduction

Originally, the facts and circumstances concerning the dispute in this matter were addressed in the Commission decision in *Albert Buoncristiano v. PGW*, Docket No. F – 01061153, Final Order, entered November 5, 2004. Over a decade ago, the Complainant challenged a decision of the Bureau of Consumer Services ("BCS") on or about April 7, 2003, found that the balance ultimately rendered, \$32,673.80, is correct but provided and a waiver of late payment charges. The bills were issued with a due date of October 31, 2001.

In June 2003, the Complainant filed its appeal of that BCS decision, listing the address of 3180 Grant Avenue, Philadelphia, Pennsylvania as the address for service of process. That address, 3180 Grant Avenue, is also the Service Address. The Complainant also provided a telephone number. PGW filed a timely answer to that complaint.

By notice dated December 17, 2003 the Commission scheduled Telephonic Hearing for March 29, 2004 before Administrative Law Judge Allison K. Turner.

A telephonic hearing was held on March 29, 2004 as scheduled. The Complainant failed to participate in the telephonic hearing, providing no further information.

At the telephonic hearing PGW explained that it had issued bills based upon meter readings from a switched meter for several years to the Complainant's account for gas service to the mixed commercial and residential end use Service Address. PGW's witness further explained the other corrective measures taken on the Complainant's account including the provision of a credit of \$6,9007.53.¹ As the Complainant was no longer a customer of record on the PGW account for gas service to the Service Address and the Complainant failed to participate in the telephonic hearing, PGW moved to dismiss the Complaint with prejudice and requested that the Commission order the Complainant's payment of the final bill in the amount of \$33,072.

On September 8, 2004, the Commission issued the Initial Decision in *Albert Buoncrisitano v. PGW*, Docket No. F-01061153 ("Initial Decision"), which dismissed the Complaint for failure to prosecute, but not with prejudice as is usually the case where the Complainant has not attended the hearing. The Complainant would have received the Initial Decision at the address provided for Service of Process, the Service Address. The Complainant did not notify the Commission of a change in the address for service of process.

PGW filed exceptions to the finding in the Initial Decision that the matter was dismissed without prejudice. PGW argued that as the Complainant failed to participate in the hearing that was properly noticed, the matter should have been dismissed with prejudice consistent with the overwhelming weight of the Commission's policy in dismissing a Complaint with prejudice where the Complainant fails to appear at the hearing applies to this matter.

PGW had further argued that the Complainant had a review of the matter by the BCS. It is the Complainant's responsibility and burden to participate and show how further relief, beyond the BCS decision should be granted by the Commission. The

¹ *Albert Buoncrisitano v. PGW*, Docket No. F-01061153, Initial Decision, Findings of Fact 14 through 17.

burden of proof as to whether the BCS decision was reasonable was with the Complainant. His failure to appear meant that he had not met his burden of proof. *Andre Turner v. PECO Energy*, Docket No. C-00956999 (Order entered March 14, 1996). *Tiffany Bryant v. Bell Atlantic – Pa.*, Docket No. F-00270958 (Order entered April 11, 1996) PGW served a copy of its exceptions on the Complainant at the address designated for service of process. The Complainant did not reply to PGW's exceptions.

In its Order and Opinion November 5, 2004, the Commission ordered that the matter be dismissed with prejudice in accordance with Commission policy and overwhelming precedent. The complaint presented no exceptional circumstances that would merit providing the Complainant with another opportunity to have his "day in court" when he has clearly chosen not to participate. The Complainant would have received the Commission's Order and Opinion of November 5, 2014 at the address provided for Service of Process, the Service Address. The Complainant did not notify the Commission of a change in the address for service of process. The Complainant did not file any response or petition to the Commission's Opinion and Order for more than a decade.

Prior to filing the instant Petition for Rescission of the November 5, 2004 Order and Opinion, the Complainant, in January 2015, filed another formal complaint, seeking to reverse the 2003 BCS decision under Docket No. C-2015-2466853. In that Complaint, the Complainant is represented by counsel but has also listed as the address provided for Service of Process, 3180 Grant Avenue, the Service Address. Thus, since the commencement of the initial informal complaint underlying these matters, the Complainant has indicated that the address for service of process has remained 3180 Grant Avenue, the Service Address. By order of Administrative Law Judge Angela T. Jones, dated July 21, 2015, that proceeding under Docket No. C-2015-2466853 is being held in abeyance until the conclusion of the Commission's disposition of the instant petition. Under Docket No. C-2015-2466853 by instruction of Administrative Law Judge Angela T. Jones through Order #2 – Briefing Schedule, dated May 13, 2015, the parties submitted a Main and Reply Brief on the question of "issue

preclusion" presented by the facts underlying the Opinion and Order of November 5, 2004 and the commencement of a new matter.

Although the paragraphs of the Complainant's Petition for Rescission of the November 5, 2004 Order and Opinion in the above captioned matter are not numbered, PGW, in the remaining paragraphs, will respond to the averments contained in each the paragraphs of the Petition in turn.

II. Answering Paragraphs

Admitted in part. Denied in part. By way of further answer, in June 2003, the Complainant filed its appeal of that BCS decision, listing the address of 3180 Grant Avenue, Philadelphia, Pennsylvania as the address for service of process. That address, 3180 Grant Avenue, is also the Service Address. By notice dated December 17, 2003 the Commission scheduled Telephonic Hearing for March 29, 2004 before Administrative Law Judge Allison K. Turner. A telephonic hearing was held on March 29, 2004 as scheduled. The Complainant failed to participate in the telephonic hearing, providing no further information. On September 8, 2004, the Commission issued the Initial Decision dismissing the Complaint for failure to prosecute, but not with prejudice, as is usually the case where the Complainant has not attended the hearing. The Complainant would have received the Initial Decision at the address provided for Service of Process, the Service Address. The Complainant did not notify the Commission of a change in the address for service of process.

Admitted. By way of further answer, PGW filed exceptions to the finding in the Initial Decision that the matter was dismissed without prejudice, that would permit the Complainant to file a new complaint. PGW argued that as the Complainant failed to participate in the hearing that was properly noticed, the matter should have been dismissed with prejudice consistent with the overwhelming weight of the Commission's policy in dismissing a Complaint with prejudice where the Complainant fails to appear at the hearing applies to this matter. His failure to appear meant that he had not met his burden of proof. *Andre Turner v. PECO Energy*, Docket No. C-00956999 (Order entered March 14, 1996). *Tiffany Bryant v. Bell Atlantic – Pa.*, Docket No. F-00270958 (Order entered April 11, 1996) PGW served a copy of its exceptions on the

Complainant at the address designated for service of process. The Complainant did not reply to PGW's exceptions.

Denied. PGW denies that the Commission did not recognize the opportunity for the parties to negotiate a payment plan. To the contrary, the Commission is deemed to know that parties may negotiate a payment plan at any time without the assistance of the Commission.

Admitted. PGW admits that the Complainant filed the new complaint on the same matter in 2015. By way of further answer, by order of Administrative Law Judge Angela T. Jones, dated July 21, 2015, that proceeding under Docket No. C-2015-2466853 is being held in abeyance until the conclusion of the Commission's disposition of the instant petition. The parties submitted a Main and Reply Brief on the question of "issue preclusion" presented by the facts underlying the Opinion and Order of November 5, 2004 and the commencement of a new matter.

Denied. PGW denies that the Complainant did not become aware of the Initial Decision until recently. To the contrary, the Complainant was properly served with the hearing notice, the Initial Decision, PGW's exceptions to the Initial Decision and the Commission's Order and Opinion of November 5, 2004. By way of further answer, the Complainant's concern with this matter now comes about as he has "sought financing from the Port Richmond Savings to upgrade 3180 Grant Avenue..." This shows that the Complainant attempts to avoid the implementation of the Municipal Lien that has been filed against the property. The Commission has repeatedly recognized its lack of subject matter jurisdiction over the filing of liens pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. Section 7101, et seq. *Larry and Gail Newman v. PGW*, Docket No. C-2011-2273565 (Final Opinion and Order issued March 29, 2012) The Complainant makes a collateral attack upon the filing of the Municipal Lien with the filing of his Petition more than a decade after the dismissal of the complaint.

Admitted. PGW admits that the Initial Decision dismissed that complaint for failure to appear. By way of further answer, the Commission's Order and Opinion of November 5, 2004, states that the dismissal of the complaint should have been with prejudice, precluding the Complainant from filing the matter at a later date.

Denied emphatically. PGW denies that the Complainant did not receive the hearing notice. The Complainant had designated the Service Address, 3180 Grant Avenue as the address for service of process. Moreover, the Complainant filed January 2015 under Docket No. C-2015-2466853, lists only 3180 Grant Avenue as the address for service of process of the Complainant. As late as January 2015, the Complainant uses 3180 Grant Avenue as the address to receive notice about these matters. The Complainant did not miss the hearing as a result of a failure to be at the Service Address to received the hearing notice. Since the commencement of the initial informal complaint underlying these matters, the Complainant has indicated that the address for service of process has remained 3180 Grant Avenue, the Service Address. The Complainant was properly served at 3180 Grant Avenue with the hearing notice, the Initial Decision, PGW's exceptions to the Initial Decision and the Commission's Order and Opinion of November 5, 2004, well in advance of any action taken with a licensee in 2011.

Admitte in part. Denied in part. PGW admits that the Complainant seeks rescission, however, the Complainant seeks relief in order to evade the implementation of the Municipal Lien that has been filed against the 3180 Grant Avenue for services rendered more that a decade ago for which the Complainant had the opportunity to be heard but failed to pursue the matter.

Admitte in part. Denied in part. PGW admits that the Initial Decision reviewed the circumstances of the matter and that the curcumstataces date back to a time before the Commission had jurisdiction over customer billing disputes for PGW. By way of further answer, PGW provided testimony of all corrective measaures taken on the Complainant's account at the hearing that the Complainant failed to attend.

Denied. PGW denies that the Complainant suffered a grave injustice.

Denied. The Initial Decision points out all corrective measaures taken on the Complainant's account at the hearing that the Complainant failed to attend.

Denied. The Initial Decision points out all corrective measaures taken on the Complainant's account at the hearing that the Complainant failed to attend.

Admitted. The Commission's Order and Opinion of November 5, 2004 correctly found that the matter should have been dismissed with prejudice for the Complainant's failure to prosecute the complaint.

Denied emphatically. The Commission should deny the Complainant's request for the Commission to rescind its order of more than a decade ago. PGW denies that the Complainant did not receive the hearing notice. The Complainant had designated the Service Address, 3180 Grant Avenue as the address for service of process. Moreover, the Complainant filed January 2015 under Docket No. C-2015-2466853, lists only 3180 Grant Avenue as the address for service of process of the Complainant. As late as January 2015, the Complainant uses 3180 Grant Avenue as the address to receive notice about these matters. The Complainant did not miss the hearing as a result of a failure to be at the Service Address to receive the hearing notice. Since the commencement of the initial informal complaint underlying these matters, the Complainant has indicated that the address for service of process has remained 3180 Grant Avenue, the Service Address. The Complainant was properly served at 3180 Grant Avenue with the hearing notice, the Initial Decision, PGW's exceptions to the Initial Decision and the Commission's Order and Opinion of November 5, 2004, well in advance of any action taken with a licensee in 2011.

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and Opinion of November 5, 2004, well in advance of any action taken with a licensee in 2011.

Admitted in part. PGW admits that much time has passed since the Commission's decision dismissing the complaint. PGW denies that the Commission's decision in this regard is unfair.

Denied. The Commission should deny the Complainant's decision to have his day in court as the chose not to participate at the hearing for which he was given proper notice.

III. Argument

A. The Complainant's Request for Review under 52 Pa. Code §5.572(d), the Complainant Fails To Raise New or Novel Arguemnts Not Previously Considered by the Commission.

With the filing of the Petition, the Complainant attempts to revisit the same dispute now more than a decade after the Commission's Opinion and Order became final in 2004. Section 316 of the Public Utility Code, 66 Pa.C.S. 316, operates to preclude litigants from pursuing the same claims that have been conclusively resolved before the Commission. Under this section, the Commission's dismissal of the Complaint with prejudice is conclusive upon all parties unless set aside, annulled or modified on judicial review.² Parallel to the Commission's decisions in , *James E. Creehan v. Duquesne Light Company*, Docket No. C-2012-2297124, Opinion and Order entered May 23, 2013; *Lorrie Reynolds v. PPL Electric Utilities Corporation*, Docket No. C-2011-2255268, Opinion and Order entered January 5, 2012 (the matter was resolved by the filing of an unobjected to Certificate of Satisfaction), the Commission had given its final disposition of the matter with the finding that the matter should be dismissed with prejudice. The nature of the *Complainant's account and the nature of problems with PGW's system had been the subject of an investigation by the Commission through the BCS and correction by PGW. The problems with the individual account were corrected prior to the review of the BCS. The complaint presented no exceptional circumstances that would merit*

providing the Complainant with another opportunity to have his "day in court" when he has clearly chosen not to participate. Given the discussion above, it is clear that the complaint must remain dismissed with prejudice in accordance with Commission policy and precedent.

With the filing of his complaint under the Petition, the Complainant has attempted to revive the same dispute now more than a decade after the Commission's Opinion and Order became final in 2004 in a previous matter. The Complainant could have filed a petition for rescission under 52 Pa. Code §5.572(d) under the previous matter. Even if the Complainant had done so or should the Commission deem the Complainant's filing as a petition for rescission, such a request should be denied. The Commission has articulated the standards governing requests for relief under 52 Pa. Code §5.572 in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982). Under the standards of *Duick*, such a petition may properly raise any matter designed to convince this Commission that it should exercise its discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.³

In its Petition Complainant has failed to raise any new or novel arguments not previously heard by the Commission concerning the Complainant's failure to participate in the hearing held on March 2004. Further the Complainant has failed to explain adequately why he failed to address the matter with the filing of exceptions or reply exceptions in 2004. The complaint presents no exceptional circumstances that would merit providing the Complainant with yet another opportunity to have his "day in court" when he has clearly chosen not to participate.

² 66 Pa.C.S.A. §316

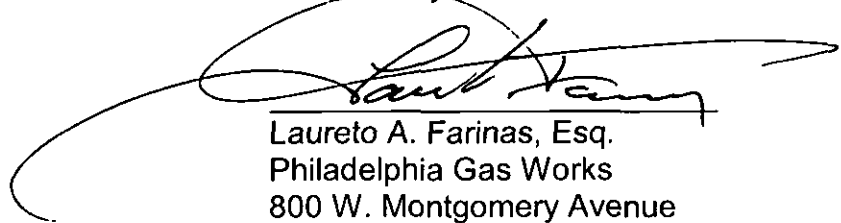
³ *Duick*, 56 Pa. P.U.C. at 559

IV. Conclusion

For the foregoing reasons, PGW respectfully requests that the Commission dismiss the Complaint.

Respectfully submitted,

July 26, 2015



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

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JUL 27 2015

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

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 § 1.54 (RELATING TO SERVICE BY A PARTICIPANT).

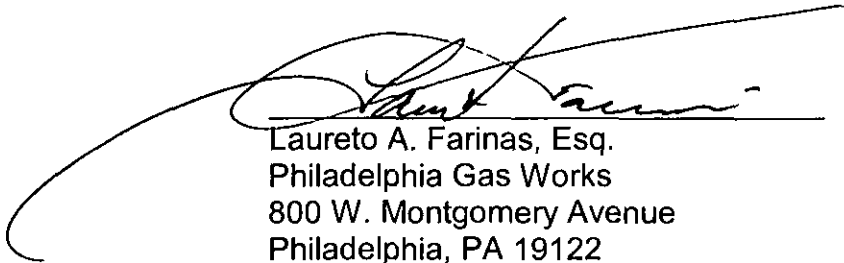
Service List

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Albert Buoncristiano
3180 Grant Avenue
Philadelphia, PA 19114

July 26, 2015



Laureto A. Farinas, Esq.
Philadelphia Gas Works
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Philadelphia, PA 19122

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PA PUBLIC UTILITY COMMISSION
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