



PHILADELPHIA GAS WORKS

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August 26, 2015

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

Re: Tawana Lipscomb-Burnett v. PGW, Docket No. C - 2014 - 2422450

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 July 16, 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: Tawana Lipscomb-Burnett (Regular Mail)
Linda Pereira (PGW Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tawana Lipscomb-Burnett,	:	
Complainant	:	
	:	Docket No. C – 2014 – 2422450
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**Philadelphia Gas Works’ Reply Exceptions to the
Complainant’s Exceptions to the Initial Decision of July 16, 2015**

Pursuant to 52 Pa. Code §5.534, and the Secretary’s letter of August 7, 2015 in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files its Reply Exceptions to the Complainant’s Exceptions to the Initial Decision issued July 16, 2015, in the above captioned matter (“Initial Decision”).

I. Introduction

On May 14, 2014, the Complainant filed a formal Complaint against PGW with this Commission alleging that Respondent was threatening to shut off her service, and that there were incorrect charges on her gas bills from PGW. The Complainant alleged that PGW miscalculated her household income in determining her eligibility for PGW’s Customer Responsibility Program (CRP) payment amount and later had refused to reduce the CRP payment amount until she could pay the past due amount. The Complainant requested that PGW correct its billing of the CRP payment about from July of 2013 forward to reflect her correct household income. In the alternative, she requested a payment arrangement that allows her to pay the past due amount in installment payments.¹

On June 10, 2014, PGW filed an Answer denying the material allegations of the Complaint. A Hearing Notice dated June 12, 2014, notified the parties that an initial hearing was scheduled for August 7, 2014, at 10:00 a.m.

On August 5, 2014, the Commission granted the Complainant’s request for a continuance of the scheduled hearing, which was rescheduled for November 12, 2014.

¹ Complaint.

The initial hearing was held at rescheduled date and time presided over by Administrative Law Judge Eranda Vero (“ALJ”). The Complainant represented herself and testified in support of her Complaint, sponsoring 17 exhibits which were admitted into the record in this matter. PGW represented by the undersigned, represented the PGW and presented the testimony of Cynthia Garner, Customer Review Officer who sponsored five exhibits, all of which were admitted into the record.

At the conclusion of the hearing, the ALJ directed the Complainant to submit, as a late-filed exhibit, documentation substantiating her claim that she had submitted to PGW a CRP application in November of 2013.² The ALJ also instructed PGW to submit business records reporting Lonnie Burnett as self-employed.³ The parties were instructed that late-filed exhibits were due by November 26, 2014, with written objections due by December 10, 2014.⁴

On November 18, 2014, PGW submitted the requested information identified as PGW late-filed Exhibit 6. The Complainant had not submitted any late-filed exhibits as of the day of the issuance of the Initial Decision.

On July 16, 2015 the Commission issued the Initial Decision, dismissing the Formal Complaint against PGW with the Commission at the above captioned matter for the Complainant’s failure to carry her burden of proof.

On or about August 3, 2015, the Commission received the Complainant’s exceptions dated July 18, 2015, without indication that the Complainant had served a copy upon PGW.

Pursuant to the Secretary’s letter of August 7, 2015 in this matter PGW files its Reply Exceptions to the Complainant’s Exceptions to the Initial Decision issued July 16, 2015, in the above captioned matter. PGW’s Reply to the Complaint’s Exceptions follows:

² Transcript pp. 83-84

³ Transcript pp. 82-83

⁴ Transcript p. 85

II. PGW's Reply Exceptions

The evidence of record fails to show that PGW has acted unreasonably or provided unreasonable service in violation of the Public Utility Code §1501, concerning the calculation of the Complainant's monthly CRP payment amount at any time. The Complainant's exceptions fail to show that the Initial Decision errs in any way to reverse its findings.

Pursuant to the Public Utility Code, 66 Pa. C.S. §332(a), the party seeking relief from the Commission, the Complainant, bears the burden of proof. To establish a sufficient case and satisfy its burden of proof, the Complainant must show that the PGW is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). Such a showing must be made by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 134 Pa. Cmwlth. 218, 578 A.2d 600 (1990).

A finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. P.U.C.*, 67 Pa. Cmwlth. 597, 447 A.2d 1100 (1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. V. Pa. P.U.C.*, 489 Pa. 109, 419 A.2d 1037 (1980).

While the burden of persuasion 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. Cmwlth. 2001).

The Complainant takes exception or reviews 18 Findings of Fact in the Initial Decision. These are grouped into 8 separate arguments/comments concerning the facts from which the Complainant takes exception. PGW replies to each in turn.

1. **Fact Finding #5** – The Complainant takes exception to the Initial Decision, Finding of Fact No. 5, which states in his application for gas service the Customer of Record, Lonnie Burnett was “self-employed.”

In this exception the Complainant seeks to explain how the record of “self-employed” could have been recorded in PGW records. Attached to the exceptions document, the Complainant submits IRS information on documents that are not in evidence. This is now submitted in response to PGW’s timely submitted business record that shows that at the time of Mr. Burnett’s gas service the records indicate that he was “self-employed.” This information, even if properly made part of the record, shows income information for the years 2005 and 2006. The income and status of employment for those years are not relevant to the calculation of the Complainant’s CRP application submitted in 2014, which is the subject of this matter. This exception should be denied.

2. **Fact Finding #10** – The Complainant takes exception to the Initial Decision, Finding of Fact No. 10, which states as follows:

10. On May 1, 2013, a Notice of Financial Determination was sent to Ms. Lipscomb informing her that she was eligible for Emergency Unemployment Compensation and that her weekly benefit rate was \$456.00, minus any deductions required by state or federal law. Complainant Exhibit 12.

In this exception the Complainant seeks to explain what actions she took when she received the Notice of Financial Determination. The Complainant’s actions in this regard have no bearing on the ALJ’s determination that the evidence of record does not support the Complainant’s claim that PGW improperly failed to reduce her CRP amount following her February 20, 2014 application. PGW acted within the provisions of its tariff when it requested Ms. Lipscomb to submit additional income information for all the adults in her household. As indicated in the Initial Decision, the Complainant failed to carry her burden of proving that PGW violated the Public Utility Code or a regulation or order of the Commission.⁵

⁵ Initial Decision, p. 12

3. Fact Finding # 12

In this exception, the Complainant merely comments on her reasons for the obtaining a Protection from Abuse Order. She also attempts to interpret a non-verbal response from the PGW witness who was not giving testimony at that time. This exception/comment should be denied and/or disregarded.

4. Fact Finding # 13-16 The Complainant takes exception to the Initial Decision, Finding of Fact Nos. 13 through 16

In this exception the Complainant seeks to reiterate her testimony at the hearing, explain what she did and the result of the submission of the CRP application. The exceptions to these fail to show any error in law or overlooking in the facts that support the findings in the Initial Decision the following:

The Exhaustion of Benefits Notice did not state that the Complainant was currently out of funds, but only that she would be out of funds in October 2013. PGW advised Ms. Lipscomb to get updated information from the Unemployment Compensations Bureau's website showing "zero funds," and to submit proof of income for her husband, Lonnie Burnett.⁶ On August 8, 2013, PGW informed the Complainant that her new CRP amount was \$231.40 per month, in addition to \$5.00 towards her pre-program arrears.⁷ This was calculated based on Complainant's household income of \$2,314.00 per month consisting of \$1,660 per month in unemployment benefits for Ms. Lipscomb, \$454 in Social Security benefits for DaJuan Echols and \$200 cash assistance from Ms. Lipscomb's mother.⁸

The Complainant further argues that a PGW representative should have explained that submitting changes in income would result in a change of payment amount. Conspicuously, the Complainant seems to argue that she should have been warned before submitting the income change information to provide her with the option of not submitting the information, keeping her CRP payment at a lower amount than that which would reflect her household income and composition. This exception should be denied.

⁶ Finding of Fact No. 14, Tr. 39-40, 62, Complainant Exhibit 13

⁷ Finding of Fact No. 15, Tr. 39-40, 62, Complainant Exhibit 13

⁸ Tr. p. 40

5. **Fact Finding # 17** The Complainant takes exception to the Initial Decision, Finding of Fact NO. 17.

In this exception, the Complainant reviews her submission of a new CRP application in February 2014. She seems to contend that information similar to that submitted in support of her PGW CRP application was submitted to PECO for enrollment in the PECO CAP. With this exception the Complainant seems to argue that PECO provided the correct response in approving her PECO CAP enrollment shows that PGW's re-calculation of her CRP payment amount is incorrect. The exception fails to show how the PECO CAP controls the rules governing the calculation of the PGW CRP payment amount. This exception should be denied.

6. **Finding #20 – 22** The Complainant takes exception to the Initial Decision, Finding of Fact Nos. 20 - 22, which states in his application for gas service the Customer of Record, Lonnie Burnett was "self-employed."

In this exception the Complainant seeks to explain her reasons for filing four informal complaints with the Commission's Bureau of Consumer Services (BCS) on the same issue. The Complainant merely comments that she believed that the four informal complaints filed between July of 2013 and March 2014, Ms. Lipscomb filed four informal complaints at BCS Case # 3123895, BCS Case # 3134248, BCS Case # 3171800, and BCS Case # 3214558 were not investigated properly.

All four informal complaints challenged the increase of the CRP payment amount from \$164.16 to \$231.40 per month. With BCS Case # 3214558 the Complainant also challenged PGW's request for additional household income information. All four informal complaints were dismissed by BCS after finding that PGW had acted in accordance with the provisions of its Commission approved CRP program.⁹

7. **Fact Finding #23 – 24** The Complainant takes exception to the Initial Decision, Finding of Fact Nos. 23 and 24.

In this exception the Complainant introduces a new issue, stated that she was not

⁹ Initial Decision p. 6

informed that had she entered into a payment arrangement she would not be required to pay a deposit due to her income and domestic situation. When the Complainant contacted PGW on March 24, 2014 to inquire about placing gas service at the Service Address in her name, PGW informed her that the existing balance for the gas account would be transferred in her name since she had resided at the Service Address during the time the balance accumulated in the account. The evidence shows that the Complainant terminated the call to PGW without taking the necessary steps to place gas service in her name during which she would have been informed of PGW's waiver of the deposit.¹⁰ This exception should be denied.

8. Fact Finding #25 – 30 The Complainant takes exception to the Initial Decision, Finding of Fact Nos. 25 through 30.

In this exception, the Complainant reviews the original arguments made in the Complaint and at the hearing. The exception raises no error in fact or in law that would merit the change in the finding of the Initial Decision that the evidence of record does not support the Complainant's claim that PGW miscalculated her CRP amount in August of 2013 by including unemployment benefits that she was no longer receiving and that she failed to carry her burden of proving that PGW acted contrary to the provisions of its tariff or that the Company violated the Public Utility Code or a regulation or order of the Commission. This exception should be denied.

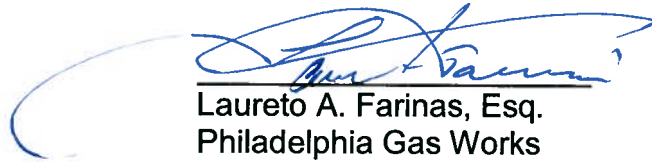
¹⁰ Tr. 54, PGW Exhibit 1.

IV. CONCLUSION

For the foregoing reasons, PGW respectfully requests that this Commission dismiss the Complaint and issue a decision adopting the Initial Decision and finding that PGW was neither in violation of any section of the Pennsylvania Public Utility Code nor its Tariff in connection the above referenced matter.

Respectfully submitted,

August 26, 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).

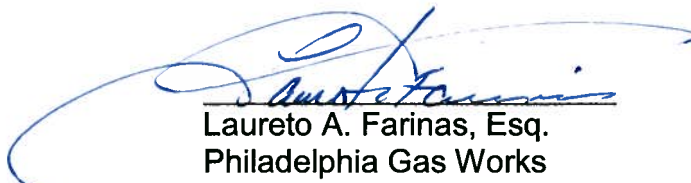
Service List:

For Complainant:

Ms. Tawana Lipscomb-Burnett
5348 Morse Street
Philadelphia, PA 19131

(By express mail)

August 26, 2015


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