



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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Danielle Leva, Paralegal  
Legal Department  
Direct Dial: 215-684-6862  
FAX: 215-684-6798  
E-mail: [danielle.leva@pgworks.com](mailto:danielle.leva@pgworks.com)

November 24, 2015

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

**Re: Marion Butler v. PGW, Docket No. F - 2015 - 2465407**

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 October 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: Marion Butler (Regular Mail)  
Linda Pereira (PGW Mail)  
Wendy Vacca (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Marion Butler,</b>	:
Complainant	:
v.	: <b>Docket No. F-2015-2465407</b>
	:
<b>Philadelphia Gas Works,</b>	:
Respondent	:

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

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, (“PGW”) hereby files its reply to the Complainant’s exception letter to the Initial Decision issued October 28, 2015, in the above captioned matter (“Initial Decision”).

**I. INTRODUCTION**

This matter is an appeal of the informal decision issued by the Commission’s Bureau of Consumer Services (BCS) at BCS # 324362. The Complainant, Marion Butler filed the instant matter with the Pennsylvania Public Utility Commission (Commission) against PGW on January 17, 2015. The Complainant alleged that there are incorrect charges on her gas bills for service at 5654 Diamond Street, 2<sup>nd</sup> Floor during the period February 21, 2014, to June 11, 2014.

By notice dated March 5, 2015, an Initial Hearing was scheduled for Monday, April 20, 2015 before Administrative Law Judge Eranda Vero. The Initial Hearing was held on the scheduled date and time. The Complainant, Marion Butler appeared *pro se* and sponsored one exhibit, which was admitted into the record. PGW appeared and presented the testimony of Cynthia Garner, Customer Review Officer – PGW who reviews and investigates complaints filed with the Commission by PGW customers. PGW sponsored seven exhibits which were admitted into the record. The record in this matter closed on May 20, 2015.

On October 28, 2015, the Commission issued the Informal Decision, dismissing the Complaint in its entirety as the Complainant failed to meet her burden of proof that PGW breached a duty owed to the Complainant or that the PGW violated the Public Utility Code or a regulation or order of the Commission, pursuant to 66 Pa.C.S.A. § 701.

On or about November 15, 2015, the Complainant filed Exceptions to the Initial Decision with the Commission. Pursuant to 52 Pa. Code §5.535, PGW files its timely reply to the Complainant's exceptions document.

## II. PGW'S REPLY TO EXCEPTION

The Exceptions document merely lists several phrases or questions specific lines of the Initial Decision. The Exceptions document fails to explain the reasons for raising the particular exception. The Exceptions document raises dissatisfaction with the Initial Decision finding that the PGW Technician conducted a trace meter piping inspection and found that there was no foreign load with the Complainant's account, but does not point to any error with additional support.

The Exceptions document 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 or 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.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600

(Pa. Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980). The Initial Decision and its findings concerning the Complainant's gas service at 5353 Spruce Street and 5654 Diamond Street, 2<sup>nd</sup> Floor are supported by substantial evidence.

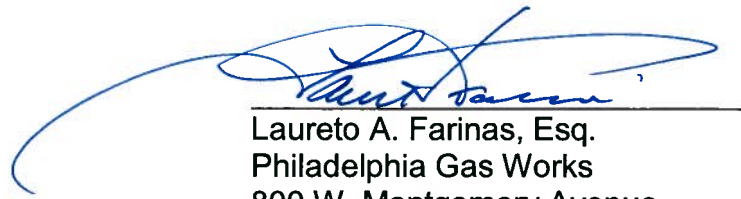
Further, the Initial Decision points out that the Complainant, failed to offer any additional evidence to rebut PGW's evidence. The Initial Decision states that despite the Complainant's repeated assertions that she did not receive heat during the four months she had gas service at the 5654 Diamond Street address, the assertions do not constitute evidence to support her claim against PGW. The Exceptions document appears to restate similar assertions without explanation. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

### III. CONCLUSION

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

Respectfully submitted,

November 24, 2015

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

**CERTIFICATE OF SERVICE**

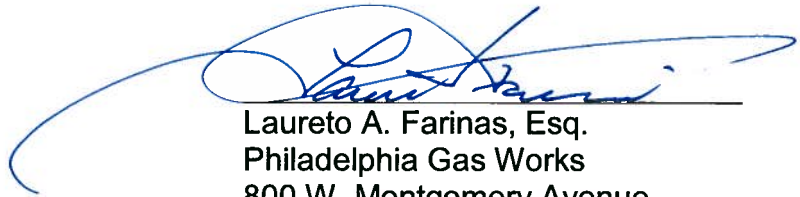
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

MARION BUTLER  
7200 M TRACE APT D214  
UPPER DARBY PA 19082

November 24, 2015



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