



PHILADELPHIA GAS WORKS

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August 22, 2016

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

Re: Deree J. Norman v. PGW, Docket No. C-2015-2489503

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 22, 2016, 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,

A handwritten signature in blue ink that reads "Danielle Leva".

Danielle Leva

Enclosure

cc: Deree J. Norman (Regular Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deree J. Norman,	:
Complainant	:
v.	: Docket No. C-2015-2489503
	:
Philadelphia Gas Works,	:
Respondent	:

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

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter regarding this matter dated August 12, 2016, the Philadelphia Gas Works, (“PGW”) hereby files its reply to the Complainant’s exceptions to the Initial Decision issued July 22, 2016, in the above captioned matter (“Initial Decision”).

I. INTRODUCTION

This matter is billing dispute in which Complainant, Deree J. Norman, filed a formal Complaint on June 25, 2015 against PGW, alleging that he was consistently “double billed,” that PGW had “misappropriated” LIHEAP credits, and that PGW had improperly billed Complainant under PGW’s Customer Responsibility Program (CRP). Complainant also challenged the accuracy of PGW’s gas usage charge. To the Complaint, PGW filed a timely Answer on July 15, 2015, denying the allegations set forth in the Complaint.

After a telephonic hearing conducted on September 24, 2015, and the close of the record, the Commission, on July 22, 2016, issued the Initial Decision that dismisses a formal Complaint because Complainant has not proved by a preponderance of the evidence that PGW violated the Public Utility Code (Code) or the rules and regulations of the Commission.

Pursuant to 52 Pa. Code §5.534, Exceptions to the Initial Decision were due for filing by August 11, 2016. The Complainant filed exceptions dated August 11, 2016 with the Commission (“Exceptions document”). Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter regarding this matter dated August 12, 2016, the due date for the filing of Reply Exceptions is due on August 22, 2016. This reply to the Complainant’s

exceptions document follows:

II. PGW'S REPLY TO EXCEPTIONS DOCUMENT

The Complainant's Exceptions document consists of a recitation and comment of the Findings of Fact and Conclusions of Law of the Initial Decision. Through the Exceptions document, the Complainant states that he concurs with the Initial Decision's Findings of Fact Nos. 1, 2, 3, 4 and 6. The Complainant also concurs with the Initial Decision's Conclusions of Law Nos. 1, 2, and 4, which includes 66 Pa. C.S. §332(a), and places the burden of proof in this matter upon the Complainant.

The Exceptions documents objects (takes exception) to Findings of Fact Nos. 5, 7, 8, 9, 10, 11, 12, 13, 14 and 15. The Complainant also objects (takes exception) the Initial Decision's Conclusions of Law Nos. 3 and 5.

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). 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).

Reply to Exception to Finding of Fact No. 5.

The Complainant takes exception to the Initial Decision Finding of Fact No. 5, which states that the Complainant's corrected Exhibit J and the issues therein listed are being investigated by PGW. Tr. at 42-43.

The Complainant's corrected Exhibit J was still under review as of the time of the Telephonic Hearing of September 24, 2015 and the outcome of the instant matter has a bearing on the further review of the Complainant's account.

The Exception document in this regard takes issue with the procedures for allowing public access to Commission documents. That issue is beyond the scope of this matter regarding PGW.

Therefore this exception should be denied.

Reply to Exception to Finding of Fact No. 7.

The Complainant takes exception to the Initial Decision Finding of Fact No. 7, which states that on April 29, 2012, a PGW repairman visited the residence due to a reported possible gas leak and found the natural gas fired house heater connected. Tr. 47.

The Exception document merely states that Finding of Fact No. 7 is a "complete misrepresentation." The Initial Decision found no credible evidence of record to support the Complainant's assertion that the finding is false. PGW's business documents establish the dates of visitation to the Complainant's Service Address. 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).

This Exception should be denied.

Reply to Exception to Finding of Fact No. 8.

The Complainant takes exception to the Initial Decision Finding of Fact No. 8, which states that according to PGW's records, Complainant's gas water heater was disconnected in September, 2011. Tr. at 48.

The Exception document also states that Finding of Fact No. 8 is a "misrepresentation." The Initial Decision found no credible evidence of record to support the Complainant's assertion that the finding is false. PGW's business documents establish the dates of the disconnection of the gas water heater at the Complainant's Service Address. 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).

This Exception should be denied.

Reply to Exceptions to Findings of Fact Nos. 9 through 14.

The Complainant's Exceptions document regarding Findings of Fact Nos. 9 through 14, all involve the Complainant's enrollment in PGW's Customer Responsibility Program ("CRP"). These are:

9. Complainant has been a participant in PGW's CRP, originally enrolled prior to 2009, and has had discussions with PGW representatives about CRP billing, re-certification and LIHEAP. Tr. at 44-45; PGW Exhibit 1.

10. On December 21, 2009, Complainant's participation in the CRP was suspended due to his failure to re-certify. Tr. at 54; PGW Exhibit 2.

11. In February-March, 2012, Complainant was actively seeking to re-enroll in the CRP. Tr. at 49.

12. Complainant was denied re-enrollment in the CRP due to his failure to produce required documentation. Tr. at 48-49.

13. The net effect of CRP participation is to freeze a customer's arrearages and to charge the customer based solely on his income; the customer is not charged on the basis of gas used. Tr. at 56-58.

14. When Complainant was no longer a participant in the CRP on March 1, 2013, his arrearages were unfrozen, and he was billed based on gas usage. Tr. at 57; PGW Exhibit 2.

The Exceptions document objects to these Findings as the Complainant states that he was never enrolled in CRP. The Initial Decision found no credible evidence of record to support the Complainant's assertion that the he was never enrolled in CRP. The Complainant offered no evidence of bills issued for the period that were based upon actual gas usage rather than the monthly payment calculated for CRP. PGW's business documents establish the dates and the income reported that rendered the Complainant eligible for that program. The Complainant's mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim of never having been enrolled in that program. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). These Exceptions should be denied.

Reply to Exceptions to Conclusions of Law Nos. 3 and 5

Lastly, the Complainant also objects (takes exception) the Initial Decision's Conclusions of Law Nos. 3 and 5.

These are:

3. A preponderance of the evidence is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957).
5. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. §§ 332(a).

The Exceptions document fails to demonstrate that the Initial Decision relies upon these conclusions in error. 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. Initial Decision and its findings concerning the Complainant's gas service at are supported by substantial evidence. These exceptions merely re-state the Complainant's assertion that the facts presented by PGW are fraudulent or illegal. The Complainant points to no record evidence rebutting the facts demonstrated by PGW's business records. 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).

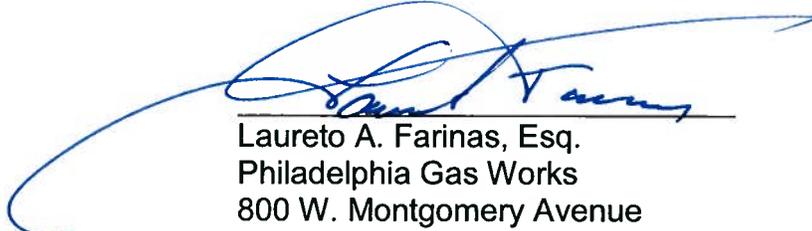
These Exceptions should be denied.

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,

August 22, 2016



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

CERTIFICATE OF SERVICE

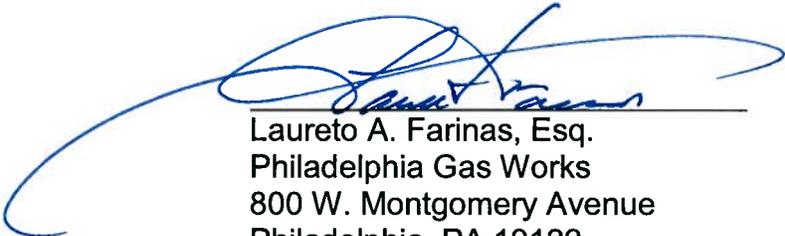
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

MR. DEREK J. NORMAN
5367 THOMAS AVENUE
PHILADELPHIA, PA 19143

August 22, 2016



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