



**PHILADELPHIA GAS WORKS**

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October 19, 2016

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

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OCT 19 2016

**Re: Kenneth McLean v. PGW, Docket No. C - 2016 - 2539492**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its exceptions to the September 29, 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 cursive script that reads 'Danielle Leva'.  
Danielle Leva

Enclosure

cc: Kenneth McLean (Regular Mail)  
Wendy Vacca (PGW Mail)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kenneth McLean

v.

Philadelphia Gas Works

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Docket No. C – 2016 – 2539492

**Philadelphia Gas Works' Exceptions  
to the Initial Decision, issued September 29, 2016**

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OCT 19 2016

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.533, the Secretary's letter dated September 29, 2016, transmitting the Initial Decision in the above captioned matter ("Initial Decision"), the Philadelphia Gas Works, ("PGW") hereby files its exceptions to the Initial Decision, which, *inter alia.*, partially sustains the complaint finding that the Complainant was homeless for a period and did not reside at the service address and was responsible for the portion of the balance which accrued during a period of time that he admits he was living at the service address.

**I. INTRODUCTION**

On March 29, 2013, the Complainant filed a formal Complaint against PGW with the Pennsylvania Public Utility Commission ("Commission") alleging that PGW had improperly transferred a balance to his account because he did not live at the 1509 W. 65<sup>th</sup> Avenue, Philadelphia, PA ("Service Address") during the time period when the balance accrued. PGW filed an answer timely on May 2, 2016, denying that there were incorrect charges on the Complainant's bill. PGW transferred the balance owed on the account of the Complainant's deceased father, Thomas McLean, to the Complainant's new account when the Complainant applied for gas service in 2015.<sup>1</sup> The Complainant's father passed away in 2009, while the account for gas service remained in his name until 2015.<sup>2</sup>

A telephonic hearing was scheduled for June 15, 2016. The hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. PGW,

<sup>1</sup> PGW Ex. 2; Transcript pp. 48, 49

<sup>2</sup> PGW Ex. 1; Transcript pp. 15 -18

represented by counsel, offered the testimony of Adrian Crawford, Customer Review Officer - PGW. Five exhibits were admitted into the record on behalf of PGW. The hearing generated a transcript of 107 pages.

On September 29, 2016, August 7, 2014, the Commission issued the Initial Decision and found, *inter alia*, that the Complainant was homeless for a period, did not reside at the service address and was responsible for the portion of the balance which accrued during a period of time that he admits he was living at the service address. The Initial Decision found that PGW has improperly transferred the balance for the period for 2012 through 2014 to the Complainant. These exceptions follow.

## **II. EXCEPTION**

1. The Initial Decision errs in finding that the Complainant carried his burden of proof in showing that he was homeless for the period for 2012 through 2014 and should not be responsible for the gas usage for that period at the Service Address.

PGW takes exception to the Initial Decision, Findings of Fact, 3, 4 and 14. The Initial Decision found that the Complainant began to occupy the Service Address in December 2014 or January 2015.<sup>3</sup> The Initial Decision found that, although the Complainant was born and grew up at the Service Address, he neither lived nor stayed there from 2011 until he moved back in December 2014.<sup>4</sup> The Initial Decision found that before December 2014, the Complainant did not have a permanent address because he was homeless.<sup>5</sup>

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854

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<sup>3</sup> Transcript, p. 20

<sup>4</sup> Transcript, p. 33, 35, 36

(1950).

In this case, PGW established the Complainant's association with the Service Address with the use of a credit report as is permitted by 52 Pa. Code §56.35(b)(2). The credit report stated that the Complainant had been associated with the Service Address since 1986. According to the record testimony the Complainant lived until 2011, when he no longer had a permanent address. The Complainant stated that he remained without a permanent address until December 2014.

The Initial Decision erroneously states that PGW relies only upon a note contained in the PGW Ex. 1 at page 5 of 5 to support the conclusion that the Complainant had lived at the Service Address since at least 2011. The record shows that the Complainant failed to substantiate any aspect of his being without a permanent address during that time for that period of several months. When asked in cross examination to name places he has stayed on a temporary basis during the period, he could not. The Complainant made a vague reference to staying with a friend but did not provide a last name or address.<sup>6</sup> The Complainant did not state that he stayed at a homeless shelter.

PGW had a business recorded in February 2015 that the Complainant "confirmed he has always lived at the property." The Complainant's inability to provide any names or addresses of any place that he stayed on a temporary basis supports the reliability of the business record stating that the Complainant always resided at the Service Address.

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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 1984).

The Initial Decision misapplies the shifting burdens of proof and persuasion and ignores the Complainant's failure to substantiate his period without a permanent address. PGW asserts that the credit report shows the Complainant's address. The Complainant attempts to rebut that fact by stating that he had been homeless for the period. The Complainant is unable to support his assertion that he was homeless with

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<sup>5</sup> Transcript, p. 18, 34

<sup>6</sup> Transcript, p. 34 - 36

any reasonable evidence of where he stayed other than the Service Address. Thus, the Complainant has failed to rebut PGW's evidence of his residence. The fact that the Complainant maintains that he was "homeless" did not prevent him from giving some form of evidence of where he stayed when not living at the Service Address.

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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

The Initial Decision should be reversed in this regard.

2. The Initial Decision's discounting of the use of the Credit Report is inconsistent with 52 Pa. Code §56.35(b)(2).

The Initial Decision Finding of Fact 17 states that according to PGW the background check sis not indicate any other address, therefore PGW concluded that the Complainant resided at the Service Address. The Complainant merely stated that he was homeless between 2012 and 2014. The Complainant fails to support his assertion that he was homeless by providing any information about various friends that he stayed with on a temporary basis the names of shelters that he might have stayed in for that period. He simply denies that he was at the property so as to avoid responsibility for gas service.

The purpose of allowing the credit report as permitted by 52 Pa. Code §56.35(b)(2) is to establish the possible residence of a person associated with utility usage. The Initial Decision's failure to recognize the Complainant's failure to support where he stayed other than the Service Address, thwarts the purpose of 52 Pa. Code §56.35(b)(2) and permits a mere unsubstantiated assertion that the Complainant was not at the Service Address outweigh the documented evidence.

Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwth. 1993); 2 Pa.C.S. § 704.

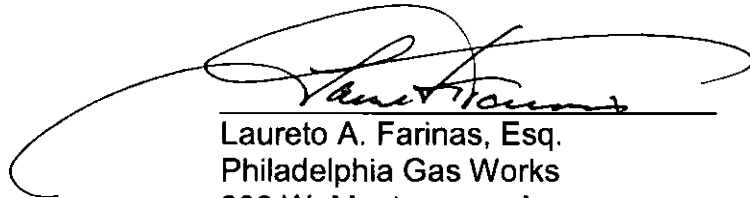
The Initial Decision should be reversed in this regard.

### **III. CONCLUSION**

For the reasons stated above, PGW requests that the Commission sustain its Exceptions and issue a decision modifying the Initial Decision to attribute responsibility for the payment of the disputed balance to the Complainant.

Respectfully submitted,

October 19, 2016

A handwritten signature in black ink, appearing to read "Laureto A. Farinas", is written over a horizontal line. The signature is stylized with a large, sweeping flourish that extends to the left and loops back under the line.

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).

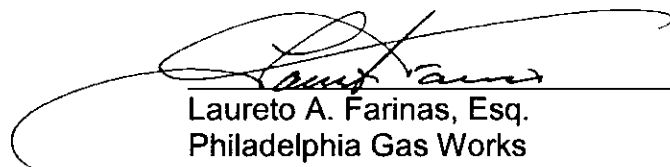
Service List:

For Complainant:

MR. KENNETH MCLEAN  
1509 WEST 65TH AVENUE  
PHILADELPHIA PA 19126

(By express mail)

October 19, 2016

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

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PA PUBLIC UTILITY COMMISSION  
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