



PHILADELPHIA GAS WORKS

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Graciela Christlieb, Senior Attorney
Legal Department
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April 24, 2017

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

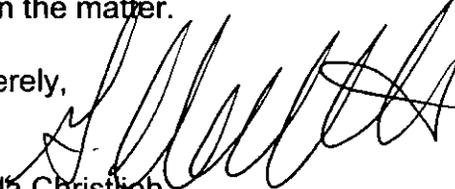
Re: Elchanan and Esther Abergel v. PGW, Docket No. F-2016-2547528

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.533, the Philadelphia Gas Works ("PGW") hereby files its Exceptions to the April 24, 2017, 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,


Graciela Christlieb

Enclosure

cc: Elchanan and Esther Abergel (Fed Ex)
Jessica Glace (PGW Mail)

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APR 24 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

bypass had been connected to the inlet and outlet piping of the gas service pipes, creating a bypass. Upon discovery of this theft, the PGW employee shut off the gas service and recorded the British Thermal Units ("BTUs") for the three gas appliances connected to the gas line, which were a house heater, a hot water heater, and a range. Following the discovery of theft, the Complainants were billed for gas usage at the Service Address from January 13, 2015 through November 18, 2015, based on the BTU capacity of the three gas appliances.

On November 3, 2016, the hearing was held, as scheduled, before Administrative Law Judge Angela T. Jones. Mr. Abergel ("Complainant") was present and testified on his own behalf. Graciela Christlieb, Esquire, represented PGW and offered the testimony of two witnesses: Jessica Glace, PGW Customer Review Unit Officer, and John Bickleman, PGW Field Service Technician. The Complainant submitted one exhibit, which was the account history of his PECO bill. That exhibit was admitted into the record without objection. PGW submitted four exhibits, which were the Theft Report, the Customer Contacts, the Account Statement for the Service Address, and the Theft Calculation. All four exhibits were admitted into the record over the objection of the Complainant.

During the hearing, the Complainant testified that the house heater was not installed or operational at the Service Address, which led the Court to direct PGW to file, as a late-filed exhibit, a calculation of the theft bill that omitted the BTUs from the house-heater. PGW complied with the Court's order, and the revised theft calculation was admitted into the record. The record was subsequently closed.

The record reflects that on January 13, 2015, PGW visited the Service Address and initiated gas service for the Complainants. While there, Andre Smith, a PGW employee, noted that there was a house heater at the Service Address that was not completely installed, as well as a water heater. (Tr. 87 & 88, PGW Exhibit 2)

On November 18, 2015, PGW received a tip for gas theft at the Service Address. (PGW Exhibit 2) That same day, John Bickleman, a PGW employee, visited the service address and discovered the gas on and a flex line bypass at the meter bar. (Tr. 58, PGW Exhibit 1 & 2) Mr. Bickleman noted that there were three appliances hooked up to the gas line: (1) a house heater, (2) a water heater, and (3) a range. (PGW Exhibit 1) Mr. Bickleman determined that all three appliances were operational and noted the BTUs of each (Tr. 63-66, PGW Exhibit 1) Mr. Bickleman shut the gas off at the curb and searched for the gas meter, but was unable to locate it. (Tr. 59 & 60, PGW Exhibit 1)

On November 19, 2015, PGW calculated the theft bill for the Complainants based on the BTUs of the three appliances found to be operational at the service address when the theft was discovered. (Tr. 89, PGW Exhibit 2, 3, & 4)

On November 24, 2015, the Complainants filed an informal complaint under BCS Docket No. 3403724. On March 30, 2016, the Bureau of Consumer Services rendered a decision for BCS Docket No. 3403724, which held the Complainants responsible for the theft bill. (PGW Exhibit 2)

The instant Complaint was filed on May 10, 2016.

On April 4, 2017, the Commission issued the Initial Decision in this matter, which held, in Section II (c), that the Complainant sustained his burden of proof that the house heater was not operating during the entire period of the unauthorized usage. The Initial Decision ordered that the complaint against PGW is sustained and that PGW is only to charge the Complainants \$19.76 for unauthorized usage from January 13, 2015 to November 18, 2015.

Pursuant to 52 Pa. Code §5.533, these timely Exceptions follow.

II. Exceptions

1. PGW takes exception to the finding that the Complainant sustained his burden of proof that the house heater was not operating during the entire period of the unauthorized usage.

As the proponent of a rule or order or seeking affirmative relief from the Commission, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). 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*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

In this case, the Complainant has failed to present any substantial evidence. Other than a PECO bill, all the Complainant has submitted is the self-serving testimony of one who believes that he should only be punished "a little bit." (Tr. 44) At the hearing, the Complainant testified that he is renovating the Service Address (Tr. 19), which is vacant (Tr. 22). The Complainant contacted PGW for gas service in January of 2015 because he needed heat while he was painting in the winter months. (Tr.19) He went on to testify that instead of hooking up the house heater that was already in the basement (Tr. 87, PGW Exhibit 2), which he could do, because he is very knowledgeable about how to install those heaters, having installed at least 10 just like it while working for a former employer (Tr. 134), he opted to use the gas stove to heat the entire house (tr. 24 &34), which is "very large." (Tr. 136) In other words, the reasoning the Complainant presented as to why he requested gas service from PGW is as follows: so he could use the heat from the stove to heat a large house while he was renovating it during the winter. The Complainant gave this explanation despite also testifying that the house was equipped with electric generators, which he was using while he was doing the renovations (Tr. 45 & 46). Complainant gave no reason for why he opted to request gas service for the sole

purpose of using a kitchen appliance to heat the property when he could have just as easily used electric generators.

With regard to the bypass, the Complainant admitted that he removed the gas meter. (Tr. 36). He testified that he removed it because he was painting and stuccoing the basement and wanted it to look nice. (Tr. 36 & 146). The Complainant further testified that he only installed the hose at the inlet to outlet at the meter bar to make his workers feel safe. (Tr. 37 & 42). During this explanation, he also alleged that PGW was at his home and discovered the bypass because he called them in regarding a rebate, which is rebutted by testimony and documents showing that PGW was there to follow up on an unbilled usage tip. (Tr. 57, PGW Exhibit 1 & 2) The Complainant also testified that when PGW found the bypass, he was just finishing up the stucco work in the basement (Tr. 37) and that the stucco work only took him three to four days (Tr. 146). However, PGW Exhibit 3, which has been incorporated into the Initial Decision as Finding of Fact # 34, shows that the meter was removed sometime between February 10, 2015 and March 11, 2015 as the February reading was the last time PGW registered any movement on the meter. If the Complainant's testimony about using the stove to heat the house (Tr. 34) and only removing the meter to do the stucco work (Tr. 146) were true, the meter would have kept recording usage for March through whenever it got warm enough to not have to use the stove since the Complainant's testimony that it only took three to four days to do the stucco work (Tr. 146) and that PGW found the bypass just as they were finishing up the stucco work (Tr. 37) puts the removal of PGW's meter at November 15th or 16th of 2015.

The Complainant also testified about why he should not be charged for the use of the house heater. He testified that it was not present at the Service Address on January 13, 2015 (Tr. 48), which is contradicted by the testimony presented by PGW (Tr. 87) and Exhibit 2, which have been incorporated into Initial Decision Finding of Fact # 29. Moreover, the Complainant vacillated between testifying that the house heater installation happened to be completed on the day PGW showed up to investigate the unbilled usage

tip (Tr. 52 & 53) and insisting that it wasn't even fully installed on that day (Tr. 49, 50, & 137). So, according to the Complainant, it is either a coincidence that PGW happened to show up to investigate unbilled usage at the Service Address on the first day that the heater was operational, or, back on November 18, 2015, PGW decided to fabricate documentation to indicate that there was an operational house heater at the property. In which case, PGW must have also fabricated the documentation that indicates that the stove was operational as well, given that it is the Complainant's testimony that the stove was not connected to the fuel line on November 18, 2015. (Tr. 50).

In the Initial Decision, the Court stated that it found the Complainant credible because "[i]t is abnormal for a person to admit culpability for unauthorized usage of gas service but to deny use of a particular appliance." The Complainant, however, loses nothing by admitting some culpability. As the owner of the house, the one renovating it, and the only beneficiary of stolen gas, there is hardly anyone else the Commission could hold responsible. Conversely, the Complainant has a great deal to gain from admitting some malfeasance, as he parlayed it into getting his theft bill reduced from \$695.10 to \$19.76. It is a tactic that runs the gamut from the child saying he just tapped his sister, but certainly did not push her, to the slightly drunk driver admitting to the officer that he was going over the speed limit in an effort to avoid a field sobriety test.

The evidence presented by the Complainant in this matter amounts to a collection of bald assertions that do not support a decision in his favor. The Complainant could have submitted the receipt for the house heater to show when he bought it, an invoice from the worker that installed the heater to show when it became operational, and even testimony from the individuals whose fear prompted him to install a hose where the meter should have been, but the Complainant did none of these things. Instead, the Complainant presented a collection of unlikely excuses for why there was a bypass installed at his property and why he should not be charged for the appliances that were present on the fuel line. While it is clear that the Complainant is adamant, "mere bald

assertions, personal opinions, or perceptions do not support the basis for a decision.”¹

III. Conclusion

For the foregoing reasons, PGW respectfully requests that the Commission grant PGW’s Exceptions and dismiss the Complaint.

Respectfully submitted,



Graciela C. Christlieb, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

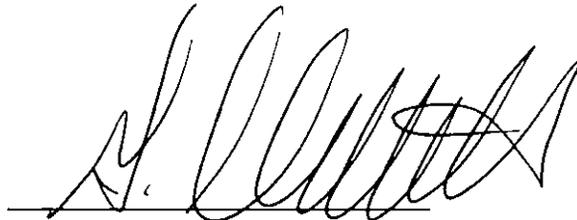
April 24, 2017

¹ *Marion Butler v. Philadelphia Gas Works*, F-2015-2465407, 2016.

VERIFICATION

I, Graciela Christlieb, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Exceptions are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

April 24, 2017



Graciela Christlieb, Esquire

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CERTIFICATE OF SERVICE

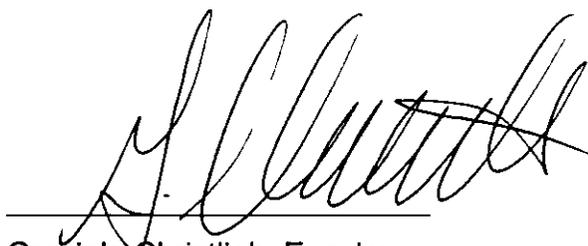
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Elchanan and Esther Abergel
1828 Griffith Street
Philadelphia, PA 19111

April 24, 2017



Graciela Christlieb, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6164

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14 49

14 52



Package US Airbill

FedEx Tracking Number

8100 2741 3950

MUR3

Form ID No

0215

Recipient Copy

1 From

Date

4/24/17

Sender's Name

Penelope Christinas

Phone

215 684-6164

Company

PHILADELPHIA GAS WORKS

Address

800 W MONTGOMERY AVE

Dept./Floor/Suite/Room

City

PHILADELPHIA

State

PA

ZIP

19122-2898

2 Your Internal Billing Reference

3 To

Recipient's Name

East Mary Chivella

Phone

717 772-7777

Company

PUC

Address

P.O. Box 3205

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Dept./Floor/Suite/Room

Address

Use this line for the HOLD location address or for continuation of your shipping address.

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Harrisburg

State

PA

ZIP

17105

0123380197



8100 2741 3950

4 Express Package Service

* To most locations.

Packages up to 150 lbs. For packages over 150 lbs., use the FedEx Express Freight US Airbill.

Next Business Day

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Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Priority Overnight**
Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Standard Overnight**
Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- FedEx 2Day A.M.**
Second business morning.* Saturday Delivery NOT available.
- FedEx 2Day**
Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
- FedEx Express Saver**
Third business day.* Saturday Delivery NOT available.

5 Packaging

* Declared value limit \$500.

- FedEx Envelope***
- FedEx Pak***
- FedEx Box**
- FedEx Tube**
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6 Special Handling and Delivery Signature Options

Fees may apply. See the FedEx Service Guide.

- Saturday Delivery**
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.
- No Signature Required**
Package may be left without obtaining a signature for delivery.
- Direct Signature**
Someone at recipient's address may sign for delivery.
- Indirect Signature**
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods?

One box must be checked

- No**
- Yes** As per attached Shipper's Declaration.
- Yes** Shipper's Declaration not required.
- Dry Ice** Dry Ice, 9, UN 1845 _____ x _____ kg

Restrictions apply for dangerous goods — see the current FedEx Service Guide.

Cargo Aircraft Only

7 Payment Bill to:

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Other Billing Acct. No.

- Sender** Acct. No. in Section 1 will be billed.
- Recipient**
- Third Party**
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Total Packages

Total Weight

Credit Card Auth:

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