



PHILADELPHIA GAS WORKS

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November 20, 2017

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

Re: James Rich v. PGW, Docket No. C-2017-2599266

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 19, 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,


Danielle Leva

Enclosure

cc: James Rich (Regular Mail)
Wendy Vacca (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Rich

v.

Philadelphia Gas Works

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Docket No. C – 2017 – 2599266

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

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated November 7, 2017, the Philadelphia Gas Works, (PGW) hereby files its Reply to the Complainant's Exceptions to the Initial Decision issued October 19, 2017, in the above captioned matter (Initial Decision).

I. INTRODUCTION

On April 13, 2017, the Complainant, James Rich (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PGW wherein he checked off boxes indicating that the utility was threatening to cut off his service or had already done so and that he wanted a payment arrangement. The Complainant did not check off that he was having a reliability, safety, or quality problem with his service or "Other" with an explanation of his issue; the Complainant also left the area under "Requested Relief" blank.

On May 8, 2017, PGW filed its Answer to the Complaint wherein it admitted that it issued a termination notice for the service at the Complainant's address, stating that the Complainant owes over \$3,000 for gas service and has defaulted on a Commission-issued payment arrangement.

The matter was scheduled for Call of the Docket and the evidentiary hearing was convened on June 20, 2017. The Complainant appeared pro se and testified on his own behalf. PGW appeared represented by counsel and proffered the testimony of one witness as well as 3 exhibits that were admitted into evidence.

The Complainant filed exceptions to the Initial Decision on or about November 3, 2017. This timely Reply follows.

II. PGW'S REPLY

The Complainant's exceptions fail to address any error in fact or law contained in the Initial Decision refuting the conclusion that the Complainant failed to meet his burden of proving that he is entitled to another Commission-issued payment arrangement or that PGW's termination notice was improperly issued.

EXCEPTIONS

The Complainant alleges that Judge Pell made a mistake with regard to his dispute with PGW's termination notice.

REPLY EXCEPTIONS

There is, in this matter, no dispute that has been raised regarding PGW's termination notice. The Complainant's Exceptions are an attempt to raise an issue post-hearing that was never raised by him either in his Complaint or at the evidentiary hearing. In his Exceptions, the Complainant alleges that the contents of PGW's termination notice are "essential" to resolving his "dispute." However, it is not until the Exceptions themselves that the Complainant even alleges that he has a "dispute" regarding the content of PGW's termination notice. The Complaint in this matter is devoid of any allegation that PGW's termination notice was improper in its content. While it is true that the Complainant checked a box indicating that PGW had issued a termination notice, the area under that category was left blank by the Complainant despite clear instructions directly above that line indicating that he must give specific information as to what he believes the utility has done wrong and warning him, in bold lettering, that his complaint may be dismissed without a hearing if he does not provide specific information. Moreover, given the opportunity to supplement his Complaint in both the "Other" category and under "Requested Relief", the Complainant chose to leave both blank thereby failing to give either PGW or the Commission notice that he

had taken issue with the content of the termination notice and not simply the fact that it was issued.

During the evidentiary hearing in this matter, the Complainant again failed to raise any dispute with PGW's termination notice despite being given ample opportunity to do so. Judge Pell questioned the Complainant during the Complainant's case-in-chief and the following exchange occurred while Judge Pell was trying to ascertain the nature of the Complaint:

Judge Pell: Is that your only source of income?

The Witness: Yes, it is. Your Honor, when you are ready for me, I would like to explain the situation.

Judge Pell: Hold on one second. You said PGW never actually terminated your service?

The Witness: No.

Judge Pell: Did they send you a termination notice?

The Witness: Yes, they did.

Judge Pell: When did they send you a termination notice?

The Witness: I would say three, four, five months ago but I was able to file a Complaint with the PUC.

Judge Pell: Okay.

The Witness: I appealed it basically.

Judge Pell: Did the termination notice tell you why they were going to terminate your service?

The Witness: I believe none payment or something.

Judge Pell: Did it provide you with the steps that you could follow to avoid termination?

The Witness: Yes.

Judge Pell: What else did you wish to tell me, Mr. Rich?

The Witness: I have never – can I stand up?

Judge Pell: You can stand up if you would like to.

The Witness: I have never had a gas bill that high in my life.¹

At that point, the Complainant launched into an argument regarding what he believed to be an inaccurate bill from PGW.² At no time during the rest of the Complainant's case-in-chief, cross examination, or re-direct examination does he even mention the termination notice, let alone give voice to any "dispute" he has with its contents. At the conclusion of PGW's case, Judge Pell again gives the Complainant the opportunity to bring up anything that hasn't already been addressed that the Complainant feels should be addressed. Again, the Complainant fails to mention having any issues with PGW's termination notice.³

The Complainant is alleging that Judge Pell "made a mistake." The Complainant argues that Judge Pell determined that the termination notice included the necessary information to let him know the steps to avoid termination when, in fact, it is the Complainant's own testimony that provides the basis for that finding.⁴

The Complainant goes on to state his mistaken belief that checking a box on the Complaint Form and failing to do or say anything else on the issue successfully shifts the burden to the respondent, adding that "Judge Pell could have required PGW to provide a copy of its notices for examination in the proceeding." The administrative law judges that preside over evidentiary hearings can, and often do, ask that the parties attend the hearings prepared with evidence to present. However, in order to do so, the judges need to have notice that there is an issue that has been raised that may require a particular kind of evidence; if the Complainant had not left his Complaint virtually blank, perhaps Judge Pell would have done as the Complainant suggests.

The Complainant also mentions that he has no lawyer. Something that the administrative law judges sometimes do to help pro se complainants is leave the record open to permit the parties to submit late-filed exhibits. This is something that could very

¹ Transcript at pp. 10-11.

² Transcript at p. 11.

³ Transcript at pp. 29-30.

⁴ Transcript at p. 11.

well have been done for the Complainant in this instance if he had ever raised his alleged "dispute" with PGW's termination notice during the hearing. However, as is noted above, he did not.

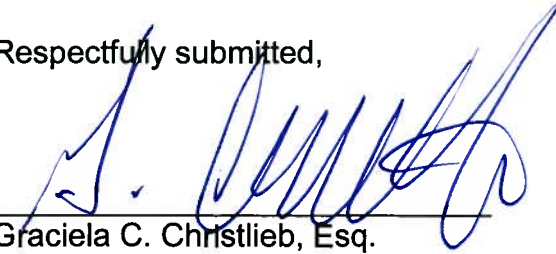
Since the start of this process, the Complainant has been afforded every opportunity to state and make his case against PGW. There is no limit on the Formal Complaint form with regard to either space or scope; the Complainant was encouraged to use additional paper and was given categories like "Other" where he could allege/complain about whatever he felt was an issue. During the evidentiary hearing, the Complainant was given ample opportunity to testify on his own behalf, cross-examine PGW's witness, and state "anything else" he wanted to say. It was not until the decision was issued to dismiss his Complaint for his failure to meet his burden of proof that he even mentioned having a dispute with the nature of the termination notice, and then it was mentioned only in the context of blaming the presiding judge for, essentially, not reading his mind and then doing more to help him. As it stands, the Complainant has yet to articulate the nature of his "dispute" regarding the termination notice.

III. CONCLUSION

The Exceptions fail to demonstrate that the Initial Decision is unsupported by substantial evidence. For the reasons stated above, the PGW requests that the Commission deny the Complainant's Exceptions to the Initial Decision and adopt the Initial Decision issued October 19, 2017 in this matter as written dismissing the Complaint.

November 20, 2017

Respectfully submitted,



Graciela C. Christlieb, 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. James Rich
1144 East Mt. Airy Avenue
Apt. 2
Philadelphia, PA 19150

November 20, 2017



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