



PHILADELPHIA GAS WORKS

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February 7, 2018

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

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

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.572(e), the Philadelphia Gas Works ("PGW") hereby files its Answer to the Notice of Appeal, Nunc pro tunc of Kenneth McLean.

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: Kenneth McLean (Regular Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth McLean,	:	
Petitioner	:	
	:	
v.	:	Docket No. C – 2016 – 2539492
	:	
Philadelphia Gas Works	:	
Respondent	:	

**Answer of Philadelphia Gas Works to the Petitioner’s
“Notice of Appeal, *Nunc Pro Tunc*”
Deemed petition for rescission**

Pursuant to 52 Pa. Code § 5.572(e), the Philadelphia Gas Works (“PGW”) hereby files its Answer to the Notice of Appeal, *Nunc pro tunc* of Kenneth McLean (“Petition”).¹ As an appeal or even a petition for reconsideration of the Commission’s Order and Opinion entered on November 13, 2017, the Petition is untimely. As the Petition seeks to have the Commission reverse its order some 65 days after the entering of that Order and Opinion, it seems that the substance of the Petition is that of a Petition for Rescission pursuant to 52 Pa. Code § 5.572. PGW requests that this Commission deny the Petition as it fails to show that it meets the criteria for the rescission of the Order and Opinion of November 13, 2017.

In timely answer to the Petition in the nature of a request for rescission, PGW hereby avers the following:

1. Denied. PGW denies that the Transcript of the telephonic hearing is inadequate as to form. According to the Commission docket, the transcript of the Telephonic Hearing that occurred on June 15, 2016 was received by the Commission on July 13, 2016 and appears to have been transcribed in the normal course as with all Commission hearings. The Petition fails to site the authority for or the meaning of the

¹ Although dated January 26, 2018, the Petition was served twice upon PGW. The first copy of the Petition came in a mailing with a post mark of January 29, 2018 and again in a mailing with a post mark of January 30, 2018. Having received the first service of the Petition on January 30, 2018, PGW files timely the instant answer to the Petition pursuant to 52 Pa. Code § 5.572(e).

transcript appearing without "proper register and charter." Further the Petition fails to state which parts of the transcript are materially lacking due to the alleged malfunction of the equipment used to record and/or transcribe the hearing.

2. Denied. The Petition fails to state which parts of the transcript are materially lacking due to any alleged malfunction of the equipment used to transmit or record the hearing.

3. Denied. PGW has no knowledge of any requirement of notice delivered for any malfunction of equipment resulting in a failure to adequately transcribe the hearing. Further, the Petition fails to state the parts of the transcript that are defective for those reasons.

4. Denied. The transcript is made available for inspection at the Commission offices. Its availability is made known to anyone who reviews the Commission's electronic docket information. Further, the transcript is available for purchase from the court reporting service. By way of further answer, the Complainant filed a Reply to PGW's Exceptions and failed to raise any issue regarding the adequacy of the transcript.

5. Denied. The Petition fails to identify specific areas from the transcript that are missing or incorrect which render it inadequate. To the contrary, to PGW's knowledge, the transcript as filed with the Commission represents an accurate transcribing of the hearing that occurred on June 15, 2016.

6. Denied. Paragraph 6 of the Petition restates a conclusion that due to the inadequacy of the transcript, the Commission's Order and Opinion is against the Complainant's interest. This paragraph fails to state with any specificity how this state has occurred.

7. Denied. Pursuant to 52 Pa. Code §56.35(b)(2) utilities are permitted to consult credit report for information on place of residence.

8. Denied. The record of the proceeding is clear, the Complainant failed to demonstrate that he lived somewhere other than the Service Address. Although the Complaint's testimony was that he was homeless and stayed with various friends, he could not state the names of the people that he stayed with while homeless.² The

² Transcript, p. 34 - 36

Complainant fails to support his assertion that he was homeless by providing any information about the various friends that he stayed with on a temporary basis or the names of shelters that he might have stayed in for that period. He simply denies that he was at the Service Address.

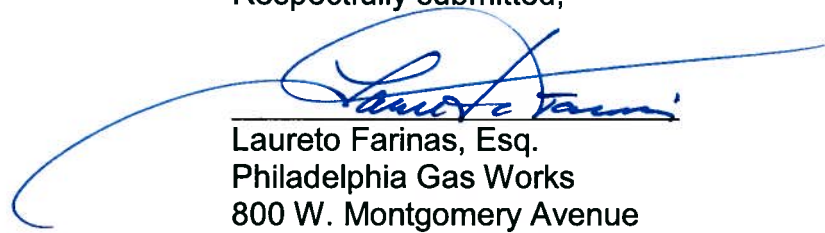
The purpose of allowing the credit report as permitted by 52 Pa. Code §56.35(b)(2) is to establish the possible residence of a person associated with utility usage. The Order and Opinion recognized that with the Complainant's failure to support his assertion that he stayed with various friends and places other than the Service Address. Without supporting evidence that the Complainant was homeless, PGW's evidence as contained in the credit report is un-rebutted. 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.

9. Denied. The Petition misapplies the shifting burdens of proof and persuasion and ignores the Complainant's failure to substantiate his period without a permanent address. As the Complainant in this proceeding, he must carry the burden of proof. The Complainant testifies that he was homeless and stayed with various friends. 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 but is unable to support his assertion that he was homeless with any reasonable evidence of where he stayed other than the Service Address. He simply maintains that he was a nomad. Thus, the Complainant has failed to rebut PGW's evidence of his residence. 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 Complaint failed to meet his burden in this matter. The Petition fails to raise any plausible new or novel arguments that the transcript was defective resulting in the finding that he failed to meet his burden of proof in this matter.

WHEREFORE, PGW respectfully requests that the Commission deny the Petition. The Petitioner has failed to show sufficient grounds upon which the Commission may rescind its decision pursuant to 52 Pa. Code § 5.572. The Commission should not rescind and set aside the Order and Opinion entered on November 13, 2017 in the above captioned matter.

Respectfully submitted,

February 7, 2018



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

VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel to the Philadelphia Gas Works; and that as such, I am authorized to make this verification on its behalf, that the facts set forth in the foregoing Answer are true to the best of my knowledge, information and belief, and that I expect to be able to prove these at a hearing held in this matter. I make this verification subject to the penalties of 18. Pa. C.S. §4904, pertaining to false statements to authorities.

February 7, 2018



Laureto Farinas, Esq.

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).

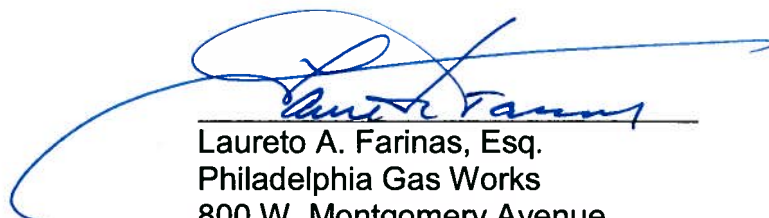
Service List:

For Complainant:

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

(By Regular mail)

February 7, 2018


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