



**PHILADELPHIA GAS WORKS**

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May 2, 2019

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

**Re: Steve Atuahene and Agnes Atuahene v. PGW, Docket No. F-2018-3004665**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files its Reply to the Complainants' Exceptions to the March 12, 2019 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: Steve Atuahene and Agnes Atuahene (Regular Mail)  
Wendy Vacca (PGW Mail)

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MAY - 2 2019

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RECEIVED**  
MAY - 2 2019  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

<b>Steve Atuahene</b>	:	
<b>Agnes Atuahene,</b>	:	
Complainants	:	
<b>v.</b>	:	<b>Docket No. F-2018-3004665</b>
	:	
<b>Philadelphia Gas Works,</b>	:	
Respondent	:	

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

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated April 17, 2019 in the above captioned matter accepting the Complainants' request for leave to file exceptions beyond the time limit, the Philadelphia Gas Works, ("PGW") hereby files its reply to the Complainant's exceptions filed on April 22, 2019 ("Exceptions"), to the Initial Decision issued March 12, 2019 in the above captioned matter ("Initial Decision").

**I. Introduction**

The Complainants, Steve Atuahene and Agnes Atuahene (the "Complainants") have filed Exceptions with the Commission to the Initial Decision in the above captioned matter that grants PGW's Motion to Dismiss the Complainants' formal Complaint with prejudice because the Complainants failed to appear and prosecute the case at the scheduled hearing date.

Throughout this proceeding the Commission has extended every opportunity to prosecute the Complaint. PGW has extended an invitation to conduct informal discovery when the Complainants had requested a continuance in order to conduct discovery. PGW stood ready to respond to the Complainants' discovery requests. The Complainants made no effort to conducted discovery.

The Complainants' posture in this matter appears as a series of dilatory requests that serve only to postpone the final disposition of the proceeding and payment of the bill on the account that is the subject of this proceeding. The Complainants' Exceptions raise issues with specific aspects of the Commission's administration of the matter and PGW's actions as an opposing party. In Reply to the Exceptions presented in this way, PGW will summarize and address each issue in turn.

## **II. History of the Proceeding**

On September 12, 2018, Agnes and Steve Atuahene (“Complainants”) filed a formal Complaint against PGW with the Commission, alleging that there are incorrect charges on their gas bills. The Complaint is an appeal of a decision of the Commission’s Bureau of Consumer Services (“BCS”) that dismissed the Complainants high bill dispute (BCS# 3595807). The Complainants requested that the Commission facilitate an independent investigation on the functionality of PGW’s meter and its readings.

On October 4, 2018, PGW filed an Answer timely, denying the material allegations contained in the Complaint. By Hearing Notice dated October 15, 2018, the Commission notified the parties that an initial hearing was scheduled in this matter for Tuesday, November 27, 2018, at 10:00 a.m.

On November 5, 2018, the Complainants filed an Application for Leave to Conduct Discovery and submitted this request to the presiding Administrative Law Judge (“ALJ”). To conduct discovery would also necessitate a request to continue the hearing scheduled for November 27, 2018.

By letter dated November 14, 2018, PGW indicated that it had no objection to the Complainants’ request for a continuance to conduct discovery and invited the Complainants to contact PGW to engage informal discovery in order to save time under the Commission’s Discovery rules.

The Commission granted the Complainants’ request for a continuance by Order dated November 15, 2018. Ultimately by Hearing Notice dated December 19, 2018, the Commission notified the parties that an initial hearing was scheduled for Friday, January 11, 2019, at 10:00 a.m.

From November 15, 2018 through the date of the scheduled hearing, January 11, 2019, the Complainants did not conduct discovery.

On January 11, 2019, the hearing convened as scheduled, PGW appeared represented by counsel. The Complainants failed to appear at the hearing. As is the Commission’s practice, the hearing was recessed and reconvened at about 10:18 a.m.

The ALJ took that time to confirm that the Complainants had not called, or otherwise shown good cause for not appearing at the hearing.

PGW moved to dismiss the Complaint with prejudice for lack of prosecution, whereupon the ALJ, after a review of the notice and prehearing order containing the date, time and place of the hearing and the service of those to the parties, the hearing was adjourned.

According to the Initial Decision, at approximately 12:00 p.m. on the day of the hearing, Mr. Atuahene came to the Commission's Philadelphia Office purporting to attend the hearing scheduled for that morning. He orally explained to Commission staff that he had been out of state and had just returned. Even with the Exceptions, Mr. Atuahene has not provided any additional details or documentation that verifies the reason for the inability to appear at the hearing. He requested that another hearing be scheduled in this matter.<sup>1</sup>

On March 12, 2019 the Commission issued the Initial Decision. The Initial Decision dismissed the complaint because the Complainant failed to appear for the scheduled hearing. Instructions included on the cover letter of the Initial Decision state that any Exceptions to the Initial Decision must be filed within twenty (20) days of the date of the Initial Decision cover letter. The Complainants failed to file exceptions within the limit prescribed in the Secretary's cover letter to the Initial Decision. On March 27, 2019, the Complainants requested additional time in which to file the Exceptions. In their request, the Complainants gave no reason given except that they are out of town. The Complainants failed to serve PGW with the request for additional time. The Secretary's letter dated April 17, 2019 granted the Complainants additional time to file Exceptions to April 22, 2019. On April 22, 2019, the Complainants filed Exceptions.

PGW replies as follows.

### **III. PGW'S Reply to Exceptions**

PGW's Reply to statements in the Exceptions – "History of the Proceeding"

In the History of the Proceeding section of the Exceptions, the Complainants state that Mr. Atuahene spoke with counsel for PGW by telephone on the day before the

hearing. A conversation between Mr. Atuahene and PGW had occurred on January 10, 2019. Since the Complainants never submitted discovery requests to PGW as they stated they would, PGW called him to see if he was still interested in pursuing the complaint. Mr. Atuahne informed PGW his purported location at the time (Massachusetts) and that he would try to make it to the hearing. PGW declined to agree to the Complainants proposal of another continuance of the hearing.

Earlier in the week, PGW had attempted to contact the Complainants to arrange for a meter test, as is customary even though the Complainants had failed to conduct any discovery. The meter test could occur without having another continuance of the matter. PGW indicated that it would object to yet another request for a continuance since the Complainants did not conduct discovery. PGW informed Mr. Atuahene that he could request another continuance, but that PGW would not agree.

The Exceptions state that PGW failed to inform the Commission of the Complainants location and thus was unfair to the Complainants. PGW had no obligation to request a continuance on the Complainants' behalf. Since PGW could not verify the Complainants' actual location on the day before the hearing, it was not PGW's place to make such a request on the Complainants behalf. As easily as Mr. Atuahene spoke with PGW by telephone, he could have contacted the Commission to explain to the ALJ his inability to attend to the hearing.

Thus, the hearing convened as scheduled on January 11, 2019. Neither Complainants nor a counsel for the Complainants appeared. The ALJ recessed the hearing to see if the Complainants called to show good cause for not appearing at the scheduled hearing. PGW moved to dismiss the Complaint with prejudice for lack of prosecution. The hearing was concluded at about 10:30 a.m.

The assertions contained in the Exception are inconsistent with the timeline covered in the Initial Decision. Had the Complainants arrived at the Commission's Philadelphia offices at 10:25 a.m. as asserted in the Exceptions, and had they been asked to wait for an hour to be escorted to the hearing room, the Complainants would have met PGW leaving from the hearing room at 10:30 a.m.<sup>2</sup>

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<sup>1</sup> Initial Decision, p.3

<sup>2</sup> Id.

When this occurs in other cases, the Commission staff dutifully calls the parties back into the hearing room and conducts a hearing. Therefore, it is unlikely that the Complainants arrived at the Commission offices so soon after the adjournment of the hearing.

According to the Initial Decision at approximately 12:00 p.m. on the day of the hearing, Mr. Atuahene came to the Commission's Philadelphia Office purporting to attend the hearing scheduled for that morning. He orally explained to Commission staff that he had been out of state and had just returned. Even with the Exceptions, Mr. Atuahene has not provided any additional details that verify the reason for the inability to appear at the hearing.<sup>3</sup>

The Complainants rights in this matter were not violated. The Commission should not grant the Complainants another hearing in this matter.

#### PGW's Reply to statements in the Exceptions – "Relevant Facts"

Relevant Facts, Paragraphs 1 through 2 summarize the formal complaint.

In Paragraph 3, the Exceptions state that the Complainants were not served with the PGW's Answer to the Complaint. On October 4, 2018, PGW served the Complainants at the address indicated on the Complaint with the Answer that was filed with the Commission on that day. That mailing was not returned to PGW as undeliverable. PGW assumed that the Complainants received service of the Answer.

Paragraph 4 suggests the fact that the hearing was scheduled without the investigation that the Complainants requested in the complaint. This somehow violates the Complainants' right in this matter. Paragraph 4 fails to recognize that the purpose of the first continuance in this matter was to enable the Complainants to conduct discovery and gather information. The Complainants failed to conduct discovery to support their case and yet seeks another delay in the hearing.

In Paragraph 5, the Complainants state that two weeks prior to the hearing, the Complainants "...attempted to work with PGW..." to have the meter tested. PGW to the hearing PGW reached out to the Complainants to arrange a meter test as might be requested by the Complainants even though they failed to conduct discovery. Even if a

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<sup>3</sup> Id.

meter test were to have been two weeks prior to the hearing (December 28, 2018), there would have been insufficient time to exchange the meter and testing in time for the hearing scheduled for January 11, 2019.

Paragraphs 6, 7, 8 and 9, are restatements of the explanation of the family emergency that prevented the Complainants from attending the hearing. Mr. Atuahne informed PGW of his purported location at the time (Massachusetts) and that he would try to make it to the hearing. As stated above, PGW indicated that it would object to yet another request for a continuance since the Complainants did not conduct discovery as they said they would during the two months preceding the date of the hearing. PGW informed Mr. Atuahene that he could request another continuance, but PGW would not agree to it. These paragraphs further state that PGW should have informed the Commission of the Complainants location.

PGW had no obligation to request a continuance on the Complainants' behalf. Since PGW could not verify the Complainants' actual location on the day before the hearing, it was not PGW's place to make such a request on the Complainants behalf. As easily as Mr. Atuahene spoke with PGW by telephone, he could have contacted the Commission to explain to the ALJ his supposed inability to attend to the hearing. The Complainants' earlier request for a continuance and for leave to conduct discovery show that the Complainants have the requisite knowledge that such a direct communication with the Commission would be required to excuse the failure to attend the hearing.

Paragraphs 10, 11, 12, 13, 14, 15, 16, 17 and 18 recount the Complainants' arrival at the Commission's Philadelphia Offices for the hearing. The hearing was concluded at about 10:30 a.m. As stated above, the assertions contained in the Exception are inconsistent with the timeline covered in the Initial Decision. Had the Complainants actually arrived at the Commission's Philadelphia offices at 10:25 a.m., the Complainants would have met PGW leaving from the hearing room after 10:30 a.m. It is the Commission's practice that, even when a party arrives after the hearing is adjourned, as long as the parties and the court reporter are present, the Commission staff dutifully calls the parties back into the hearing room to conduct the hearing.

Therefore, it is unlikely that the Complainants arrived at the Commission offices so soon after the adjournment of the hearing and it is unlikely that the Mr. Atuahene was made to wait for more than an hour to be escorted to the hearing room at 12:00 p.m. Had he arrived before PGW and the court reporter left the building, the hearing would have been conducted.

The Complainants' rights were not violated. The Commission should not grant the Complainants another hearing in this matter.

**PGW's Reply to statements in the Exceptions – "Argument"**

**The ALJ complied with all due process requirements afforded the Complainant in the matter and did not abuse discretion.**

Throughout this proceeding the Commission has extended every opportunity to prosecute the Complaint. The Complainants' posture in this matter has resulted in a series of dilatory requests that serve only to postpone the final disposition of the proceeding.

The Exceptions state that the time extended to file violates due process because of the short time provided to file late exceptions.

On March 12, 2019 the Commission issued the Initial Decision dismissing the complaint because the Complainants failed to appear for the scheduled hearing. Instructions included on the cover letter of the Initial Decision state that any Exceptions to the Initial Decision must be filed within twenty (20) days of the date of the Initial Decision cover letter. The Complainants failed to file exceptions within the limit prescribed in the Secretary's cover letter to the Initial Decision. The Exceptions were originally due on April 2, 2019. On March 27, 2019, the Complainants requested additional time in which to file the Exceptions. In their request the Complainants gave no reason given except that they are out of town. The Complainants failed to serve PGW with the request for additional time. The Secretary's letter dated April 17, 2019 granted the Complainants additional time to file Exceptions to April 22, 2019. The Complainants states that this violates their right to due process. To prepare their Exceptions, the Complainants actually had from March 27, 2019 to April 22, 2019 to review the Initial Decision and prepare Exceptions. This is 6 more days to prepare

Exceptions that they originally had at the March 12, 2019 issuance of the Initial Decision. The Complainants' claim that the extension of time to file Exceptions violates their due process rights is not supported by the facts.

The Complainants further argue that the Initial Decision is based on an "erroneous restriction of due process and its subsequent alleged compliance." In their formal Complaint, Complainants allege that there are incorrect charges on their gas bills. As relief, the Complainants requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings. The Complainants seem to suggest that the requested investigation should have been commenced by the ALJ through the appointment of "...an independent party qualified to facilitate independent investigation..." even if the Complainants fail to appear at the hearing. The Complainants apparently, fail to realize that as the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainants.<sup>4</sup> It was the Complainants' responsibility to be present at the hearing to put forth facts in support of the relief sought.

One might consider this a plausible mistake, except for the fact that on November 6, 2019, the Complainants filed an Application for Leave to Conduct Discovery. In that application the Complainants discuss their need "...to probe into the facts and data in that matter." Thus, the Complainants, by their November 6, 2019 filing demonstrate that they understand their responsibility to gather facts in support of their case. In these Exceptions, the Complainants, having neglected their responsibility to conduct discovery, attempt to shift this responsibility to the Commission. The Commission has not violated the Complainants' due process rights, but rather, the Complainants have abdicated the responsibility of the prosecution of the case by failing to use the discovery process and by their failure to attend the hearing. The Complainants demonstrate their selective inattention to their burden of proof under 66 Pa.C.S.A. § 332(a).

The Exceptions should be denied.

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<sup>4</sup> 66 Pa.C.S.A. § 332(a).

**The Dismissal of the Complaint is not an error of law, abuse of discretion, a violation of the Complainants' property rights, first amendment rights or the right of access to the Commission's adjudication of this matter.**

As set forth in the Initial Decision, administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>5</sup> That requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.<sup>6</sup> Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.<sup>7</sup>

In this matter, two Hearing Notices, a Prehearing Order, and an Order granting the Complainants' first request for a continuance were all mailed to the Complainants at the address given by the Complainants in their formal Complaint. None of the documents were returned to the Commission as undeliverable by the United States Post Office. Under the applicable case law, the Complainants are deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing.<sup>8</sup> Despite the mailing of the documents giving notice of the hearing, the Complainants failed to appear.

The Initial Decision adds that in addition to the constructive notice the Complainants also had actual notice of the day, date and time of the scheduled hearing as evidenced by Mr. Atuahene's coming to the Commission's Philadelphia Office at approximately 12:00 p.m. on the day of the hearing seeking to attend the hearing scheduled for that morning. The Complainants were informed via the Commission's Prehearing Order, dated November 5, 2018, that "A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and should be submitted in writing no later than five (5) days prior to the hearing.... Changes are granted only in rare situations where good cause exists."<sup>9</sup> The Complainants' first request for a continuance of the hearing demonstrates that the Complainants were aware of the procedure and able to follow it. Despite the Complainants assertions, PGW had no obligation to inform the ALJ about their discussion on the previous day.

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<sup>5</sup> Initial Decision, p. 5

<sup>6</sup> *Schneider v. Pa. Pub.Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwth. 1984).

<sup>7</sup> *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwth. 1994).

<sup>8</sup> Initial Decision, p. 5

The Complainants had the ability to call the ALJ to inform her of their situation. The Complainants failed to do so.

Furthermore, the ALJ recessed the hearing for approximately 20 minutes in order to give the Complainants a chance to make a late arrival or to inform the ALJ of their arrival however untimely. When Mr. Atuahene arrived at the Commission's Philadelphia Office at approximately 12:00 p.m., he provided no details regarding his and Mrs. Atuahene's failure to attend the hearing apart from averring that he had been out of state and had just returned.<sup>10</sup>

The Initial Decision found that the Complainants' reason for failing to attend the scheduled hearing does not constitute good cause or involve exigent circumstances excusing the Complainants' absence at the scheduled hearing. The Complainants provided no indication that a good faith effort was made on their part to attend the hearing in a timely fashion. For those reasons the Initial Decision found that the Complainants' failure to appear at the scheduled hearing is unexcused.<sup>11</sup>

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing.<sup>12</sup> The Complainants waived the opportunity to participate in the hearing by failing to appear.<sup>13</sup> Agnes and Steve Atuahene's Complaint should be dismissed with prejudice.

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<sup>9</sup> Prehearing Order, ¶ 1

<sup>10</sup> Initial Decision, p. 5 – 6

<sup>11</sup> *Id.*

<sup>12</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

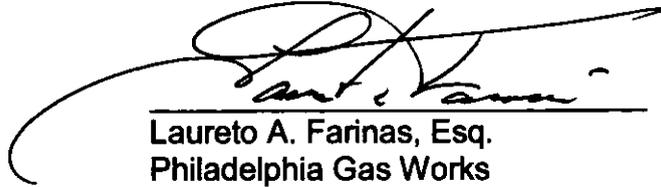
<sup>13</sup> 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

**IV. CONCLUSION**

For the reasons stated above, PGW request that the Commission deny the Complainants Exceptions in this matter and issue a Final Order dismissing the complaint.

Respectfully submitted,

May 2, 2019

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 initial "L" and "F".

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

**CERTIFICATE OF SERVICE**

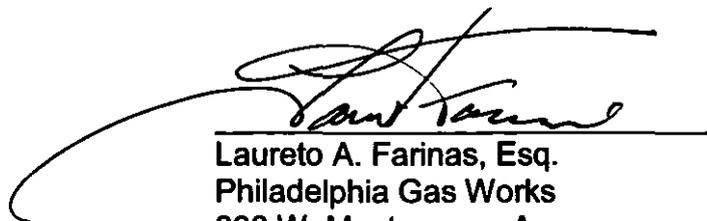
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Steve Atuahene  
7500 N. 21<sup>st</sup> Street  
Philadelphia, PA 19138

May 2, 2019

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

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UNITED STATES US

SHIP DATE: 02MAY19  
ACTWGT: 1.00 LB  
CAD: 3975663/NET4100

BILL SENDER

TO **SECRETARY**  
**PA PUC**  
**400 NORTH ST**

**HARRISBURG PA 17120**

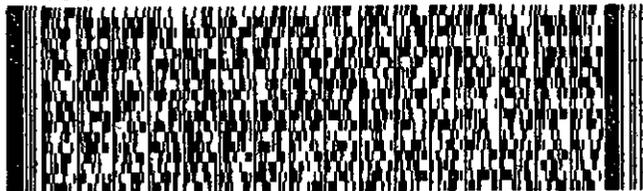
(717) 772-7777

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**17120**  
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