



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
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May 7, 2019

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

Re: Yvette Small v. PGW, Docket No. C – 2019 – 3009002

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.102, the Philadelphia Gas Works (“PGW”) hereby files the original Motion for Summary Judgment 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: Yvette Small
Wendy Vacca

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Small

v.

Philadelphia Gas Works

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Docket No. C- 2019 – 3009002

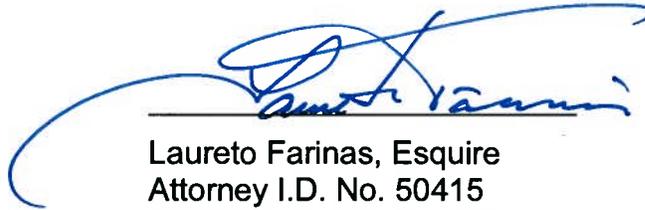
NOTICE TO PLEAD

To: Yvette Smalls, Complainant

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Motion for Summary Judgment, within twenty (20) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

May 7, 2019



Laureto Farinas, Esquire
Attorney I.D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Small

v.

Philadelphia Gas Works

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:
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Docket No. C– 2019 – 3009002

**Philadelphia Gas Works’
Motion For Summary Judgement**

Pursuant to 52 Pa. Code §5.102, and 66 Pa.C.S. §§ 5.101- 5.103, the Philadelphia Gas Works (“PGW”) hereby moves for a summary judgement and the dismissal of the above captioned matter on the grounds of *res judicata*, that the exact and identical factual and legal issues that are the basis of the instant complaint have been addressed by this Commission in an order under a previous matter *Yvette Small v. PGW*, Docket No. F-2018-3000910, Final Order entered, October 1, 2018.

In support of this motion, PGW hereby avers the following:

1. In October 2017 the Complainant, Yvette Small filed an informal complaint with the Bureau of Consumer Services (“BCS”) under BCS Complaint No. 3572604 concerning the PGW Gas Service Account at 2259 N. Uber Street, Philadelphia, Pennsylvania, PGW Account No. 0879484217 (Service Address).
2. On February 12, 2018, the BCS issued a decision under BCS Complaint No. 3572604 dismissing in part and sustaining in part the informal complaint. The BCS dismissed the complaint with regard to the check returned for “insufficient funds” and sustained the complaint in that it ordered PGW to waive the insufficient funds charge that had been assessed upon the Complainant’s PGW account. In compliance with that decision, PGW waived the \$20 charged for insufficient funds on February 14, 2018.
3. On March 13, 2018, the Complainant filed an appeal of the BCS Decision, which was docketed at Complaint Docket No. F-2018-3000910 which is attached hereto as Appendix “A.”
4. The Complainant’s appeal at Docket No. F-2018-3000910 alleged that there were incorrect charges on her bill and that she was overcharged for gas service which she alleged to have paid online. The Complainant also admitted that she later

cancelled a payment because she could not afford it but contents that she owed PGW a lesser amount.

5. By notice dated April 26, 2018, the Commission scheduled an Initial In-person hearing before Administrative Law Judge Angela T. Jones (“ALJ”) for Friday, June 1, 2018 at 10:00 a.m. in a hearing room at the Commission’s Philadelphia Office.

6. In preparation for that Initial In-person hearing, the ALJ issued a Prehearing Order dated April 26, 2018 (“Prehearing Order”) which is attached hereto as Appendix “B,” in which the ALJ informed the parties, *inter alia.*, that “You may lose this case if you do not take part in the hearing and present evidence on the issues raised.” Prehearing Order, Paragraph 3 (Bold and all caps in original); “If you intend to introduce any exhibits into evidence at the hearing, you must supply an original and one copy for the court reporter, a copy for me, and one copy for each other party.” Prehearing Order, Paragraph 5; and “The Complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that that Respondent has violated the Public Utility Code or a Regulation or an Order of the Commission so that the Complainant is entitled to the relief requested in the Complaint.” Prehearing Order, Paragraph 7 (Bold and all caps in original).

7. The Initial In-Person hearing was held as scheduled on June 1, 2018. The Complainant, Yvette Small appeared and represented herself. PGW appeared, was represented by counsel and presented the testimony of one witness who sponsored 6 exhibits. The Complainant testified but did not sponsor any exhibits.

8. On August 13, 2018, the Commission issued the Initial Decision dated July 18, 2018, dismissing the Complaint, finding that of the Complainant failed to sustain her burden of proof and that PGW filled the Complainant accurately for service to her Service Address. That Initial Decision is attached hereto as Appendix “C” (“Initial Decision”).

9. The Initial Decision carefully sets forth the review of various transactions on the Complainant’s account. These include the bills and credit refunds issued by PGW and the payments and cancelled payments of the Complainant. The analysis led to the conclusion that the account was billed correctly and all applicable transactions were account for.

10. Neither party to that proceeding filed Exceptions to the Initial Decision with the 20 day period provided following the issuance of the Initial Decision, in accordance with the Commission's procedural rules.

11. Pursuant to the Pennsylvania Public Utility Code at 66 Pa. C.S. §332(h), the Initial Decision became final by operation of law. The Commission's entered the Final Order dismissing the Complaint on October 1, 2018.

12. On April 1, 2019, the Complainant filed the Complaint in the instant matter under Complaint Docket No. C-2019-3009002, which is attached hereto as Appendix "D."

13. In the above captioned matter, under Docket No. C-2019-3009002, the Complainant, Yvette Small alleges that there are incorrect charges on her bill for her PGW Gas Service Account at 2259 N. Uber Street, Philadelphia, Pennsylvania, PGW Account No. 0879484217, the Service Address.

14. In the above captioned matter, under Docket No. C- 2019 – 3009002 an Initial In-Person Hearing has been scheduled for Friday, June 14, 2019 at 10:00 a.m. before Administrative Law Judge Angela T. Jones.

15. The Complaint in the instant matter refers to a time when she had previously attended court with her "proof," and states that, "...since I did not have a lawyer, she didn't ask me for my proof." Complaint, Paragraph 5. (See Appendix "D")

16. On May 2, 2019, counsel for PGW contacted the Complainant to clarify what she was referring to in the Complaint. The Complainant confirmed that she was disputing the matter that was the subject of *Yvette Small v. PGW*, Docket No. F-2018-3000910. The Complainant stated that she was not permitted to give her proof at the hearing. She stated that she disagreed with the decision in that matter and she wants to continue to fight it.

17. By all indications, according to the Initial Decision of the matter under Docket No. F-2018-3000910, the Complainant was afforded every opportunity to participate in the hearing of that matter.

18. The instant matter should be dismissed under the principal of *res judicata*, as there is a final judgment on the merits issued by the Commission under Complaint Docket No. F-2018-3000910 entered on October 1, 2018 and by the Code at 66 Pa.C.S. § 316, which prohibits a complainant from raising the same issues before the Commission a second time. That Section states as follows, in pertinent part:

Whenever the [c]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316

WHEREFORE, PGW respectfully requests that, pursuant to the Commission's Final Order in *Yvette Small v. Philadelphia Gas Works*, Docket No. F-2018-3000910, the Commission [1] should dismiss the instant complaint as the Commission has addressed all factual and legal issues that are the basis of the instant complaint in its previous order under Complaint Docket No. F-2018-3000910 entered on October 1, 2018 and [2] should cancel the Initial In-Person Hearing scheduled for June 14, 2019 under the above captioned matter.

Respectfully submitted,

May 7, 2019



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

Appendix “A”

RECEIVED

MAR 13 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

timely

BCS 3572604

PHILADELPHIA GAS WORKS

Must be returned by MARCH 26, 2018

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

*Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.*

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Yvette Small

Street/P.O. Box 2259 N Ueberst Apt # _____

City Phila State Pa Zip 19132

County Phila

Telephone Number(s) Where We Can Contact You During the Day:

() _____ (home) (267) 601-2189 (mobile)

E-mail Address (optional): _____

Utility Account Number (from your bill) 0879484217

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PGW

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|---|---|
| <input type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input checked="" type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I would like the PUC to help me to solved this problem. Cause they trying to over charge me. In cancel a ~~three~~ payment which was done online. I couldn't afford the payment. Now I owe this I owe to them but which its \$109.00 nothing also. Also

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

Yvette Small, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Yvette Small
(Signature of Complainant)

3/12/18
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

SS

03/08/2018

Philadelphia Gas Worker (PGW)

Re:000879484217

To Whom May Concern:

I did receive the letter from PGW about the \$459.94. Which I did a online payment for \$459. 94 but before the payment was due I cancel it and change it to \$359.94. Which I owe \$100 plus the \$109 for September or October bill. So the only thing I owe is \$ 209. Plus I don't know how I was credited to \$254.35 which it doesn't add up. How do I still owe \$459.94 and I paid \$359.94? If the payment for \$459.94 was processed how was I able to cancel it? Cuz once the payment is processed you're not able to cancel it. Also I will owe y'all more than I owe, which it would been \$819.88 that I gave y'all. Which my bill is never high also I would never let it get that much. Plus I just received a bill for \$699 and I don't owe that. I don't want to get a shut-off notice. I want the Commission to help me to solve this problem please. Cuz they tried to make me pay the \$459.94 all because I canceled the payment. The reason why I cancel because I couldn't afford the

SS

\$459.94 that's why I made it \$359.94.

Thank you
Yvette Small



ACCOUNT HISTORY

View your bills and payment history for the past 12 months. To view your current billing and usage information and compare it to the past 24 months, please use [Bill Analyzer](#)

<u>View Bill</u>	<u>Bill Date</u>	<u>Bill Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
	2/27/2018	\$689.98	<input type="button" value="Submit"/>	-
	1/27/2018	\$819.96	2/23/2018	\$219.96
	12/26/2017	\$709.98	-	-
	11/22/2017	\$709.96	12/19/2017	\$109.96
	10/24/2017	\$599.98	-	-
	9/22/2017	\$699.90	10/20/2017	\$114.90
	8/22/2017	\$589.92	9/13/2017	\$95.00
	7/25/2017	\$0.00	-	-
	6/22/2017	\$459.94	7/14/2017	\$359.94
	5/23/2017	\$329.96	-	-
	4/26/2017	\$219.98	-	-
	3/24/2017	\$220.90	4/24/2017	\$110.90

LIHEAP sent this



Contact Us

Since I was late on my payment n couldn't pay they add the \$109.98 which was the CRT. So the \$219.98 + 109.98 = \$329.96. So I couldn't pay that so they add the \$329.96 + \$109.98 = \$439.94. So where they got the \$459.94 from.

4. Small
3354 N. Uber St
Phila. Pa. 17132

CERTIFIED MAIL™



7013 0600 0000 9002 6079



17120

U.S. POSTAGE
PAID
PHILADELPHIA, PA
19132
MAR 13 18
AMOUNT
\$4.37
R2305M146347-37

Secretary
Pennsylvania Public Utility Commission
400 North St 2nd Floor
Harrisburg, Pennsylvania 17120

Appendix “B”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Small

v.

Philadelphia Gas Works

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F-2018-3000910

PREHEARING ORDER

An Initial Hearing in this case is scheduled for an available hearing room on the fourth floor of the building located at 801 Market Street on Friday, June 1, 2018 at 10:00 a.m. The entrance to the building is found on 8th Street towards the middle of the block. Once you have arrived in the building on the fourth floor, please call 215.560.2105 to be escorted into the appropriate hearing room. Accordingly, the parties are hereby directed to comply with the following requirements:

1. You must serve me directly with a copy of any document that you file in this proceeding, at the time of filing. If you send me any correspondence or document, you must send a copy to all other parties. For your convenience, a copy of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") current service list of the parties to this proceeding is enclosed with this Order.

2. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing and should be submitted no later than five (5) days prior to the hearing. 52 Pa.Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. The correct address is:

Administrative Law Judge Angela T. Jones
Pennsylvania Public Utility Commission
801 Market Street, 4th Floor, Suite 4063
Philadelphia, PA 19107

Changes are granted only in rare situations where good cause exists.

3. YOU MAY LOSE THIS CASE IF YOU DO NOT TAKE PART IN THE HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED.

4. The hearing is a formal proceeding and will be conducted in accordance with the Pennsylvania Public Utility Commission's Rules of Practice and Procedure.

5. If you intend to introduce any exhibits into evidence at the hearing, you must supply an original and one copy for the court reporter, a copy for me, and one copy for each other party. Proposed exhibits should be properly pre-marked for identification purposes.

6. Pursuant to 52 Pa.Code §§ 1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).

7. THE COMPLAINANT BEARS THE BURDEN OF PROOF IN THIS PROCEEDING AND MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT HAS VIOLATED THE PUBLIC UTILITY CODE OR A REGULATION OR AN ORDER OF THE COMMISSION SO THAT THE COMPLAINANT IS ENTITLED TO THE RELIEF REQUESTED IN THE COMPLAINT.

8. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa.Code § 5.421. You must submit your written application to me sufficiently in advance of the hearing date so the other parties will have the required ten (10) days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.

9. Any party may conduct discovery to learn the factual basis of another party's position in this case. However, 52 Pa.Code § 5.331(b) provides, in relevant part, that "[a] party shall initiate discovery as early in the proceedings as reasonably possible." Additionally, 52 Pa. Code § 5.322 provides, in relevant part, that "parties are encouraged to exchange information on an informal basis." All parties are urged to cooperate in informal information exchanges and in conducting discovery. Cooperation is preferable to disagreements, which require my participation to resolve. There are limitations on discovery (52 Pa.Code § 5.361) and sanctions for abuse of the discovery process (52 Pa.Code §§ 5.371 & 5.372).

10. The Complainant is responsible for payment of current undisputed bills for service pending the resolution of this formal complaint. 52 Pa.Code § 56.181. Failure to make payments may result in the termination of utility service.

11. **Commission policy is to encourage settlements. 52 Pa.Code § 5.231(a). Therefore, you are urged to discuss informally between yourselves the possible settlement of this case at least one week before the hearing.** If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

12. Please note, if English is not your first language and you or any witness you present is in need of an interpreter to participate in the hearings, please call the scheduling office at 717.787.1339. Please provide what language you need the interpreter to be fluent in. We will

Yvette Small v. PGW
Docket No. F-2018-3000910

SERVICE LIST

YVETTE SMALL
2259 N UBER STREET
PHILADELPHIA PA 19132
267.601.2189

GRACIELA CHRISTLIEB ESQUIRE
PHILADELPHIA GAS WORKS
800 West Montgomery Avenue
PHILADELPHIA PA 19122
215.684.6164
Accepts E-Service
Representing Philadelphia Gas Works

Appendix “C”



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

August 13, 2018

F-2018-3000910

Yvette Small

v.

Philadelphia Gas Works

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, **within twenty (20) days** of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will **not** be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

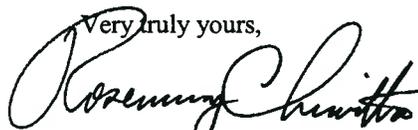
Replies to Exceptions, if any, must be **filed** with the Secretary of the Commission and **served** on each party of record and the Commission's OSA, in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge could become final without further Commission action. You will receive written notification if this occurs. However, even if no exceptions are received, the Commission may review and change the decision pursuant to Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h).

NW
Enclosures
Certified Mail
Receipt Requested

Very truly yours,

Rosemary Chiavetta
Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Small

v.

Philadelphia Gas Works

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F-2018-3000910

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainant failed to sustain her burden of proof regarding her claims of incorrectly billed charges. Therefore, this decision dismisses the formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On March 13, 2018, Yvette Small (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against Philadelphia Gas Works (PGW or Respondent or Company). The Complainant indicated that there are incorrect charges on her bill.

The Complainant further alleged that she was overcharged for gas service which she alleged she paid online. The Complainant admitted that she later cancelled a payment because she could not afford it. The Complainant contended that she only owes \$109.00.

The Complaint was served electronically (eService) by the Commission's Secretary on April 3, 2018, per the audit history of the docket. The eService is pursuant to the waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

Counsel for the Respondent, Graciela Christlieb, Esquire, filed an Answer on April 23, 2018. The Answer denied the allegations of the Complaint and averred that the Company did not overcharge the Complainant. The Respondent averred that a check was returned for insufficient funds and a charge for insufficient funds was applied to the Complainant's account.

The Answer further avers that the Complainant filed an informal complaint regarding this matter with the Commission's Bureau of Consumer Services (BCS) at Case No. 3572604. The BCS found that the Complainant's informal complaint was dismissed regarding the returned check. The BCS also found that the insufficient funds charge to the Complainant's account should be waived and on February 14, 2018, the Respondent waived the insufficient funds charge in compliance with the BCS decision. This Complaint is a timely appeal of the BCS decision.

The Respondent requested that the Commission dismiss the Complaint.

By Hearing Notice dated April 26, 2018, the matter was scheduled for an initial hearing on Friday, June 1, 2018, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

By Prehearing Order dated April 26, 2018, the undersigned provided, among other things, the procedural rules for this proceeding.

The initial hearing convened as scheduled on June 1, 2018. Yvette Small was present and represented herself. Counsel for the Respondent, Attorney Christlieb, was present and was accompanied by one witness, Tiffany Jones.

Ms. Small testified and did not sponsor any exhibits.

The Respondent's witness sponsored the following six exhibits:

- (1) PGW Exhibit 1 – contacts at the premise;
- (2) PGW Exhibit 2 – customer online and payment activity;
- (3) PGW Exhibit 3 – PGW refund check to Complainant;
- (4) PGW Exhibit 4 – account statement of Complainant;
- (5) PGW Exhibit 5 – PGW letter in response to payment dispute; and
- (6) PGW Exhibit 6 – BCS Case No. 3572604 case report.

All six PGW exhibits were admitted into the record over the Complainant's objection to the pay date shown on PGW Exhibit 2.

The entire transcript was received on June 25, 2018 and consisted of 93 pages of transcribed testimony. The record closed on June 25, 2018, when the transcript was received.

This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Yvette Small, who currently resides at 2259 North Uber Street, Philadelphia, PA (service address). Tr. 6.
2. The Respondent is PGW which provides gas service to the Complainant at the service address.
3. The Complainant is enrolled in the Company's Customer Responsibility Program (CRP) and under the program is responsible to pay \$109.98 per month for gas service. Tr. 24-25, PGW Exhibit 4.
4. The Complainant missed a couple of monthly payments and had late payments while she was enrolled in the CRP program. Tr. 25-26, 35, 42.

5. The Complainant's bill is generated in the same amount monthly regardless of usage because the bill is based on the income of the CRP participant. Tr. 42, 79-80.

6. Tiffany Jones is employed by PGW as a Senior Customer Review Officer who investigates informal and formal complaints filed against the Company with the PUC. Tr. 45-46.

7. Ms. Jones investigated the Complainant's Complaint. Tr. 46.

8. The Complainant receives her PGW bill in the mail. Tr. 13.

9. The Complainant has a username and password to access the PGW payment website. Tr. 37.

10. No one other than the Complainant has her password to the PGW payment website. Tr. 37.

11. The Complainant is the only person that pays her PGW bills. Tr. 37.

12. The Complainant normally pays her bills online through PGW's website. Tr. 8, 35.

13. The PGW website automatically shows the amount due for gas service rendered associated with the Complainant's account when the Complainant accesses her account online. Tr. 13.

14. On June 22, 2017, a bill was issued to the Complainant's account, which was due on July 14, 2017, in the amount of \$459.94 based on past due CRP payments. Tr. 80, PGW Exhibit 4.

15. On June 22, 2017, the Complainant enrolled in autopay on the PGW website. Tr. 48, 56, 64, PGW Exhibit 2.

16. By enrolling in autopay, the Complainant scheduled a payment for the full amount of the June 2017 bill to be made on the due date of the bill, July 14, 2017. Tr. 64.

17. On June 23, 2017, the Complainant scheduled a one-time payment in the amount of \$459.94 to be paid on July 14, 2017. Tr. 7, 35, 48, 56, PGW Exhibit 2.

18. On June 24, 2017, PGW's website generated a payment for the amount due for the June 2017 bill through the autopay feature. Tr. 48-49, 57, PGW Exhibit 2.

19. On July 6, 2017, the Complainant cancelled the autopay feature. Tr. 11-12, 35, 50, 57, PGW Exhibit 2.

20. The scheduled autopay payment was cancelled upon cancellation of the autopay feature. Tr. 50.

21. A confirmation code was generated for the cancellation of the autopay scheduled payment. Tr. 50.

22. When a transaction is cancelled or modified on the PGW website, an email is generated within 24 hours to confirm the cancellation. Tr. 19-21, 28-29.

23. With another transaction on July 6, 2017, the Complainant scheduled a one-time payment in the amount of \$359.94 to be paid on July 14, 2017. Tr. 50, 57-58, PGW Exhibit 2.

24. Through this second transaction on July 6, 2017, the Complainant intended to cancel the \$459.94 payment that she had previously scheduled for the payment due date.

25. The Complainant did not receive an email to confirm that her \$459.94 payment was cancelled. Tr. 19, 21, 28-29.

26. On July 14, 2017, both payments scheduled for this date in the amounts of \$459.94 and \$359.94, scheduled by the Complainant on June 23, 2017 and July 6, 2017, respectively, were executed and posted to the Complainant's bank account. Tr. 50-51, 61-62, 80-81, PGW Exhibits 2 and 4.

27. The Complainant received an overdraft notice on her bank account after the July 14, 2017, payments because the bank debited both the \$459.54 and \$359.54 payments to PGW. Tr. 14-15.

28. Seeing the overdraft notice on her bank account caused the Complainant to call her bank regarding the \$459.54 payment to PGW. Tr. 39.

29. After the Complainant spoke to her bank about the overdraft notice, on July 17, 2017, she called PGW to obtain an explanation of why they presented to her bank two payments. Tr. 16.

30. The response the Complainant received from PGW was that the \$459.54 payment was never cancelled, so that payment was processed. Tr. 17.

31. The Complainant disagreed with PGW and contended that the \$459.54 payment was cancelled and should not have been processed. Tr. 17-18.

32. On July 17, 2017, during a call initiated by the Complainant, the Respondent told the Complainant that she could either wait for a refund check or she could contact her bank to cancel the payment that was posted. Tr. 51, 65-66, PGW Exhibit 1.

33. The Complainant called Respondent back on July 17, 2017 and gave the confirmation code that corresponded to cancelling autopay. Tr. 51, 66, PGW Exhibit 1.

34. The confirmation code was emailed to the Complainant at the email address that corresponds to the Complainant's account on the PGW payment website. Tr. 67.

35. On July 18, 2017, the Complainant again called the Respondent requesting a refund and was told she could receive a refund in the amount of \$359.94. Tr. 51, 68, PGW Exhibit 1.

36. The Complainant disputed the refund amount, contended it should be \$459.94, and requested to speak with a supervisor. Tr. 51-52, 68-69, PGW Exhibit 1.

37. A PGW supervisor confirmed that the refund amount was \$359.94 because the Complainant owed \$459.94 and made two payments, one for \$459.94 and one for \$359.94; thus, the refund due was \$359.94. Tr. 69, PGW Exhibit 1.

38. On July 19, 2017, PGW's Account Management Department approved a refund to be issued in 10 business days. Tr. 52, 70, PGW Exhibit 1.

39. On July 25, 2017, the Complainant's July 2017, bill was issued and automatically paid with the credit amount on her account, leaving a credit amount of \$249.96 ($\359.94 (June credit) - $\$109.98$ (CRP amount due for July 2017) = $\$249.96$). Tr. 52, 53-54, 82, PGW Exhibit 4.

40. The Complainant had a \$4.39 credit from an older service account, and therefore, her total credit was \$254.35 ($\249.96 (June credit) + $\$4.39$ (older service account credit) = $\$254.35$). Tr. 52, 82-83, PGW Exhibit 4.

41. On July 31, 2017, the Respondent issued to the Complainant a refund check in the amount of \$254.35. Tr. 22-24, 31, 40, 70, PGW Exhibits 1, 3 and 4.

42. The refund check, in the amount of \$254.35, issued on July 31, 2017, was processed prior to the Respondent finding out that the authorization for payment in the amount of \$459.94 was revoked by the Complainant. Tr. 76, PGW Exhibits 4 and 5.

43. On August 3, 2017, the payment of \$459.94 was returned by the Complainant's bank because the Complainant revoked its authorization. Tr. 52, 62, 83-84, PGW Exhibits 4 and 5.

44. On August 7, 2017, the Complainant deposited the \$254.35 PGW check that she received into her bank account. Tr. 31, 40, PGW Exhibit 3.

45. On August 22, 2017, a bill was generated on the Complainant's account in the amount of \$109.98 with an outstanding balance due in the amount of \$589.92 (\$459.94 (payment that was revoked) + 109.98 (CRP monthly amount due) + \$20.00 (for insufficient funds charge) = \$589.92). Tr. 84, PGW Exhibit 4.

46. On September 1, 2017, the Complainant called the Respondent regarding a shut-off notice received for September 6, 2017. Tr. 72, PGW Exhibit 1.

47. On September 1, 2017, the Respondent explained to the Complainant that she stopped the payment in the amount of \$459.94 after it was processed. Tr. 73, PGW Exhibit 1.

48. On September 1, 2017, the Respondent explained that because the Complainant requested a refund check, the credit was not applied to her account, but was presented to her as a check. Tr. 73, PGW Exhibit 1.

49. The Respondent normally does not issue refunds in the form of a check to customers with active accounts if it is not requested. Tr. 74.

50. On October 24, 2017, the Complainant filed an informal complaint with the Commission's BCS over the allegations concerning the \$459.94 and \$359.94 payments. Tr. 86-87, PGW Exhibit 6.

51. On February 12, 2018, the BCS issued a decision which directed the Respondent to credit the Complainant's account in the amount of \$20.00 to waive the insufficient funds charge and in all other respects dismissed the complaint. Tr. 87-88, PGW Exhibit 6.

52. The \$20.00 insufficient funds charge was removed from the Complainant's account on February 14, 2018. Tr. 84-85, PGW Exhibit 4.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 1992).

In addition, 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.Cmwlt. 1980).

If the Complainant presents evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlt. 2001).

II. Whether Charges Are Incorrect

There is no dispute that the Complainant is the responsible ratepayer for gas service at the service address. Tr. 37. The Complainant normally pays her bills online through the Respondent's website. There is no dispute that the Complainant is a participant in the Respondent's CRP. Tr. 24-25. There is no dispute that the Complainant's monthly amount billed is \$109.98 as a CRP participant. *Id.* There is no dispute that the Complainant did not always timely pay her CRP bills. Tr. 25-26, 35, 42, PGW Exhibit 4. There is no dispute that the Complainant is the only person that pays her bills and the only person with access to her username and password to the website that enables her to pay her bills. Tr. 37. What is disputed is whether the Respondent accounted appropriately for the transactions that the Complainant designated as payments through the Respondent's website.

The Complainant contended that she made two separate transactions, one on June 23, 2017, in the amount of \$459.94 and another on July 6, 2017 in the amount of \$359.94 for payment of her bill due on July 14, 2017. Tr. 9-12. There is no dispute that the full amount of the bill for the July 14, 2017, due date was \$459.94. Tr. 9, PGW Exhibit 4. The Complainant contended that she accessed the Respondent's electronic bill payer system before July 14, 2017 and cancelled the scheduled payment for the full amount because she determined her finances were such that paying the full amount would present a burden to her. Tr. 11-12. However, the Complainant was willing to pay \$359.94 or \$100.00 less than the full amount due for the July 14, 2017, payment. The Complainant does not recall invoking autopay for the full amount due on July 14, 2017. Tr. 35-36.

The Respondent contended that the Complainant on June 22, 2017, implemented autopay for the full amount due on July 14, 2017. The Respondent confirms that the Complainant had a transaction in the amount of \$459.94 on June 23, 2017 for payment due on July 14, 2017. PGW Exhibit 1 and 4. The Respondent provided evidence that the Complainant invoked a second transaction on July 6, 2017, for the amount of \$359.94 due on July 14, 2017, or \$100.00 less than the full amount due. The Respondent provided evidence that the Complainant reviewed her account on July 6, 2017 and cancelled the autopay payment on that date. PGW Exhibit 2. The Complainant failed to rebut this evidence.

The Respondent presented to the Complainant's bank two transactions for payment on July 14, 2017, in the amounts of \$459.94 and \$359.94. Most telling is that the Complainant did not recall receiving a confirmation email cancelling the \$459.94 payment that she made. Tr. 19, 21, 28-29. However, the Complainant did present a confirmation email cancelling the autopay payment in the amount of \$459.94. Tr. 30, PGW Exhibit 1.

Based on the record evidence presented, I find that the Complainant's actions through Respondent's website caused two payments in the amounts of \$459.94 and \$359.94 to be rendered on the due date of July 14, 2017, for the Complainant's June 2017, bill for gas service. Furthermore, I do not find that the presentation of these two payments in the amounts of \$459.94 and \$359.94 by the Respondent to the Complainant's bank were in error.

On July 25, 2017, the Complainant's bill for July 2017, became due in the amount of 109.98 (CRP monthly payment). PGW Exhibit 4. The Respondent took the credit of the Complainant's account in the amount of \$359.94 and added a credit in the amount of \$4.39 from an older service account for a total of \$364.33 (\$359.94 (credit from June bill overpayment) + \$4.39 (credit from older service account) = \$364.33). Tr. 52. The Respondent deducted the amount due for July 2017, for a refund due to the Complainant in the amount of \$254.35 (\$364.33 - 109.98 = \$254.35). Tr. 52, PGW Exhibits 1 and 3.

On July 31, 2017, the Respondent mailed a check to the Complainant in the amount of \$254.35 because the Complainant requested a refund in the form of a check. PGW Exhibits 1, 3 and 5.

There is no dispute that the Complainant stopped the one payment in the amount of \$459.94. Tr. 14-18, 52, 61, PGW Exhibit 4. On August 3, 2017, the Complainant's bank revoked the payment in the amount of \$459.94 to the Respondent because the Complainant told the bank the payment was not authorized. Tr. 18, PGW Exhibits 4 and 5. Because the payment had already been credited to the Complainant's account, the Complainant then owed \$459.94 on August 3, 2017. PGW Exhibit 4.

On August 22, 2017, the Complainant received a bill for service rendered in August 2017. PGW Exhibit 4. The Complainant also was charged \$20.00 for insufficient funds in August 2017, because of the stopped payment on August 3, 2017, from the Complainant's bank. PGW Exhibit 4. The Complainant's total balance due for her August 2017, bill was \$589.92 (\$109.98 (monthly CRP) + \$459.94 (amount due because of stopped payment) + \$20.00 (insufficient funds charge) = \$589.92). PGW Exhibit 4.

I find that the Respondent billed the Complainant accurately for service to her service address. The Complainant provided no evidence that the charges by the Respondent were unreasonable or inappropriate. There is no record evidence to support the Complainant's allegation that she had incorrect charges for billed service. I find that the Complainant failed to support her burden to prove there were incorrect charges billed for her gas service.

The Complainant has failed to support her burden of proof. The Complaint will be dismissed by the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

4. The Complainant failed to sustain her burden to prove incorrect charges on her bills at her service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Yvette Small against Philadelphia Gas Works at Docket No. F-2018-3000910 is dismissed.

Appendix “D”

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Yvette Small

v.

Philadelphia Gas Works

:
:
:
:
:
:

F-2018-3000910

FINAL ORDER

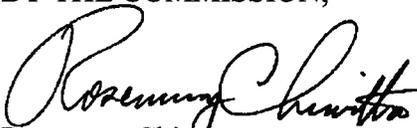
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Angela T. Jones dated July 18, 2018, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Yvette Small against Philadelphia Gas Works at Docket No. F-2018-3000910 is dismissed.
2. That the Secretary's Bureau mark this docket closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: October 1, 2018

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.

Date: May 7, 2019



Laureto Farinas

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 § 1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

Complainant

Ms. Yvette Small
2259 N. Uber Street
Philadelphia, PA 19132

May 7, 2019



Laureto A. Farinas, Esq.
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