



PHILADELPHIA GAS WORKS

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May 9, 2019

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

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MAY 9 - 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Deree J. Norman v. PGW, Docket No. C – 2018 – 2640719

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works hereby files its reply to the Complainant's exceptions filed on April 29, 2019 to the Initial Decision issued April 9, 2019 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deree J. Norman
Complainant
v.

Philadelphia Gas Works,
Respondent

:
:
: **Docket No. C-2018-2640719**
:
:
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MAY 9 - 2019

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, ("PGW") hereby files its reply to the Complainant's exceptions filed on April 29, 2019 ("Exceptions"), to the Initial Decision issued April 9, 2019 in the above captioned matter ("Initial Decision").

I. INTRODUCTION

This matter involves a formal complaint filed by the Complainant, Mr. Deree J. Norman, on December 27, 2017 against PGW with the Commission alleging that, *inter alia*, there are incorrect charges on his bills and that he needed a payment arrangement.

This Initial Decision denies Mr. Norman's formal Complaint because he failed to sustain his burden of proving: 1) that there are incorrect charges in his PGW gas bills; and 2) that PGW violated a Commission statute, regulation or order by not offering Mr. Norman a payment arrangement after the conclusion of his prior complaint, and with regard to Mr. Norman's LIHEAP1 application for 2017-2018. The Initial Decision also denied the Complainant's request for a Commission-issued payment arrangement upon concluding that a payment arrangement issued by the utility is more advantageous for him.

The Complainant's Exceptions raise issues in a general way, of the presiding officer's impartiality with regard to the hearing and the receipt of evidence upon which the Initial decision is based. At all times during the course of this proceeding, the presiding officer provided the Complainant with every opportunity to prosecute his complaint within the Commission's rules. The presiding officer made every accommodation to the Complainant in the discovery process and in the presentation of his case at the hearing of this matter.

The Complainant filed Exceptions to the Initial Decision on April 29, 2019. PGW replies as follows.

II. PGW'S REPLY TO EXCEPTION

Exceptions to Technical Testimony

The Complainant's first exceptions are to the Initial Decision Findings of Fact, Paragraphs 6 and 8 which states

6. The Service Address is equipped with a gas house heater, a gas water heater and a gas range.
8. Mr. Norman is able to use the gas water heater even without electricity.

The exception is that Finding of Fact 6 is misleading. Finding of Fact, Paragraph 6 is simply a statement of the appliances at the Service Address. The Exception mentions other Findings of Fact to point to the inability of some appliances to use gas seemingly to show that there is no gas used at the Service Address.

As to the Complainant's Exception to Finding of Fact 8, the Exception ignores that gas usage occurs, at least, through the use of gas consumed to heat water. The Exception makes an irrelevant, vague and inappropriate argument concerning the behavior of the presiding officer and a complaint filed by the Complainant at the Pennsylvania Attorney General's office. This Exception deflects from the acknowledgment that the Complainant is able to use his hot water heater (heated by gas) without electricity.

The Exception includes information that is not of record. The Complainant at the hearing failed to produce any documentation concerning the status of the water service to the Service Address. As the Complainant seems to contend is that there is 0 CCF of gas usage at the Service Address, it seems illogical that he would want to continue receiving gas service rather than requested that the gas service be terminated until a time when some or all of the gas using appliances are operational.

The Exception to Finding of Fact, Paragraph 9 states that the finding is misleading and inconclusive.

Finding of Fact, Paragraph 9 is simply a statement of the billing and usage on the Complainant's PGW account for the period mentioned. It is part of the record evidence from PGW Exhibit 1-A. The Exceptions states that the Initial Decision failed to take into account the Complainant's water usage for the corresponding months, reduction of gas usage from the gas appliances that were alleged not to be using gas at during the corresponding months.

The Exception also includes a chart labeled "Water." It purports to be a chart of the billing information about the Complainant's water consumption. This information has not been authenticated. The record contains no documentation provided by the Complainant about water usage. The information contained on the chart was not offered in evidence at the hearing of this matter. The consumption information was not made part of the record of this proceeding. Therefore the Initial Decision would not have relied upon to reach its findings. As the "Water Chart" in the Exceptions is not record evidence it should be disregarded by the Commission.

This Exception should be denied.

The Exception to Finding of Fact, Paragraph 26 states that the finding is speculative and a bald assertion.

For Finding of Fact, Paragraph 26, the Initial Decision relied upon the testimony of PGW witness, Abe Awad. In his extensive testimony on the way that the meter functions and responds to pressure, Finding of Fact, Paragraph 26, is supported by substantial evidence. The Complainant failed to offer any opposing testimony other than his opinions concerning the functioning of a meter and its response to slight pressure fluctuations. As the proponent of a rule or order, 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.A. § 332(a). To satisfy this burden, the Complainant should have produced credible evidence through testimony or other means that disprove the testimony of Mr. Awad.¹

Find of Fact, Paragraph 26 is supported by substantial record evidence. The Commission's decision must be supported by "substantial evidence," which consists of

¹ Transcript pp. 214 – 246 and 272 - 274

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*, 489 Pa. 109, 413 A.2d 1037 (1980). In this matter, PGW presented the testimony of Mr. Awad to rebut the Complainant's unsupported assertions. This Exception should be denied.

The Exception to Finding of Fact, Paragraph 27 states that the finding is speculative and a bald assertion.

For Finding of Fact, Paragraph 27, the Initial Decision relied upon the testimony of PGW witness, Abe Awad. In his extensive testimony on the way that the meter functions and responds to pressure, Finding of Fact, Paragraph 27, is supported by substantial evidence. The Complainant failed to offer any opposing testimony other than his opinions concerning the functioning of a meter and its response to slight pressure fluctuations. The Exception continues to make unsupported assertions about the variations in pressures as having a substantial effect upon the measurement of gas at the meter.

As the proponent of a rule or order, 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.A. § 332(a). To satisfy this burden, the Complainant should have produced credible evidence through testimony or other means that disprove the testimony of Mr. Awad. This Exception should be denied.

The Exception to Finding of Fact, Paragraph 34 states that the finding is speculative and a bald assertion.

For Finding of Fact, Paragraph 34, the Initial Decision relied upon the testimony of PGW witness, Abe Awad. In his extensive testimony on the way that the gas meter functions, Finding of Fact, Paragraph 34, is supported by substantial evidence. The Complainant failed to offer any opposing testimony other than his opinions concerning the functioning of a meter and its response to slight pressure fluctuations. The Exception makes a *non sequitur* and unsupported assertion about the capacity of meters to hold gas. Finding of Fact, Paragraph 34, is based upon sound record

evidence. 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*, 489 Pa. 109, 413 A.2d 1037 (1980). In this matter, PGW presented the testimony of Mr. Awad to rebut the Complainant's unsupported assertions. This Exception should be denied.

Exceptions Regrading Payment Arrangement

The Exception to Finding of Fact, Paragraph 39 states that the finding is misleading and fails to include or misstates relevant facts.

In this Exception, the Complainant outlines a procedural history of Mr. Norman's unsuccessful previous formal complaint filed at Docket C-2015-2489503. It was not necessary for the Initial Decision of the instant matter to address the previous matter. PGW was not obligated by that decision to offer the Complainant a payment arrangement. This Exception should be denied.

Exceptions Regarding LIHEAP Application

The Exception to Finding of Fact, Paragraph 50 states that the finding is speculative and inconclusive.

In this Exception the Complainant asserts a theory in which PGW is responsible for the denial or loss of LIHEAP applications. At the hearing of this matter, PGW witness testified that PGW does not make any determination regarding the approval or denial of LIHEAP applications.² The testimony of PGW witness, Ms. Jessica Glace appropriately explains PGW's role in that application process. The Complainant placed not evidence that he had applied for LIHEAP in the years mentioned in the Exception save Complainant's Exhibit 1 which was a letter from the Commonwealth of Pennsylvania, Department of Human Services, Mail date: December 20, 2017. As stated during her testimony, PGW witness Glace could not discern the full purpose or content of the as the letter seemed to be covered before copying. The letter stops after the salutation

² Transcript p. 141

"Dear Mr. Norman." Comp. Ex. 1 This seems to indicate that there was additional information that specifically applied to Mr. Norman that was redacted from the letter. The record contains no other information to support the Complainant's assertion that PGW was instrumental in his denial of LIHEAP grants. Further, the Complainant attaches the letter (Complainant's Ex. 1 LIHEAP Notification) to the Exceptions. While it is unclear why the Complainant says that he has the complete (unredacted) letter for Commission review in the future, the Commission should disregard this information as not in record evidence.

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*, 489 Pa. 109, 413 A.2d 1037 (1980). This Exception should be denied.

Exception Regrading Payment Arrangement in Prior Complaint

The Exception to Finding of Fact, Paragraph 51 states that the Initial Decision of the instant matter should have addressed a payment arrangement for the Complainant in the matter under Docket C-2015-2489503.

The Initial Decision found that the Commission's Opinion and Order entered on July 13, 2017 in the matter of *Deree J. Norman v. PGW*, Docket C-2015-2489503 did not instruct PGW to establish a payment arrangement for Mr. Norman. The Exception bases its argument on his misinterpretation of the obligation of the utility following that Commission Opinion and Order. A review of that order will reveal that PGW had no obligation to contact the Mr. Norman to offer a payment arrangement.

This Exception should be denied.

Exceptions Regrading Conclusions of Law

The Exception to Conclusion of Law, Paragraph 2.

The complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. §332(a).

The Exception now alleges that the burden that he had for this matter was more than a preponderance of evidence. The record of this matter shows that the Complainant provided no evidence in support of his complaint other than the expression of his own theories and opinion about the nature of the pressure of gas as it passes through PGW metering apparatus. The Complainant fails to recognize that his opinion testimony was unsupported by any factual scientific evidence about the subject matter. In rebutting the Complainant's assertions, the PGW witnesses provided logical consistent rebuttal evidence to the Complainant's bald assertions. In 66 Pa.C.S. §332(a) the legislature meant that the Complainant has the burden to establish the facts of his/her case. This Exception should be denied.

The Exception to Conclusion of Law, Paragraphs 3 and 4.

In these Exceptions the Complainant states that the Initial Decision did not follow the precedent in *Waldron v. Philadelphia Electric Co.* In reply PGW asserts that the Initial Decision did follow this precedent. The Complainant had stipulated that the meter at the Service Address was working properly. Nevertheless the Initial Decision goes on to review the facts of the matter and the Complainant's theories of the impact of pressure on the meter. With the testimony provided by PGW witness, Mr. Awad, the Initial Decision is supported by substantial evidence that the impact of pressure upon the meter is not as the Complainant opines. The Initial Decision looks beyond the accuracy of the meter for evidence in support of the Complainant's assertions and found that they were rebutted by PGW testimony.

Further in these Exceptions, state that the Initial Decision contains "bald assertions." The Exceptions seem to ignore that the Complainant's burden was to make more than the "bald assertions" that comprised the theories of his base. The Initial Decision is supported by substantial evidence.

As the proponent of a rule or order, 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.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that PGW (or its equipment) is 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). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

This Exception should be denied.

The Exception to Conclusion of Law, Paragraphs 6.

This Exception cites the authority of the Commission to waive late payment charges for low income customers. The Initial Decision noting that the customer fits the criteria for such a waiver does so at the discretion of the presiding officer. Under 66 Pa. C.S. §1409, 52 Pa. Code §56.22(d) the waiver is not for erroneously assessed bills but rather for income level.

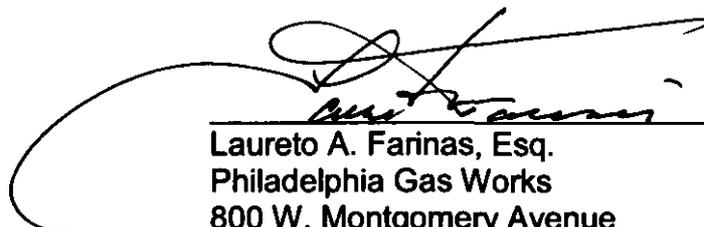
This Exception should be denied.

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant's Exceptions and adopt the Initial Decision in its entirety.

Respectfully submitted,

May 9, 2019


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

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CERTIFICATE OF SERVICE

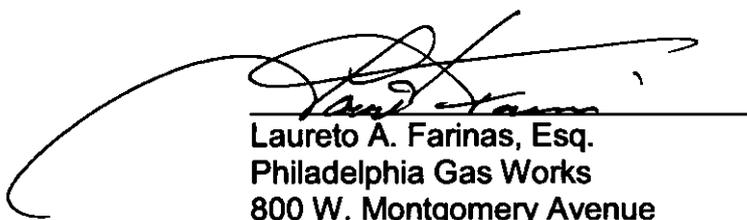
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Deree J. Norman
5367 Thomas Avenue
Philadelphia, PA 19143

May 9, 2019



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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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