



PHILADELPHIA GAS WORKS

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November 4, 2019

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

RECEIVED

OCT 30 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Michael Morales v. PGW, Docket No. C-2018-3002466

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files its Exceptions to the October 10, 2019 Initial Decision in the above captioned matter. The original Exceptions were e-filed on October 30, 2019 and a replacement page "1" was e-filed on October 31, 2019. Please reject the filings from October 30, 201 and October 31, 2019 under Confirmation Numbers 1827350 and 1827413 respectively.

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: Michael Morales (Regular Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Morales,	:
Complainant	:
v.	: Docket No. C-2018-3002466
	:
Philadelphia Gas Works,	:
Respondent	:

**PHILADELPHIA GAS WORKS'
EXCEPTIONS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, ("PGW") hereby files its exceptions ("Exceptions"), to the Initial Decision issued October 10, 2019 in the above captioned matter ("Initial Decision").

I. INTRODUCTION

This matter is a dispute of a bill charged for unauthorized gas usage at an athletic club. The Complainant is the customer of record for a leased building, 2248 N. 3rd Street, Philadelphia, Pennsylvania ("Service Address") that he contends is used periodically. The Complainant states that PGW has overcharged him for unauthorized gas service. The Initial Decision finds in part for PGW and in part for the Complainant. The Complainant is found to be responsible to pay for gas usage at the property during the period in question. PGW takes exception to the Initial Decision's instruction to PGW to recalculate estimated usage based on the periodic usage of the athletic club rather than the full-time usage of a residence and issue a bill accordingly.

HISTORY OF THE PROCEEDING

On May 21, 2018, the Complainant filed a Complaint with the Commission against PGW. The Complaint disputes the accuracy of the charges on his account for unauthorized usage and requests the restoration of gas service.

On June 22, 2018, PGW filed a timely Answer denying all material allegations of fact and conclusions of law in the Complaint. PGW also stated that the Complainant was properly billed for the unauthorized usage that was the result of a bypass of the metering at the Service Address.

The Complainant established residential heat service on January 31, 2014 and a PGW technician also exchanged the meter at the Service Address when turning on the gas on January 31, 2014. During a Usage Discrepancy Investigation on May 30, 2017, a PGW technician discovered a tampered meter bypass. On November 17, 2017, a PGW technician finally gained access to the service address and determined that there was a 50,000 BTU house heater and one 100,000 BTU commercial heater. On November 21, 2017, PGW billed the Complainant \$5,013.70 minus the previous amount billed \$1,194.16, or \$3,819.54, for the period January 31, 2014 to May 30, 2017 noting that this calculation was based on heating capacity (British Thermal Units ("BTUs")) of the two heaters found at the property.

After some rescheduling, a hearing of the matter convened as rescheduled on December 6, 2018. The Complainant represented himself and presented no exhibits. PGW was represented by counsel and presented two witnesses who sponsored five exhibits. All exhibits were admitted. The record closed upon receipt of the hearing transcript on January 19, 2019 but was reopened by Order issued on January 28, 2019, that allowed the Complainant until February 8, 2019, to respond to a PGW letter dated January 25, 2019 regarding remaining evidentiary issues.

On March 29, 2019, the Complainant sent a response that included a flash drive the contents of which could not be viewed. Complainant was notified by telephone that the file was unreadable. On April 9, 2019, an Order was issued reopening the record to allow PGW to reply to the Complainant's March 29, 2019 submission.

By order of April 30, 2019, a Hearing Notice scheduled a further hearing for June 10, 2019. The further hearing was held on June 10, 2019. The Complainant represented himself and Complainant's Exhibits 1 and 2 were admitted.

On October 10, 2019 the Commission issued the Initial Decision finding in part for PGW and in part for the Complainant. The Complainant is found to be responsible to pay for gas usage at the property during the period in question but instructs PGW to recalculate estimated usage based on the periodic usage of the athletic club rather than the full-time usage of a residence and issue a bill accordingly. PGW's Exceptions follow:

II. PGW'S EXCEPTIONS

PGW takes exception to Findings of Fact No. 28 and 29 as they are not supported by substantial evidence. Findings of Fact No. 28 and 29 state,

28. The softball club uses the gas for heating from November to March for Friday night meetings and occasional televised sporting events and the heaters are the only gas appliances at the service address. (Tr.13, Tr. 68-69)

29. The softball clubs used electric heat after the PGW service was shut off. (Tr. II at 5)

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint i.e. overbilling for unauthorized usage. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwith. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

There is no evidence of record to support the finding that the athletic club's usage of the Service Address was confined to weekend and other occasional use. As to the time of occupation and use (weekends and sporting event), the Complainant's testimony is illogical. The facility is rented. The athletic club pays a monthly rent to the property owner. While the Service Address is not residential, the Service Address would be accessible to its members for activities consistent with athletic clubs in preparation for and commensurate with its events. It is illogical to infer that occupancy and gas usage occurred during the weekend days (Friday, Saturday and Sunday) 12 days per month when the club could occupy the Service Address for the full 30 days of each month. The Complainant's testimony is unsupported by any evidence other than his oral testimony, that the Service Address was unoccupied for the other 18 days of each month.

As to the usage of electric heaters to provide heat during the period of unauthorized usage, the record contains no evidence of the increased electric use as a result of the

electric heaters to provide heat during the period of unauthorized usage. Complainant's Exhibits 1 and 2 fail to show any trend of electric usage showing increases during the period of unauthorized gas usage. Such a showing would provide guidance on a more accurate calculation of unauthorized gas usage. Complainant's Exhibits 1 and 2 simply fail to provide any coherent basis on which Finding of Fact No. 28 can be based. (See Complainant's Exhibits 1 and 2)

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

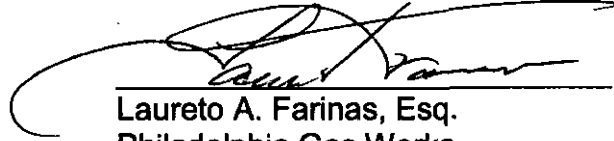
Thus, the Initial Decision should be reversed as to the order to re-calculate the amount of unauthorized usage based upon the Findings of Fact Nos. 28 and 29 as they are not supported by substantial evidence. The amount of unauthorized usage should remain as calculated by PGW and the Complaint should be dismissed in its entirety.

III. CONCLUSION

For the reasons stated above, the Commission should dismiss the Complainant in its entirety.

Respectfully submitted,

October 30, 2019

A handwritten signature in black ink, appearing to read "Laureto A. Farinas", is written over a horizontal line. The signature is stylized and cursive.

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

CERTIFICATE OF SERVICE

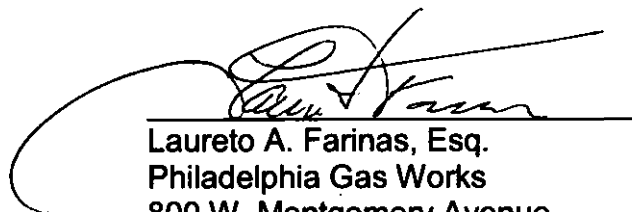
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

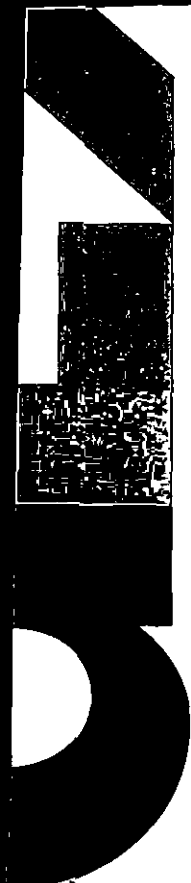
Mr. Michael Morales
7704 Algon Avenue
Philadelphia, PA 19111

October 30, 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 initial 'L' and a long horizontal stroke extending to the left.

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

Express



CMPC

To: PUC MASTER

Agency: PUC

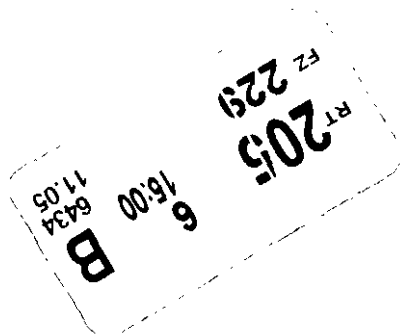
Floor:

External Carrier: FEDEX

11/5/2019 9:52:10 AM



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ORIGIN ID: BEXA (215) 684-6982
LAURETO FARINAS, ESQ.
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4TH FLOOR - LEGAL
PHILADELPHIA, PA 19122
UNITED STATES US

SHIP DATE: 04NOV19
ACTWGT: 1.00 LB
CAD: 3975663/NET4160

BILL SENDER

TO SECRETARY
PA PUC
400 NORTH ST

HARRISBURG PA 17120

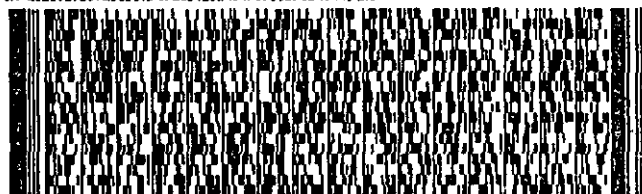
(717) 772-7777

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