

NOV 14 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PHILADELPHIA GAS WORKS

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November 14, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120**Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197**

Dear Secretary Chiavetta:

Enclosed for filing is Philadelphia Gas Works' Reply to the Exceptions of the Complainant, Tomisha Palmer submitted pursuant to 52 Pa. Code § 5.535. This document has been served on the parties in accordance with the attached Certificate of Service.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Graciela Christlieb', is written over a horizontal line.

Graciela Christlieb, Esq.

cc: Tomisha Palmer c/o
Josie Pickens, Esq.
Lydia Gottesfeld, Esq.
Robert Ballenger, Esq.

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NOV 14 2019

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TOMISHA PALMER, :
Complainant :
v. : F-2018-3006197
PHILADELPHIA GAS WORKS, :
Respondent :

**REPLY OF THE PHILADELPHIA GAS WORKS
TO THE EXCEPTIONS OF TOMISHA PALMER**

Pursuant to 52 Pa. Code §5.535, the Respondent, Philadelphia Gas Works (“PGW”), hereby files its Reply to the Complainant’s Exceptions to the Initial Decision issued on October 15, 2019.

I. INTRODUCTION

On November 26, 2018, Tomisha Palmer (“Complainant”) filed a Formal Complaint against PGW wherein she alleged that PGW had shut off her service and that there were incorrect charges on her bill for gas service at 4244 North Hicks Street (“service address”). As relief, the Complainant requested that the Commission order PGW to remove the charges from the service address from her bill and provide service to her at her new address: 1736 N. Croskey Street.

On December 18, 2018, PGW filed an Answer wherein it admitted that it had shut off the service at the service address and denied that there were incorrect charges on the Complainant’s bill. Complainant had been properly charged for meter bypass and/or meter tampering charges, and payment of these charges was and is a precondition of service at the Complainant’s new Croskey Street address.

On March 14, 2019, the Complainant filed a Petition for Interim Emergency Relief (“Petition”), requesting that the Commission issue an Interim Emergency Order compelling PGW to establish gas service at 1763 N. Croskey Street without requiring her to pay for meter bypass and/or meter tampering charges at the service address as a precondition for service. On March 19, 2019, PGW filed its Answer to Complainant’s Petition.

A hearing was held on March 21, 2019, to address the Complainant's Petition. The Complainant appeared represented by counsel and testified in support of her Petition. By Order dated March 28, 2019, The Complainant's Petition was denied and the denial of relief was certified to the Commission for consideration and disposition in accordance with 52 Pa. Code § 5.305, pertaining to interlocutory review of a material question submitted by a presiding officer.¹

On May 7, 2019, the evidentiary hearing was held, as scheduled, before Administrative Law Judge Christopher P. Pell ("ALJ"). The Complainant appeared represented by counsel and testified in support of her Complaint. Graciela Christlieb, Esquire, represented PGW and offered the testimony of the following witnesses: William Schwartz, a Real Estate Manager for Bricks Management; Idriss Byrd, a PGW field service technician; Nicholas Simeo, a PGW Supervisor; and Jessica Glace, a PGW Senior Customer Review Officer.

On October 15, 2019, the parties were served with the Initial Decision in this matter.

The Complainant filed Exceptions to the Initial Decision on November 4, 2019. PGW's timely Reply follows.

II. EXCEPTIONS AND REPLIES

Exception No. 1:

The Complainant contends that the ALJ erred in finding that the Complainant failed to meet her burden of proving that PGW violated the Public Utility Code, Commission Regulations, or PGW's Tariff when it denied the Complainant's requests (1) for a payment arrangement on the theft balance² and/or; (2) enrollment in PGW's Customer Responsibility Program ("CRP") prior to receiving payment of the theft balance.^{3 4}

¹ Commission regulations at 52 Pa. Code § 5.305(f) provide that the "[f]ailure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer." The Commission did not act upon the certified question within 30 days of its receipt of the certified question.

² I.D. Finding of Fact No. 57.

³ I.D. Finding of Fact No. 60.

⁴ Within this exception, the Complainant also seems to aver that the ALJ failed to make a determination as to "whether, based on the preponderance of the evidence on the full record, and applying the requirements of the Public Utility Code, Commission Regulations and PGW's Tariff, PGW could permissibly condition service upon such full payment." However, it is clear from the Initial Decision that the ALJ did engage in such an analysis on pages 19-20.

Reply:

In the Initial Decision, the ALJ properly determined that PGW had sufficient reason to conclude that the Complainant was actively engaged in theft of service at the service address and so held that PGW did not commit a violation when it denied the Complainant a payment arrangement on the theft balance and/or enrollment in CRP prior to receiving payment of the theft balance.⁵ The Complainant contends that the ALJ's consideration of the reasonableness of PGW's actions is "applying a standard that does not exist."⁶ The Complainant is incorrect.

The Commission has consistently held that "[t]he standard to determine the adequacy of a utility's service and facilities is one of reasonableness." *Ebitz v. West Penn Power Co.*, PUC Docket No. C-2012-2298368 (Final Order January 4, 2013); see also *Guirguis v. Pennsylvania Power Co.*, PUC Docket No. C-2018-3004271 (Final Order June 28, 2019). The standard of performance by the utility is a "reasonableness" standard. Given the information at PGW's disposal, it was entirely reasonable for PGW to determine that the Complainant engaged in theft of service and to proceed accordingly in denying a payment arrangement on the theft as well as denying enrollment into CRP prior to the payment of the theft balance. Contrary to what the Complainant would have the Commission believe, PGW does not simply hold anyone associated with a property where a meter bypass is discovered responsible to pay all charges associated with that bypass. The record of this proceeding makes it clear that PGW engages in a thorough investigation before holding someone responsible for bypass charges. In this case, in what is practically the definition of "reasonableness", after finding that the gas service to the service address was on when it should not have been and discovering that a PGW meter had been removed and replaced with a bypass, PGW held the leaseholder of the property and continuous occupant since 2012 responsible for the theft. There was not even any evidence that an adult other than the Complainant resided at the service address. PGW had no information that in any way mitigated against the Complainant being held responsible for the theft⁷ when the

⁵ I.D. at pp. 16-17.

⁶ Complainant's Exceptions at p. 5.

⁷ PGW submits in its Exceptions that the ALJ erred in taking the May 2, 2017 telephone call placed by the Complainant to PGW wherein she inquired about a LIHEAP grant as the action of a person who was unaware of theft at the property. PGW has always taken that action to be further proof that the Complainant was not only aware of the theft, but hiding it. During the phone call, after being informed that she had not had gas in her name since 2013, the Complainant failed to explain her situation and ask about transferring the service into her name. The Complainant failed to even reference the address she was calling about. Moreover, she failed to ever contact PGW

determination was made (nor was any such information presented to PGW prior to the May 7, 2019 hearing). PGW's denial of a payment arrangement on the theft balance or enrollment in CRP until the theft balance was paid in no way violated the Public Utility Code, Commission Regulations, or PGW's Tariff. Not even in the cases relied on by the Complainant does the Commission hold that PGW committed a violation when it held the complainants responsible for theft and proceeded accordingly.⁸ The Complainant's arguments that PGW should now be found to have committed a violation for denying a payment arrangement on the theft balance and/or enrollment in CRP prior to payment of the theft balance are Monday morning quarterbacking at best and completely disingenuous at worst.

Exception No. 2:

The Complainant contends that "[t]he ALJ made an error of law in concluding that Ms. Palmer was not eligible for a payment arrangement or enrollment in CRP for the unauthorized use charges at issue."⁹

Reply:

This exception appears to be based on a willful misreading of the Initial Decision. Nowhere in the Initial Decision does the ALJ determine the eligibility or ineligibility of the Complainant for either a payment arrangement or enrollment in CRP. Rather, as discussed in PGW's reply to Exception No. 1, the ALJ made a determination as to the reasonableness of PGW's conclusion that the Complainant had engaged in theft of service and subsequent denial of a payment arrangement and enrollment in CRP when deciding whether PGW had committed a violation.

The Complainant's Initial Brief¹⁰ informed the ALJ that the theft balance had been paid and, as the issue was moot, the Initial Decision made no determinations as to the eligibility or ineligibility of the Complainant for either a payment arrangement or enrollment in CRP. Six pages into her argument on how the ALJ erred in making a determination that he never made, the

again about putting gas in her name at the service address until after the theft was discovered.

⁸ In neither *Davis v. PGW*, PUC Docket No. F-2016-2573100 (Final Order October 26, 2017) nor *Oduwole v. PGW*, PUC Docket No. F-2018-3001419 (Final Order March 28, 2019) does the commission find that PGW violated the Public Utility Code, Commission Regulations, or PGW's Tariff.

⁹ Complainant's Exceptions at p. 11.

¹⁰ Complainant's Initial Brief at p. 3.

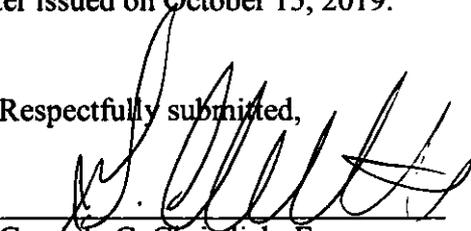
Complainant seems to acknowledge the specious nature of this exception and proceeds to turn it into a platform for asking the Commission to issue an Order on an issue that is moot and was not addressed in the Initial Decision so that it can then sanction PGW for actions that the ALJ ruled were reasonable under the circumstances. The Complainant frames this request as necessary to “correct PGW practices,”¹¹ but the reality is that cases where the Commission has issued payment arrangements to complainants who bear the financial responsibility for the theft while not being found to be a party to the theft are rare and turn on individual facts and circumstances. Moreover, while Complainant feels it is “worthwhile” to note that “all” (both *Davis* and *Oduwole*) of the cases she relies upon involve PGW, her contention that this somehow “suggests PGW is engaged in an ongoing practice of disregarding the consumer rights of innocent customers” is completely without merit.¹²

III. CONCLUSION

For the reasons stated above, the PGW requests that the Commission deny Complainant’s Exceptions to the Initial Decision in this matter issued on October 15, 2019.

November 14, 2019

Respectfully submitted,



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¹¹ Complainant’s Exceptions at p. 17.

¹² What is worthwhile to note is that throughout this case, the Complainant has failed to point to a single thing that PGW could have or should have done differently in its process of making a determination as to who was to be held responsible for the theft at the service address.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

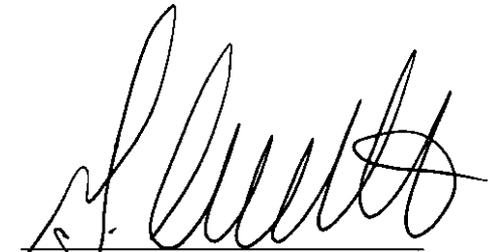
Tomisha Palmer	:	
<i>Complainant</i>	:	
v.	:	Docket No. F-2018-3006197
	:	
Philadelphia Gas Works	:	
<i>Respondent</i>	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Reply to the Exceptions of the Complainant, Tomisha Palmer, in accordance with the requirements of 52 Pa.Code §§ 1.55 and 5.421(b)(4):

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November 14, 2019

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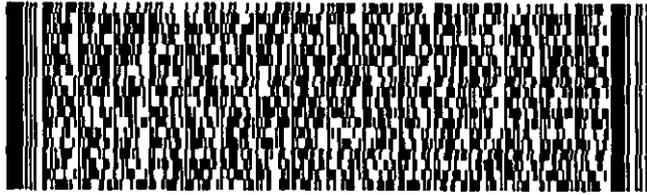
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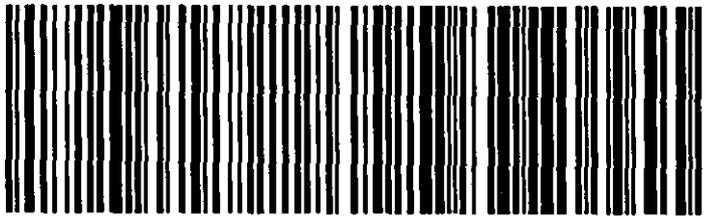


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