



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.leva@pgworks.com

February 24, 2020

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

Re: Ravin Harding v. PGW, Docket No. C – 2019 – 3014816

Dear Secretary Chiavetta:

Pursuant to the Interim Order dated February 11, 2020 of Administrative Law Judge Angela T. Jones in the above captioned matter, the Philadelphia Gas Works ("PGW") hereby files its Memorandum of Law.

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: Administrative Law Judge Angela T. Jones
Ravin Harding

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Ravin Harding,
Complainant**

v.

**Philadelphia Gas Works,
Respondent**

:
:
:
:
:
:
:
:

Docket No. C-2019-3014816

**Philadelphia Gas Works'
Memorandum of Law**

Pursuant to the Interim Order dated February 11, 2020 of Administrative Law Judge Angela T. Jones in the above captioned matter (the "Order") the Philadelphia Gas Works ("PGW") hereby files its Memorandum of Law on the questions presented in the Order and other questions of import at the conclusion of the Initial In-Person Hearing of this matter held on February 10, 2020.

I. Summary of the Facts

This matter is a dispute of a balance (\$989.98) from the Complainant's previous address 5774 Hunter Street ("Previous Service Address") that was transferred to the Complainant's account for her current address 601 Nassau Road, Philadelphia, PA ("Current Service Address").

The Complainant established service at the Current Service Address as of December 28, 2018.¹ The Current Service Address is listed as a general service residential with gas heat and other domestic appliances. PGW records show that the Complainant previously had gas service at her Previous Service Address from January 23, 2013 to June 1, 2015.²

The Complainant states that she resided at the Previous Service Address from January 2013 until April 2015 when she moved from the Previous Service Address. The

¹ PGW Ex. – 1, p. 4 of 6

² PGW Ex. – 6

Complainant further states that she called PGW in April 2015 to terminate gas service there. The outstanding balance of the Complainant's account on March 12, 2015 was \$1,069.30. On April 7, 2015, the Complainant paid \$300 on the account, reducing the outstanding balance to \$769.30.³

While the Complainant maintains that she contacted PGW to terminate service before leaving her Previous Service Address, PGW records do not indicate that any call was made to terminate service to the Previous Address on or about April 2015.⁴ Termination of service under the Complainant's name occurred when a new tenant at the Previous Service Address applied for new gas service.⁵

The Complainant was enrolled in PGW electronic billing while living at the Previous Service Address. The Complainant provided testimony that she sent a notification to the United States Post Office to have her mail forwarded to the Current Service Address.

Because it had no request to terminate gas service at the Previous Service Address, PGW continued to provide gas service and bill the Complainant at the Previous Service Address until June 13, 2015 when it issued a Final Bill in the amount of \$989.98.⁶ This amount included the unpaid balance as of the date the Complainant alleges to have moved from the Previous Service Address and the additional gas usage until June 13, 2015.

On December 26, 2018, the Complainant called PGW to establish gas service at the Current Service Address. PGW referred the Complainant to visit a PGW Service Center. PGW instructed the Complainant to bring two forms of identification and proof of ownership of the Current Service Address. PGW also informed the Complainant of the \$989.98 balance for the Previous Service Address.⁷ Gas service was on at the Current Service Address. The Complainant did not contact PGW until she received a

³ PGW Ex. – 4, p. 2 of 3

⁴ PGW Ex. – 1, p. 5 of 6

⁵ PGW Ex. – 4, p. 2 of 3

⁶ PGW Ex. – 4, p. 2 of 3 and PGW Ex. – 6

⁷ PGW Ex. – 6

three day service termination notice as there was gas service to the Current Service Address but no Customer of Record.⁸

After having received a three day service termination notice, the Complainant contacted PGW on January 17, 2019. The Complainant indicated that she purchased the property on December 28, 2018. On January 18, 2019, the Complainant was at a PGW Service Center and a turn on was issued for the Service Address. PGW advised the Complainant that the final bill amount from the Previous Service Address would be on the first bill issued for gas service at the Current Service Address.

On January 23, 2019, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS). By decision dated September 25, 2019, the BCS concluded that the Complainant is responsible for the unpaid balance from the Previous Service Address.⁹ On November 25, 2019, the Complainant filed a second informal complaint for which the BCS provided the Complainant with a payment arrangement of \$172 per months until paid in full. This is \$86 per month of the PGW budget plus \$86 toward the outstanding account balance.¹⁰

At the hearing of this matter, PGW proffered, PGW Exhibit – 6, the Final Bill issued June 13, 2015. According to the Complainant's testimony at the hearing, the Complainant was enrolled in PGW "e-billing" in which she received monthly PGW bills by email. The Complainant also indicated that she provided a forwarding address to the United States Post Office when she left the Previous Service Address in April 2015. With either method of receiving the PGW Final bill, the Complainant would have been made aware of the Final Bill amount of \$989.98 in June 2015.

II. Questions Presented

According to the Order, the Complainant's testimony at the February 10, 2020 hearing revealed that when Ms. Harding received notice or should have received notice of the alleged outstanding amount due for service at the service address is critical to this dispute.

⁸ PGW Ex. – 1, p. 4 of 6

⁹ PGW Ex. – 5, p. 3 of 7

¹⁰ PGW Ex. – 5, p. 5 of 7

Additional questions were raised concerning any payments made by the Complainant, are accredited to the disputed outstanding balance before the amount due for current usage. The Order instructs PGW to address the following questions:

- (1) Whether 66 Pa.C.S. §§ 1312(a), 3314(a) and *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370 (Pa.Cmwth. 1992) are applicable to this proceeding, and the result of any applicability; and
- (2) Under what authority or policy does the Respondent accredit the disputed outstanding balance over the undisputed amount due for usage.

A. Statute of Limitations

Under the facts of this matter, the Complainant is barred from bringing this matter by the Commission's Statute of Limitations under 66 Pa.C.S. § 3314(a) which states,

§ 3314. Limitation of actions and cumulation of remedies.

- (a) General rule.--No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. (Emphasis added.)

The Complainant received the Final Bill issued June 13, 2015 by email or sometime in June 2015 by regular mail. The Complainant only first complained about her responsibility for the PGW final bill from her Previous Service Address with the filing of the Complainant's first informal complaint on January 23, 2019. This is some 3 years and 6 months after the issuance of the Final Bill. Unlike the informal complaint filed in *Duquesne Light Company*, there was no intervening period in which the Complaint, Ms. Harding, had a pending informal complaint that would have stopped the clock from running in the three year period after her receipt of the final PGW bill for gas in June 2015.

In *Duquesne Light Company*, the counting of the three year (1095 day) statute of limitations of 66 Pa.C.S. § 3314(a) did not include the time during which the complainant in *Duquesne Light Company* had a pending informal complaint. The removal of that time of pendency placed that complainant within the three year statute of limitations of 66 Pa.C.S. § 3314(a).

In the instant case, the Complainant, Ms. Harding, received her Final Bill in June 2015 but did not complain about the final bill until she was informed that it would be included in upcoming bills issued to her Current Service Address. The Complainant did not raise the issue that she had called PGW in April 2015 to terminate gas service at the Previous Service Address or to state when she had moved. The PGW record reflects that the Complainant made a \$300 on April 7, 2015, leaving a remaining balance of \$769.30.¹¹ There was no record of the request to terminate gas service. The Complainant continued to receive bills in the normal course of business and would have been aware of the remaining balance and open account until receiving a final bill in June 2015.

Thus, the Complainant should be barred from bringing this complaint under 66 Pa.C.S. § 3314(a). The complaint should be dismissed.

In contrast, 66 Pa.C.S. § 3312(a) is not applicable to this matter. That section states:

§ 1312. Refunds.

- (a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of

¹¹ PGW Ex. -4, p. 2 of 3

the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

The instant matter is not a complaint that seeks the refund any amounts that have been paid. The Complainant seeks to be relieved of the responsibility to pay the unpaid balance of the Previous Service Address. The Complainant does not dispute the accuracy of the readings of the billed amount but states only that she moved in April 2015.

Further, PGW did not abandon its effort to collect on this account. Following the Complainant's payment of \$300 on April 7, 2015, which left a remaining balance of \$769.30, PGW placed the account under a collection service from October 2017 to December 2018. This method of collection was changed when the Complainant applied for gas service under her name on December 26, 2018.¹²

B. Payment of the Undisputed Amount

The applicable statutes do not obligate a utility to segregate the disputed amount on a complainant's account.

During the pendency of a disputed matter at the Commission, a complainant remains obligated to pay any undisputed amount billed. Under 66 Pa.C.S. § 1410, the Complainant is obligated to pay the amount that she/he does not dispute. That section states:

66 Pa.C.S. § 1410 (2)

Pending the outcome of a formal or informal complaint filed with the commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

¹² PGW Ex. – 1, pp. 4 and 5 of 6.

Further at 52 Pa.Code § 56.181 – the duties obligations of parties of utility disputes are spelled out. That section states:

52 Pa.Code § 56.181 - Duties of parties; disputing party's duty to pay undisputed portion of bills; public utility's duty to pay interest whenever overpayment found.

Pending resolution of a dispute, including a termination dispute, the disputing party shall be required to pay the undisputed portion of bills, as described in this section.

- (1) Pending informal complaint. Pending the outcome of an informal complaint, the disputing party shall be obligated to pay that portion of a bill which is not honestly disputed. An amount ultimately determined, by the parties or the commission, to have been validly due but not paid may be paid with interest at the tariff rate filed under §56.22 (relating to the accrual of late payment charges) except when interest charges have been reduced or eliminated by the parties or the Commission to facilitate payment by the disputing party.
- (2) Pending formal complaint. Prior to the hearing on a formal complaint or prior to the issuance of a Commission order when no hearing is to be held in a formal complaint proceeding, the customer shall be required to pay that amount which the consumer services representative determines is not disputed.
- (3) Overpayments reimbursed with interest. An amount ultimately determined to have been overpaid by the disputing party shall be reimbursed with interest at the tariff rated filed under §56.22.
- (4) Effect of offer of payment. An offer by a customer to pay all or any portion of a bill may not be deemed a waiver of a right to reimbursement for amounts subsequently deemed, by the parties or the Commission, to have been overpaid.
- (5) Effect of acceptance of partial payment. The acceptance by a public utility of a partial payment for a bill pending final outcome of a dispute may not be deemed an accord and satisfaction or waiver of the right of the public utility to payment in full as subsequently agreed to by the parties or decided by the Commission.

Finally, the Prehearing Order, dated December 30, 2019 admonishes that the Complainant is responsible for payment of current undisputed bills for service pending the resolution of this formal complaint. 52 Pa.Code § 56.181. It informs the Complainant that failure to make payments may result in the termination of utility service.

These statutes and instructions to the parties to not obligate the utility to segregate a stated disputed amount from the account or to make a distinction in billing as to what

amount is to be paid, (disputed or undisputed). PGW bills for accounts that are the subject of disputes provide the billed amount and amount due whether it appears as an amount for monthly usage or for an active payment arrangement. The utility is not obligated to isolate a disputed amount from the account. The statutes cited above, provide a customer of the right to refrain from the payment of the disputed amount without penalty by the utility.

To safeguard against any penalty by the utility for a complainant's failure to pay an undisputed amount, PGW does not assess late payment charges on any balance or terminate the service of an account in dispute. This blanket solution assures that a complainant is not penalized for a failure to pay an undisputed amount. Where a complainant pays a disputed amount, 52 Pa.Code § 56.181(3) provides compensation for such an overpayment in the form of interest on any overpayment of a disputed amount.

In the instant matter the Complainant, payment patterns suggest that she is aware that she is not obligated to the disputed amount. The disputed amount is the amount (\$989.98) reactivated onto the Complainant's account on January 18, 2019.¹³ In the months following January 2019, the Complainant made monthly payments at or near the current monthly usage. Only in September 2019 did the Complainant appear to pay into the disputed amount by approximately \$16. Thereafter, the Complainant's balance exceeds the disputed amount. Thus, in the instant matter 52 Pa.Code § 56.181 has little, if any applicability.

For the reasons stated in this memorandum the complaint in this matter should be dismissed in its entirety.

¹³ PGW Ex. 4, p. 2 of 3

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:

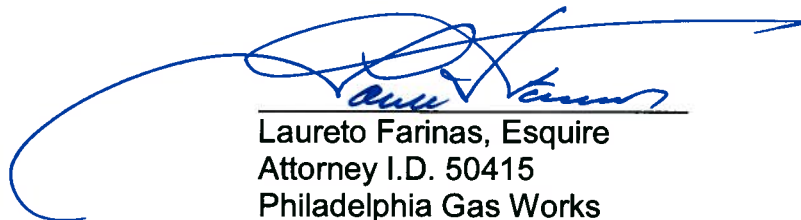
For Presiding Officer

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

For Complainant:

Ms. Ravin Harding
6014 Nassau Road
Philadelphia, PA 19151

February 24, 2020



Laureto Farinas, Esquire
Attorney I.D. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982