



**PHILADELPHIA GAS WORKS**

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January 10, 2024

**VIA ELECTRONIC FILING**

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

Re: Marcus Culver v. Philadelphia Gas Works; Docket No. F-2022-3037377

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Reply to Complainant's Exceptions to the Initial Decision issued in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

Enclosure

cc: Cert. of Service [w/enc.]

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Reply to Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

**First Class Mail**

Marcus Culver  
2904 North 25<sup>th</sup> Street  
Philadelphia, PA 19132

Date: January 10, 2024

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marcus Culver,	:	
Complainant,	:	
v.	:	Docket No. F-2022-3036883
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**REPLY EXCEPTIONS OF PHILADELPHIA GAS WORKS**

Pursuant to 52 Pa. Code §5.535 of the regulations of the Pennsylvania Public Utility Commission (“Commission”) and the Secretarial Letter dated December 28, 2023, issued in the above-captioned proceeding, the Philadelphia Gas Works (“PGW” or “Respondent”) hereby submits the following Reply to the Exceptions filed by Marcus Culver (“Complainant”) to the Initial Decision of Deputy Chief Administrative law Judge Christopher P. Pell (“Judge Pell”) in this matter (“Initial Decision”).

**I. INTRODUCTION**

On December 15, 2023, the Complainant) filed the Complaint against PGW wherein he placed a checkmark in the box marked “[o]ther” and indicated that PGW shut off his gas due to theft of service; he maintained that he was unaware of any theft of service and sought the Commission’s help reestablishing gas service. On January 17, 2023, PGW filed an Answer admitting that it terminated the service at 2904 N. 25th Street in Philadelphia (“Service Address”) due to theft of service and that PGW is holding the Complainant responsible for the bypass charges at the Service Address.

By Initial Telephonic Hearing Notice dated January 19, 2023, an initial call-in telephonic hearing was scheduled for March 10, 2023 at 10:00 a.m., and the matter was assigned to Judge Pell.

By Interim Order dated March 6, 2023, Judge Pell denied, without prejudice, PGW’s Motion to Continue filed on March 3, 2023. By Interim Order dated March 7, 2023, Judge Pell denied PGW’s Amended Motion to Continue. By Interim Order dated March 9, 2023, Judge Pell granted PGW’s Petition for Reconsideration and continued the hearing scheduled for March 10, 2023.

By Rescheduled Initial Call-In Telephone Hearing Notice dated March 24, 2023, the initial call-in telephonic hearing was rescheduled for April 17, 2023 at 10:00 a.m.

The hearing convened as scheduled on April 17, 2023. Counsel for PGW called in to the hearing with two witnesses and was prepared to proceed. The Complainant did not call in for the hearing. PGW's counsel moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

On August 3, 2023, Judge Pell issued his Initial Decision wherein he granted PGW's Motion to Dismiss.

On September 6, 2023, in accordance with 66 Pa. C.S. § 332(h), the Initial Decision became final without further Commission action. The Final Order, inter alia, dismissed the Complaint without prejudice and marked the proceeding closed.

On December 21, 2023, the Commission issued an Opinion and Order wherein it rescinded the September 2023 Final Order and re-served a copy of the Initial Decision to all parties of record.

On December 29, 2023, the Commission served PGW with a copy of Complainant's Exceptions to the Initial Decision. PGW's Reply to Complainant's Exceptions follows.

## **II. COMPLAINANT'S EXCEPTIONS AND PGW'S REPLY**

### **Exception**

In his Exceptions, the Complainant reiterates that he was unaware of the theft of service and asks that the case be thrown out.

### **Reply**

The Complainant has failed to identify any error in law or fact that would support reversal of Judge Pell's finding that the Complainant waived the opportunity to participate in the hearing by failing to appear. Rather, Complainant completely ignores the fact that he failed to appear at the hearing for his Complaint and instead comments on how it was "not fair" to him that a Continuance was granted at PGW's request. The entire Initial Decision is about the Complainant's failure to appear and the lack of any excuse provided for his absence, yet, given the opportunity, the Complainant still does not give any reason for why he was absent from the hearing or any reasons why a new hearing should be held. In fact, he does not even ask for a new hearing; he instead focuses on how PGW is somehow to blame for his theft of service.

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water*

& Sewer Auth., Docket No. F-2021- 3027107 (Opinion and Order entered Feb. 7, 2022); Williams v. PECO Energy Co., Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). The record in this matter did not close until May 9, 2023. There is no indication that the Complainant contacted anyone to try to explain his absence at the hearing or to follow-up to see what happened after the first hearing date was continued. Clearly he was aware that a hearing was to be held in this matter; PGW spoke with the Complainant regarding the request for a continuance. Further there is no indication that, should the PGW and the Commission expend the effort and resources to convene another hearing in this case, the Complainant would deign to participate.

### **III. CONCLUSION**

WHEREFORE, PGW respectfully requests that this Commission deny Complainant’s exceptions and adopt the Initial Decision.

Respectfully submitted,

*/s/ Graciela Christlieb*

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Date: January 10, 2024

*Counsel for PGW*