



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Anita J. Murray, Esquire
Senior Attorney
Legal Department
Direct Dial: 215-684-6659
Fax: 215-684-6798
Email: anita.murray@pgworks.com

August 29, 2024

VIA ELECTRONIC FILING

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

Re: Marisa Diaz-Willis v. Philadelphia Gas Works,
Docket No. F-2023-3045048

Dear Secretary Chiavetta:

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

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ **Anita J. Murray**
Anita J. Murray

/awm
encl.

cc (w/encl.): Marisa Diaz-Willis via Email
Special Agent Michael Mroczka via Email

CERTIFICATE OF SERVICE

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

VIA EMAIL ONLY

Marisa Diaz-Willis
marisakdiaz@comcast.net

Special Agent Michael Mroczka
micmroczka@pa.gov

By: /s/ Anita J. Murray
Anita J. Murray, Esquire

Date: Aug. 29, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marisa Diaz-Willis,	:	
Complainant,	:	
v.	:	Docket No. F-2023-3045048
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

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

Pursuant to 52 Pa. Code § 5.535 and the Secretary’s Letter dated August 20, 2024, Philadelphia Gas Works (“PGW” or “Respondent”) hereby submits the following Reply to the Exceptions filed by Marisa Diaz-Willis (“Ms. Diaz-Willis” or “Complainant”) to the Initial Decision dated July 30, 2024 (“Initial Decision”).

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ms. Diaz-Willis filed a Formal Complaint (“Complaint”) against PGW with the Pennsylvania Public Utility Commission (“Commission”) on or about December 4, 2023. In the Formal Complaint, Ms. Diaz-Willis asserted three general claims: (1) PGW has or is threatening to terminate her gas service; (2) there are incorrect charges on her bill; and (3) requested a payment agreement from the Commission. The Formal Complaint concerned gas service at the service address of 509 Westview Street, Philadelphia, PA (“Service Address”).¹

PGW responded to the Formal Complaint with Preliminary Objections and an Answer with New Matter, both filed on January 10, 2024. In the Preliminary Objections, PGW averred that her claim relating to a balance transfer from August 30, 2019 was outside the applicable three (3) year statute of limitations found in 66 Pa.C.S. § 3314, and had already been the subject of a Commission payment agreement issued at BCS Docket No. 3743236.² In the Answer with New Matter and relevant to the Exceptions and Reply thereto, PGW admitted that Ms. Diaz-Willis was requesting a payment arrangement and denied there were any incorrect charges. PGW further averred that the

¹ See Complaint.

² See Preliminary Objections.

bills were based on actual meter readings; she had two prior company and one prior Commission issued payment arrangements, all of which were unsatisfied; and that the meter had been tested and was determined to be accurate.³ In the New Matter, PGW alleged that from the allegations and claims in the Formal Complaint, Ms. Diaz-Willis appeared to be contested the balance transfer from August 2019 and further alleged the following: Ms. Diaz-Willis contacted PGW on August 30, 2019 to establish gas service in her name after the passing of her mother; during the call as part of the application process PGW ran an credit check which linked Ms. Diaz-Willis to the Service Address and PGW advised her she was responsible for the owed balance of \$2,049.09; Ms. Diaz-Willis then filed an informal complaint at BCS 3743236 on October 22, 2019 and disputed the balance transfer and requested a payment arrangement; the decision on BCS 3743236 found that the owed balance was \$2068.79⁴ and issued a payment arrangement (“October 2019 PAR”); Ms. Diaz-Willis did not appeal the decision on BCS 3743236; and she subsequently defaulted on the October 2019 PAR.⁵ PGW denied the remaining allegations and requested dismissal of the Complaint. *Id.*

An Initial Call-In Telephonic Hearing Notice was issued on January 24, 2024, and a telephone hearing was scheduled for April 9, 2024, before Special Agent Michael J. Mroczka.

Ms. Diaz-Willis did not file a Response to the Preliminary Objections with the twenty (20) day response deadline. She filed her Response later, as well as a Reply to the Answer and New Matter, on February 24, 2024. In her Response to the Preliminary Objections, she averred that the issue was not the balance transfer but was based on inflated and incorrect gas charges as per BCS 3919005.⁶ In her Reply to New Matter, she again averred that she was not contesting the balance transfer but was disputing the existence of erroneous and excessive charges on her gas bill. Notwithstanding her representation that she was not disputing the balance transfer, she then disputed the criteria used by PGW, i.e. the credit report, to hold her responsible for the balance transfer.⁷

The Prehearing Order was issued on March 15, 2024, for the April 9th hearing date.

³ See Answer with New Matter.

⁴ This amount was equal to both the owed balance and the bill for service issued in October, prior to the filing of BCS 3743236.

⁵ See Answer with New Matter.

⁶ See Response to Preliminary Objections.

⁷ See Reply to New Matter and New Matter.

The hearing proceeded as scheduled on April 9, 2024, with Ms. Diaz-Willias appearing *pro se* and testifying on her behalf. She did not present any witnesses and offered one exhibit, a summary of her monthly bills in excel format (“Complainant Exhibit 1”). PGW was represented by legal counsel Anita J. Murray, Esquire. PGW also presented the testimony of its witness, David Kauffman, Customer Review Officer, at PGW. PGW offered seven exhibits which were admitted in evidence.⁸ Prior to the hearing, Special Agent Mroczka heard oral arguments on the Preliminary Objections, which he then held in abeyance until after the hearing.

The record closed on May 2, 2024, upon receipt of the hearing transcript.

On July 30, 2024, Special Agent Mroczka issued his Initial Decision which treated the Preliminary Objections as a Motion to Dismiss the balance transfer; granted the Motion to Dismiss, and denied and dismissed Ms. Diaz-Willis’ Formal Complaint. Ms. Diaz-Willis filed Exceptions on August 19, 2024. PGW now files this Reply to her Exceptions.

II. COMPLAINANT’S EXCEPTIONS AND PGW’S REPLY

A. Exception #1: “Account Transfer”

In Exception #1, Ms. Diaz-Willis asserts Special Agent Mroczka erred in dismissing her balance transfer claim because he should not have treated the Preliminary Objections as a Motion to Dismiss and because the statute of limitations is inapplicable to this particular claim.

Regarding the Preliminary Objections, Special Agent Mroczka was correct in denying them as the Formal Complaint did not plead any facts regarding the balance transfer because preliminary objections cannot rely on its own factual assertions as the disposition thereof is based on the well-pleaded material facts of the complaint.⁹ He was also correct in applying 52 Pa. Code § 1.2(a) and treating the Preliminary Objections as a Motion to Dismiss. This provision allows the Special Agent to liberally construe a party’s pleading and disregard an error or procedural defect so long as the substantive rights of the parties are not affected and it aids in the just, speedy, and inexpensive determination of the matter.¹⁰

⁸ PGW’s exhibits which were admitted into evidence are as follows: August 30, 2019 Customer Contact (Exhibit 1); BCS 3743236 Informal Complaint and Decision (Exhibit 2); Payment Arrangement History (Exhibit 3); PGW Letter re: Bill Dispute (Exhibit 4); BCS 3915005 Informal Complaint and Decision (Exhibit 5); Customer Contact: Meter Exchange and Test Results (Exhibit 6); and Statement of Account (Exhibit 7a).

⁹ I.D., p. 7.; *Romanoski v. PUC*, 2024 WL 2747691 (Opinion and Order entered on May 23, 2024).

¹⁰ 52 Pa. Code § 10.2(a).

In the instant matter, Ms. Diaz-Willis's substantive rights were not affected because she filed both a Response to the Preliminary Objections and a Reply to the Answer with New Matter, and she testified at the hearing about the balance transfer.¹¹ The treatment of the Preliminary Objections allowed for a just, speedy and inexpensive determination of the Formal Complaint because the hearing went forward as scheduled and the parties were permitted to provide testimony and documentary evidence on all of the claims at issue, including the balance transfer.

Ms. Diaz-Willis further contends and that the three-year statute of limitations¹² should not apply because she was not aware of PGW's use of a credit report until the pleadings stage of this case and such use of a credit report was incorrect. Special Agent Mroczka correctly held such claims were barred by the statute of limitations.¹³

Under 66 Pa.C.S. § 3314, an action must be "brought within three years from the date at which the liability therefore arose," unless otherwise provided for. The testimony from the parties and the exhibits clearly demonstrates that the date the liability arose was August 30, 2019 as that was the date she contacted PGW and applied for service; that she was linked to the property since 1989 via Experian; she was advised of her obligation to assume the balance if she wanted service; and that she agreed to assume the balance in order to get service.¹⁴ The underlying facts of her dispute over PGW's criteria for holding her responsible for the balance transfer all occurred on August 30, 2019.

The statute of limitations may be tolled by filing an informal complaint or by the equitable estoppel doctrine, where deception or concealment caused Ms. Diaz-Willis to "relax her vigilance".¹⁵ On October 22, 2019, she filed an informal complaint, BCS 33743236, where she disputed her obligation to assume the balance transfer.¹⁶ Later that same day, a decision was issued. The filing of the informal complaint then pushed the statute of limitations deadline by one day to August 31, 2022. The decision on this informal complaint held her responsible for the transfer balance and issued her the October 2019 PAR.¹⁷ Ms. Diaz-Willis did not appeal this decision.¹⁸ Ms. Diaz-Willis had the opportunity to further contest, through an appeal, the criteria

¹¹ Tr. p. 41-44.

¹² 66 Pa.C.S. § 3314

¹³ I.D., p. 8.

¹⁴ Tr. p. 4, 41-43, 55-56; 79-82; PGW Exhibit 1. *See also* 66 Pa.C.S.A. § 1407; 52 Pa. Code § 56.35(b)(2).

¹⁵ *Harris v. PGW*, 2012 WL 6641344 (Dec. 2, 2015).

¹⁶ PGW Exhibit 2.

¹⁷ PGW Exhibit 2.

¹⁸ Tr. p. 57-58.

for holding her responsible for the balance transfer, but she elected to do so. Instead, her Formal Complaint was filed on June 5, 2023, long after the expiration of limitations period. The statute of limitations bars Ms. Diaz-Willis from continuing to assert claims which occurred on August 30, 2019.

Lastly, regarding Foot Note 3 of the Initial Decision, Special Agent Mroczka correctly held, that Ms. Diaz-Willis purchased the Service Address on November 12, 2008¹⁹ but the statute of limitations rendered this discussion moot.

Ms. Diaz-Willis failed to identify any error in law or fact that would support reversal of the Initial Decision. For these reasons, Exception #1 must be denied.

B. Exception #2: “High Bill Dispute”

In Exception #2, Ms. Diaz-Willis contends that Special Agent Mroczka erred in determining that she was not overbilled for service because her gas usage was relatively consistent years 2022-2024 but her bills for the same period increased significantly.

Special Agent Mroczka correctly held that she was not overbilled, based on the meter testing results and the *Waldron* rule.²⁰ In the Initial Decision, Special Agent Mroczka reviewed the meter test results and properly determined that the meter tested with the 2% tolerance standard.²¹ Ms. Diaz-Willis did not present any contrary evidence and did not take exception to this finding.

Special Agent Mroczka then reviewed the *Waldron* rule in the context of a three-story, five-bedroom, 2,400 square foot home using gas for heat, hot water, and cooking.²² Generally, a review of the record evidence reflected higher usage with higher number of degree days and higher usage in the winter months compared to summer months year after year.²³ In other words, the pattern of gas usage is consistent. The difference in the billing amounts for each year, he found, was due to the fluctuation in the actual price of gas. A review of the monthly billing for years 2022-2024 reflected a “steady CCF usage in conjunction with the degree days along with a fluctuation in that actual price of gas, i.e. the gas usage compared to how cold it was outside was similar but PGW’s

¹⁹ I.D., Finding of Fact #4; Tr. p. 45.

²⁰ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980), explained by *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

²¹ 52 Pa. Code § 59.22(a)-(b); PGW Exhibit 6.

²² I.D., p. 11; Tr. p. 29, 57.

²³ I.D., p. 11; Complainant Exhibit 1; PGW Exhibit 4; PGW Exhibit 7a.

rates were higher.”²⁴ PGW presented testimony that gas rates change as approved by the PUC. A similar conclusion was found with the meter replacement in October 2023 – post-exchange usage was consistent, with a decrease in billing caused by a gas price reduction.²⁵

In sum, both Special Agent Mroczka and Ms. Diaz-Willis agree that the pattern of usage has remained relatively constant from 2021-2024. Ms. Diaz-Willis does not account for the changing price of gas in her analysis, which is an important key factor in reviewing an account for a high bill claim. She failed to present any evidence demonstrating the existence of an unreasonably or abnormally high bill. Ms. Diaz-Willis failed to identify any error in law or fact that would support reversal of the Initial Decision. For these reasons, Exception #2 must be denied.

C. Exception #3: “Reinstatement of Prior Payment Arrangement”

In Exception #3, Ms. Diaz-Willis asserts that Special Agent Mroczka erred by not considering, as a “significant change in circumstance,” her business’s loss of income caused by the pandemic. She does not cite to any caselaw or legal authority in support of her position, other than claiming that her situation is within the spirit of 66 Pa.C.S. § 1405(e). However, the Commission is not empowered or authorized to change the provisions of the Code. Only the legislature can take such action.

The record evidence supports Special Agent Mroczka’s denial of Ms. Diaz-Willis’ request for a Commission-issued payment agreement. A plain reading of Sections 1405(e) and 1403 provide a clear, unambiguous standard when deciding whether a prior Commission-issued payment arrangement can be reinstated. Under Section 1405(e), a prior Commission-issued payment agreement may be reinstated if the cause of the default was the “result of a significant change in circumstance.”²⁶ The Code clearly defines a “significant change in circumstance” as being: (1) chronic or acute illness which caused a significant loss in household income; (2) catastrophic damage to the residence which caused a significant “net cost” to the household; (3) the loss of the residence; and (4) an increase in the number of dependents in the household.²⁷ A loss of business income, not due to chronic or acute illness but from a pandemic, is not one of allowable basis for reinstatement.

²⁴ *Id.*; Tr. p. 107-108.

²⁵ *Id.*

²⁶ 66 Pa.C.S. § 1405(e).

²⁷ 66 Pa.C.S. § 1403.

At the hearing, Ms. Diaz-Willis did not give testimony demonstrating that any of the four (4) factors above were present in her situation. In particular, she did not testify that the October 2019 PAR broke because she was ill from Covid. Rather, she testified that the agreement broke because her business suffered losses due to Covid.²⁸ When given the opportunity to provide additional testimony for Special Agent Mroczka to consider for her request, Ms. Diaz-Willis again referenced, in relevant part, the effect Covid had on her business.²⁹ As correctly noted by Special Agent Mroczka in the Initial Decision, Ms. Diaz-Willis did not testify, or present other evidence, that meets any of the criteria for reinstatement of the October 2019 PAR.³⁰

Finally, Ms. Diaz-Willis avers, in very general, conclusory statements, that the Initial Decision is not supported by substantial evidence and the Code sections and laws cited therein are inapplicable. She, however, does not point to any specific, supporting examples. The Commission should sustain the Initial Decision because Ms. Diaz-Willis failed to meet her burden of proof³¹ and establish, by a preponderance of the evidence³², her claims against PGW. The record clearly demonstrates that the Initial Decision is supported by substantial evidence and applicable and relevant law and the Commission should uphold the Initial Decision. For these reasons, Exception #3 must be denied.

III. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission deny Ms. Diaz-Willis' Exceptions and adopt the Initial Decision.

Respectfully submitted,

/s/Anita J. Murray
Anita J. Murray, Esquire
Attorney I.D. 84703
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Telephone: (215) 684-6659

²⁸ Tr. 39.

²⁹ Tr. 39-41.

³⁰ I.D., p. 15.

³¹ 66 Pa.C.S. § 332(a).

³² *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

anita.murray@pgworks.com

Date: Aug. 29, 2024

Counsel for PGW