



Philadelphia Gas Works

800 West Montgomery Avenue, Philadelphia, PA 19122

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August 12, 2009

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

Re: Delphine Matthews v. PGW, Docket No. C – 2008 – 2029557

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original of its Petition for Reconsideration of the Order of July 23, 2009, Entered July 28, 2009 in the above captioned matter.

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

Sincerely,

A handwritten signature in blue ink that reads "Kristine Trock". The signature is written in a cursive, flowing style.

Kristine Trock

Enclosure

cc: Ms. Delphine Matthews (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delphine Mathews	:	
	:	
v.	:	Docket No. C – 2008 – 2029557
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works' Petition for
Reconsideration of the Order of July 23, 2009, Entered July 28, 2009**

Pursuant to 52 Pa. Code §5.572(e), the Philadelphia Gas Works ("PGW") hereby files its petition for reconsideration of the Commission Opinion and Order in the above captioned matter of July 23, 2009, entered July 28, 2009 (Petition). In support of the Petition, PGW avers the following:

1. On February 11, 2008, the Complainant filed a formal complaint in this matter. The Complainant sought the refund of \$1,531.74 that was paid to PGW for a municipal claim for unpaid gas service to 2232 N. Chadwick Street, Philadelphia, Pennsylvania (Service Address) pursuant to the Municipal Claim and Lien Law, 53 P.S. §7107, et seq. and the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. §2201 et seq. The amount paid was from the proceeds of the sale of the Service Address.
2. The unpaid gas debt of \$1,531.14 was for gas service rendered to the Service Address under the PGW account of David McQueen, the Complainant's father and previous owner of the Service Address. (Initial Decision, Findings of Fact No. 7, p. 3 of Exhibit "A" herein)
3. On April 2, 2008, PGW filed a timely Answer to the Complaint stating that the \$1,531.74 was appropriately paid to PGW to satisfy the unpaid debt.
4. An Initial Hearing was held on October 15, 2008, and an Initial Decision was issued on December 30, 2008 ("Initial Decision"), which is attached hereto as Exhibit "A." The Initial Decision dismissed the Complaint and found, *inter alia*, that: the Commission lacks jurisdiction and authority to contravene the provisions of the Municipal Claim and Lien Law, 53 P.S. §7107, et seq. and/or the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. §2201 et seq. (Municipal Claim and Lien Law)

5. On January 16, 2009, the Complainant filed Exceptions to which PGW filed a timely Reply to Exceptions on March 16, 2009.

6. By Order entered April 17, 2009, which is attached hereto as Exhibit "B," the Commission denied the Exceptions and adopted the Initial Decision, stating that the Commission has only those duties, powers, and responsibilities as were expressly or by necessary implication given to it by the Legislature, citing *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959). The April 17, 2009 decision held that the Commission must act within, and cannot exceed, its jurisdiction, which cannot be conferred where none exists. *Roberts v. Martorano*, 427 Pa. 81, 235 A.2d 602 (1967). The April 17, 2009 decision further concluded that the authority to decide upon the question of whether PGW had a valid and enforceable lien against the 2232 N. Chadwick Street, the Service Address pursuant to the Municipal Claim and Lien Law remains with the state courts (April 17, 2009 Decision).

7. The April 17, 2009 Decision recognized that the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. Section 2201 et seq., §2212(n) specifically provides, "Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise." 66 Pa. C.S.A. §2212(n).

8. The April 17, 2009 Decision further recognized that recent amendments to the Public Utility Code at 66 Pa. Cons. Stat. §§ 1401, et seq., confirm PGW's lien rights, stating that "[a] city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply ..." 66 Pa. Cons. Stat. § 1414.

9. On May 4, 2009, the Complainant filed a petition for reconsideration to which PGW filed an Answer. By order of May 14, 2009, which is attached hereto as Exhibit "C," the Commission granted reconsideration.

10. On July 23, 2009, the Commission issued its Opinion and Order, entered July 28, 2009, which is attached hereto as Exhibit "D," (July 23, 2009 Opinion and Order) granting reconsideration on the grounds that in its April 17, 2009 Decision, the

Commission failed to consider statements contained in the Commission Order entered September 12, 2005 in the Chapter 14 Implementation, Docket No. M – 00041802F0002 (Second Implementation Order) stating that,

Even more significant, it appears, it that the General Assembly placing this authority (PGW's additional collection tool) under the Public Utility Code puts the full power and authority of Commission jurisdiction of the lien process, 66 Pa. C.S. § 501, and the accessibility of the Commission's formal complaint procedures to PGW customer who have a dispute with the lien process.

11. The July 23, 2009 Opinion and Order also granted reconsideration because the Commission seeks to protect the public interest in an on-going litigation, the settlement of the underlying controversy, notwithstanding. Pursuant to its decision *Kaufman v. Verizon Pennsylvania Inc.*, Docket No. C-20055680 (Order entered December 1, 2006) the Commission deemed PGW's filing of a Certificate of Satisfaction of May 18, 2009, as a Motion to Withdraw a pleading pursuant to 52 Pa. Code §5.94, providing the Parties to offer additional information about the motion within sixty (60) days.

12. The July 23, 2009 Opinion and Order failed to consider that the General Assembly's reason for placing under the Public Utility Code, a city natural gas distribution operation's additional collection tool and the specific prohibition of anything in the Public Utility Code from abrogating the lien power as described in 66 Pa. C.S.A. §2212(n), and in 66 Pa. Cons. Stat. §§ 1401, *et seq.*, was to provide a clear description of the limitation of the Commission jurisdiction with respect to liens. The power of the Commission is statutory, arising either from the express words contained in the enabling statutes or by a strong and necessary implication from those words, and the legislative grant of power to act in any particular base must be clear. *PECO Energy Company v. Pennsylvania Public Utility Commission*, 791 A.2d 1155; *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959) Jurisdiction cannot be conferred where none exists. *Roberts v. Martorano*, 427 Pa. 81, 235 A.2d 602 (1967). In the statutory expression of Commission authority with regard to liens, there is neither a strong nor a necessary implication of the retention of jurisdiction over "lien process."

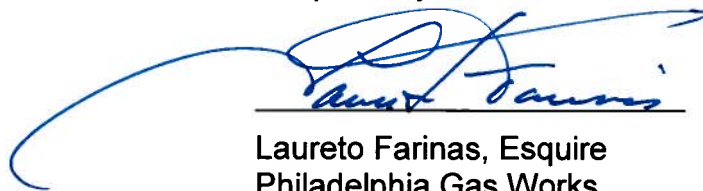
13. The Opinion and Order, entered July 28, 2009 failed to consider the *de minimus* nature of the public interest in this litigation. The parties have settled this matter amicably. The Complainant had not objected to the terms of the settlement.

14. The Commission's procedural rules at 52 Pa. Code §5.24 do not prohibit the filing of a Certificate of Satisfaction after the issuance of an Initial Decision. As jointly stated by Commissioners Pizzigrilli and Powelson, dissenting in part to the July 23, 2009 Opinion and Order, 52 Pa. Code §5.24 allows for the filing of a Certificate of Satisfaction at any time. This is consistent with the Commission's policy promoting settlements at 52 Pa. Code §5.231(a). Unlike the facts of the Commission's decision in *Kaufman v. Verizon Pennsylvania Inc.*, Docket No. C-20055680 (Order entered December 1, 2006), the Commission's decision in this matter does not assess a fine upon the utility, but rather, finds in favor of the utility. As such, the Certificate of Satisfaction filed in this matter should remain as such.

Wherefore, PGW respectfully requests that this Commission: [1] reconsider its decision of the Opinion and Order, entered July 28, 2009, [2] deny the Complainant's Petition for Reconsideration, [3] allow PGW's filing of a Certificate of Satisfaction to remain as filed, and [4] affirm its April 17, 2009 Decision, dismissing the above captioned Complaint.

Respectfully submitted,

August 12, 2009

A handwritten signature in blue ink, appearing to read "Laureto Farinas", is written over a horizontal line. A large, sweeping blue flourish extends from the left side of the signature across the page.

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

EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: December 30, 2008

C-2008-2029557

LAURETO A FARINAS ESQUIRE
PHILADELPHIA GAS WORKS
800 W MONTGOMERY AVENUE
PHILADELPHIA PA 19122

Delphine Matthews

v.

Philadelphia Gas Works

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Guy M. Koster. This decision is being issued and mailed to all parties on the above specified date.

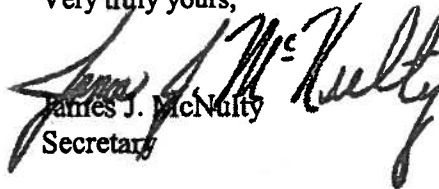
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

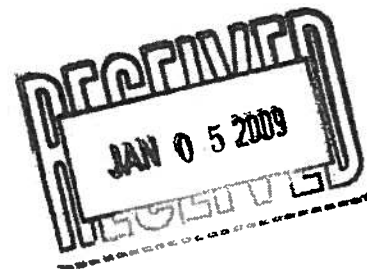
Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,


James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MH



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delphine Matthews

v.

Philadelphia Gas Works

:
:
:
:
:
:

C-2008-2029557

INITIAL DECISION

Before
Guy M. Koster
Administrative Law Judge

HISTORY OF THE PROCEEDING

On February 11, 2008, Delphine Matthews (Complainant) filed a Complaint against Philadelphia Gas Works (Respondent or PGW) alleging, inter alia, that when she sold her house in September 2007, the title insurance company withheld \$1,531.74 at settlement which she alleges was then incorrectly paid to PGW for outstanding gas bills attributed to the previous owners and/or residents of the property, Darrell and/or David McQueen. Complainant further alleges that these funds were incorrectly paid to PGW because there were no liens recorded against the property for outstanding gas bills in September 2007 when she sold the home. Complainant also alleges that although she purchased the property on August 23, 2004, she never had any utilities turned on at this property between the date of purchase and date of sale in September 2007. Complainant seeks a refund and/or credit to her account in the amount of \$1,531.74.

PGW filed an Answer denying that these funds were incorrectly released to PGW and averred that the title company released the funds to pay a lien obligation on the property pursuant to the Municipal Claim and Tax Lien Law, 53 P.S. §1701.

By way of further Answer, PGW admitted that the account for gas service that was underlying the lien was at the time in the name of David McQueen who previously inhabited the service address. PGW admitted that although Darrell McQueen had an outstanding gas bill connected with this service address from 1998, it denied that there was a lien recorded in Darrell McQueen's name in the amount of \$584.96 at the service address as alleged by Complainant.

In its Answer, PGW also admitted that no gas service had been turned on at the service address for the Complainant.

A hearing was held on October 15, 2008. Complainant appeared *pro se*, testified on her own behalf and introduced five exhibits. Respondent was represented by Laureto Farinas, Esquire, who presented one witness and introduced three exhibits. The resulting hearing record consisted of a transcript containing seventy-four (74) pages and a total of eight (8) exhibits. No briefs were filed and the record was closed on October 29, 2008.

FINDINGS OF FACT

1. The Complainant, Delphine Matthews, currently resides at 2121 North 17th Street, Philadelphia, Pennsylvania. (NT 7-8).
2. On August 23, 2004, Complainant purchased the property at 2232 North Chadwick Street, Philadelphia, PA, which is the subject of this complaint, from her father, David McQueen. (NT 8-10, 14, 19-20, 41-42; Exh. DM-1).
3. Complainant never requested and Respondent never provided gas service in the name of the Complainant at the 2232 North Chadwick Street property. (NT 11, 38-39).
4. On or about September 13, 2007, Complainant sold the property located at 2232 North Chadwick Street, Philadelphia, PA. (NT 10, 13; Exh. DM-2).

5. Prior to settlement, Complainant was notified by the Title Company that there was a municipal lien against the property for gas (PGW) in the amount of \$1,531.74. (NT 46-50).

6. At the time of settlement, the title company withheld \$1,531.74 from the proceeds of the sale which it later paid to PGW as payment for outstanding gas bills related to the Chadwick Street property. (NT 11; Exh. DM-2).

7. Between October 23, 2000 and March 5, 2001, and March 6, 2003 and August 2, 2004, an unpaid balance of \$1,531.74 was accumulated by David McQueen (Account Nos. 000412370857 and 000880228788) for gas service at 2232 North Chadwick Street, Philadelphia, PA. (NT 56-58; Exhs. PGW-1 and 2).

8. PECO stipulated that at the time of the sale of the Chadwick Street Property on or about September 13, 2007, no liens had been filed or recorded by PGW against the property for unpaid gas bills, however as of the date of settlement, the two gas bills totaling \$1,531.74, in the name of the previous owner, David McQueen, remained unpaid. (NT 36-37, 57-58; Exhs. PGW-1 & 2; DM-4).

DISCUSSION

The Complainant purchased the property at 2232 North Chadwick Street, Philadelphia, PA from her father David McQueen on August 23, 2004. The dispute involved in the instant matter relates to the amount of \$1,531.74 which was collected by PGW from the title company when Complainant sold the home in September 2007. This amount was for two gas bills accrued in the name of the previous owner, David McQueen from October 23, 2000 to March 5, 2001 and March 6, 2003 to August 2, 2004 and involves the following two accounts:

PGW Exhibit No. 1- Account No. 000412370857- \$946.18

PGW Exhibit No. 2 - Account No. 000880228788 - \$584.96

Contrary to Complainant's assertion, PGW admitted that although Darrell McQueen at one time had an outstanding gas bill connected with this service address from 1998, it denied that there was a lien recorded in Darrell McQueen's name in the amount of \$584.96 and that Darrell McQueen's debt had been discharged in bankruptcy. (NT 51, 58).

Upon the sale of the Complainant's home at 2232 North Chadwick Street, Philadelphia, PA in September 2007, the outstanding balance of \$1,531.14, in the name of David McQueen, shown on PGW Exhibits 1 and 2 was deducted by the title company at settlement from the proceeds of the sale and paid to PGW. Complainant seeks a refund or credit of this amount.

PGW asserts, inter alia, that the amount for gas usage was accumulated by David McQueen (Account Nos. 000412370857 and 000880228788) for gas service at 2232 North Chadwick Street, Philadelphia, PA. between October 23, 2000 and March 5, 2001, and March 6, 2003 and August 2, 2004 and that the amount was collected under the Municipal Claim Lien Act. PGW further asserts that the Commission has no jurisdiction over proceeds collected under the Municipal Claim Lien Act.

With respect to PGW's contention that the Commission lacks jurisdiction because the \$1,531.14 was collected under the Municipal Claim Lien Law, Act 153 of May 16, 1923, P.L. 207; 53 P.S. §7101 et seq., PGW points out that under that Act, PGW, as a municipally owned gas utility, is authorized to collect for unpaid gas service to a particular address because Section 7101 specifically defines "municipal claim" as

(1) the claim arising out of, or resulting from a tax assessed, service supplied, work done, or improvement authorized and undertaken, by a municipality, although the amount thereof be not at the time definitely ascertained by the authority authorized to determine the same, and a lien therefore be not filed but become fileable within the period and in the manner herein provided . . . (Emphasis supplied).

This authority has also been recognized in the Natural Gas Choice and Competition Act (Act), 66 Pa. C.S.A. §2201 et seq. Section 2212(n) of the Act specifically provides “Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to Section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.” 66 Pa. C.S.A. §2212(n). The Natural Gas Choice and Competition Act defines “Natural Gas Distribution Company” to include a public utility or a city natural gas operation that provides natural gas distribution services and may provide natural gas service supplies. Thus the Natural Gas Choice and Competition Act validates that a city natural gas operation, such as PGW, has the authority to file liens for natural gas service that it has supplied. Accordingly, the Commission lacks jurisdiction and authority to contravene the provisions of the foregoing statutes or to take action contrary to their mandates.

For all of the foregoing reasons, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties in this proceeding.
66 Pa. C.S. § 701.
2. The Commission lacks jurisdiction and authority to contravene the provisions of the Municipal Claim Lien Law, 53 P.S. §7107 et seq. and/or the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. §2201 et seq.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Delphine Matthews against Philadelphia Gas Works in Docket No. C-2008-2029557 is hereby dismissed.
2. That this proceeding be marked closed.

Date: November 25, 2008

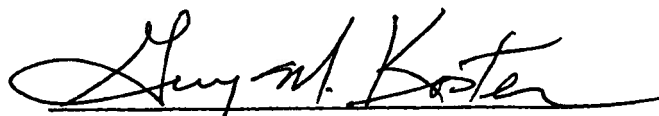

Guy M. Koster
Administrative Law Judge

EXHIBIT B



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 17, 2009

C-2008-2029557

LAURETO A FARINAS ESQUIRE
PHILADELPHIA GAS WORKS
800 W MONTGOMERY AVENUE
PHILADELPHIA PA 19122

Delphine Matthews
v.
Philadelphia Gas Works

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on April 16, 2009 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encls
cert. mail
JF



**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 16, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Delphine Matthews

C-2008-2029557

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Delphine Matthews (Complainant) on January 16, 2009, to the Initial Decision (I.D.) issued by Administrative Law Judge (ALJ) Guy M. Koster on December 30, 2008. Philadelphia Gas Works (PGW) filed Replies to Exceptions on March 16, 2009.

History of the Proceeding

On February 11, 2008, the Complainant filed a formal complaint (Complaint), which alleged that the Complainant sold property in Philadelphia (the Chadwick Street Property) on September 19, 2007. According to the Complainant, at settlement, the title company paid \$1,531.74 to PGW on account of outstanding gas bills owed by David McQueen (the Complainant's father and the prior owner of the Chadwick Street Property), and Darrell McQueen (another prior owner of the Chadwick Street Property). Complainant contended that the title company should not have paid PGW. She requested a refund or credit of these funds. Complaint at 2 and Attachment.

The Commission's Secretary's Bureau served the Complaint on PGW on March 14, 2008. On April 2, 2008, PGW filed a timely Answer, stating that the title company properly paid PGW \$1,531.14 to satisfy a lien on the property. Answer at 1.

PGW stated that Darrell McQueen established service at the Chadwick Street Property on October 10, 1996. His service was shut off on July 8, 1998, when he had an outstanding balance of \$1,081.66. PGW denied that any of the \$1,531.14 payment was for service provided when Darrell McQueen's name was on the account. Answer at 1-2.

PGW further stated that David McQueen established gas service at the Chadwick Street Property on October 23, 2000. Service was terminated as of March 5, 2001; when the outstanding bill was \$946.18. Service was restored on March 6, 2003. As of August 2, 2004, the outstanding bill on the account was \$584.96. This balance, together with the unpaid balance from 2000-2001, totaled \$1,531.14. On August 23, 2004, Mr. McQueen conveyed the Chadwick Street Property to the Complainant for

\$1.00. Gas service was never turned on at the service address for the Complainant. Ans. at 2.

On September 19, 2007, the Complainant sold the Chadwick Street Property. According to PGW:

Title insurance was granted in the names of Delphine Matthews and David McQueen. The title company discovered a lien obligation to PGW on the Service Address. On September 21, 2007, the title company released funds in the amount of \$1,531.14 to fulfill the lien obligation on the Service Address.

Ans. at 2.

A hearing was held on October 15, 2008. Complainant appeared *pro se*, testified on her own behalf, and introduced five exhibits. PGW was represented by counsel, who presented one witness and introduced three exhibits. No briefs were filed, and the record was closed on October 29, 2008.

By Initial Decision issued on December 30, 2008, ALJ Koster dismissed the Complaint. The ALJ concluded "The Commission lacks jurisdiction and authority to contravene the provisions of the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 *et seq.* and/or the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. § 2201 *et seq.*" Conclusion of Law 2.

The Complainant filed Exceptions on January 16, 2009. The Exceptions, however, did not include an original signature. The Commission's Secretary's Bureau therefore returned the Exceptions to the Complainant for execution.

The Complainant signed the Exceptions and returned them to the Commission, but there was no indication that the Exceptions were filed on PGW. On March 6, 2009, the Commission's Secretary's Bureau served the Exceptions on PGW. PGW filed timely Replies to Exceptions on March 16, 2009.

Discussion

Before addressing the Exceptions, it is noted that any issue or Exception we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993).

The ALJ made eight Findings of Fact and reached two Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Positions of the Parties

The Exceptions state that the Complainant disagrees with the ALJ's decision. The Exceptions, however, do not identify any errors of fact or law in the Initial Decision. The Exceptions merely ask that the case be reopened and the Commission consider the evidence that was given. Exc. at 1.

PGW's Replies to Exceptions argue that the Complainant's Exceptions fail to show that the Commission has jurisdiction over the claims raised in the Complaint. R. Exc. at 2. PGW argues that it has authority to file liens for unpaid gas service pursuant to the Municipal Claim and Tax Lien Law. PGW submits that the Code

confirms PGW's lien rights at both 66 Pa. C.S. § 2212(n) and 66 Pa. C.S. § 1414. Citing *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket No. C-20066672 (January 22, 2007), *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672 (February 23, 2009) and *Alvin H. Smith v. Peoples Natural Gas Company and Elbert S. Burkes*, Docket No. F-02079805 (Motion of Commissioner Gardner at Public Meeting of February 26, 2009), PGW argues it is "well settled" that the Commission has no jurisdiction to adjudicate claims regarding municipal liens.

Disposition

On review of the record, we will deny the Exceptions and adopt the Initial Decision, consistent with this Opinion and Order. The Commission has only those duties, powers and responsibilities as were expressly or by necessary implication given to it by the Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959). The Commission must act within, and cannot exceed, its jurisdiction. Jurisdiction cannot be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 81, 235 A.2d 602 (1967).

The crux of this case is whether the title company properly paid PGW \$1,531.14 at the time the Complainant sold the Chadwick Street Property. Some of Complainant's allegations sound in fraud against the title company (e.g., that the title company misled her into believing that the outstanding balance owed to PGW was for service provided to her rather than to a previous owner of the Chadwick Street Property). It is abundantly clear that this Commission has no jurisdiction over claims against a title insurance company.

Other claims advanced by the Complainant question whether PGW had a valid and enforceable lien against the property, pursuant to the Municipal Claim and Tax Lien Law, at the time she sold the Chadwick Street Property. Again, we believe it is

clear that we have no authority to adjudicate such disputes. Rather, the Legislature has conferred authority to resolve such disputes on the Commonwealth's Unified Judicial System.

We recognize that the Code addresses PGW's right to file liens pursuant to the Municipal Claim and Tax Lien Law. The Natural Gas Choice and Competition Act, at 66 Pa. C.S. § 2212(n) states:

Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.

Similarly, Section 1414(a) of the Code states:

(a) GENERAL RULE.-- A city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, and chapter 22 (relating to natural gas competition).

We believe these provisions were intended to preserve a statutory right that PGW had before the Commission was given authority to regulate PGW. We do not believe the above provisions were intended to give this Commission authority to adjudicate disputes over the validity and enforceability of PGW's alleged liens. Such

authority remains with the courts. We therefore find that the Commission lacks jurisdiction over the instant matter.

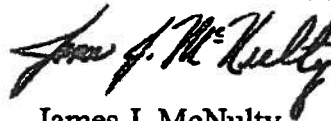
Conclusion

Based on the foregoing, the Exceptions filed by Delphine Matthews are denied and the Initial Decision of ALJ Koster is adopted, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Delphine Matthews on January 16, 2009 are denied.
2. That the Initial Decision of Administrative Law Judge Guy M. Koster, issued on December 30, 2008, is adopted, consistent with this Opinion and Order.
3. That this proceeding be marked closed.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 16, 2009

ORDER ENTERED: APR 17 2009

EXHIBIT C



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 15, 2009

C-2008-2029557

LAURETO A FARINAS ESQ
KRISTINE TROCK
PHILADELPHIA GAS WORKS
800 W MONTGOMERY AVENUE
PHILADELPHIA PA 19122-2898

Delphine Matthews
v.
Philadelphia Gas Works

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on May 14, 2009 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encls
cert. mail
JF

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 14, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Kim Pizzingrilli
Wayne E. Gardner
Robert F. Powelson

Delphine Matthews

C-2008-2029557

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

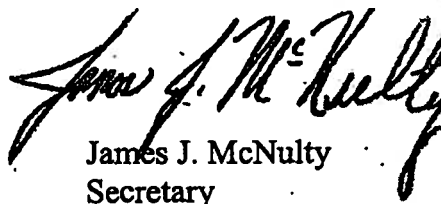
Before the Commission for consideration and disposition is the Petition for Reconsideration (Petition), filed by Delphine Matthews, on May 4, 2009, seeking reconsideration of our Opinion and Order entered April 17, 2009, relative to the above-captioned proceedings.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the Commission must act to grant a petition for reconsideration within thirty days of the date of entry of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a petition for review is timely filed. The thirty-day period within which the Commission must act upon this Petition for Reconsideration in

period within which the Commission must act upon this Petition for Reconsideration in order to preserve jurisdiction is May 18, 2009. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of, and consideration on, the merits of the Petition; **THEREFORE,**

IT IS ORDERED: That the Petition for Reconsideration filed on May 4, 2009, by Delphine Matthews, is hereby granted, pending further review of and consideration on, the merits.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 14, 2009

ORDER ENTERED: May 15, 2009

**Delphine Matthews
2121 North 17th Street
Philadelphia, PA 19121**

RECEIVED

2009 MAY -4 AM 10: 11

PA P.U.C.
SECRETARY'S BUREAU

C-2007-2029557

October 9, 2005

Dear Sir or Madam:

My name is Delphine Matthews and I'm sending this letter requesting reconsideration based on the decision rendered by commission James McNulty I disputed a gas bill from my past address 2232 North Chadwick Street, a hearing was ordered in front of Judge Guy Koster on February, 2008. He may the ruling in favor of P.G.W. Therefore I had to file an appeal because I totally disagree with his decision.

I purchased a property from my father David McQueen for the price of \$6000.00 (not one dollar) during the time in question there were no liens except for water.

Later I sold the property again there were no gas lien. I knew that my father David McQueen was moving into a senior citizen home where he had to have his gas turn on in his name, I had no knowledge of any gas liens or outstanding gas bills until I went to closing for the sale of the house. At that time the title company had informed me that there was a gas lien. I told them that it didn't belong to me and they gave me one week to show that there was no lien. I went to the gas company and had called the gas company and was informed that there was no lien at the time of my purchasing the property or the time of my selling. I understand there's a new gas law leaving the owner responsible if the tenant doesn't pay. However I had never had any tenants nor have I had gas service at the address in question. I never involve myself in anyone else's business affairs unless it pertains to me.

I understand that David McQueen has had an outstanding gas bill which caused his service to be cut off, yet PGW let him get service again. Leaving him with two outstanding bills and then allowing him gas service a third time at his current place of residence. What I don't understand is why after being in this position. *Why would PGW give him gas service again?*

I have no allegations against the title company based on the accusations of truth or fraud. My dispute is not with them, but with PGW. Furthermore the buyer who had purchased the home from me had ordered a title search which showed no gas liens just an outstanding gas bill to that address.

If for some reason the courts finds in favor of PGW, please provide me with proof that there was a gas lien prior to me purchasing the property.

Thank You in advance for your reconsideration in this matter.

Sincerely,



Delphine Matthews

EXHIBIT D

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held July 23, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Kim Pizzigrilli, Joint Statement, Dissenting in Part
Wayne E. Gardner
Robert F. Powelson Joint Statement, Dissenting in Part

Delphine Matthews

C-2008-2029557

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition), filed by Delphine Matthews (Complainant) on May 4, 2009, seeking reconsideration of our Opinion and Order entered April 17, 2009 (*April 2009 Order*), in the above-captioned proceeding. Philadelphia Gas Works (PGW) filed its Answer to the Petition on May 18, 2009.

History of the Proceeding

A detailed history of the proceeding was set forth in our *April 2009 Order*. As such, we will summarize the procedural history herein.

On February 11, 2008, the Complainant filed a formal complaint (Complaint), which alleged that the Complainant sold property in Philadelphia (the Chadwick Street Property) on September 19, 2007. According to the Complainant, at settlement, the title company paid \$1,531.74 to PGW on account of outstanding gas bills owed by David McQueen (the Complainant's father and the prior owner of the Chadwick Street Property), and Darrell McQueen (another prior owner of the Chadwick Street Property). The Complainant contended that the title company should not have paid PGW. She requested a refund or credit of these funds. Complaint at 2 and Attachment.

On April 2, 2008, PGW filed its Answer, stating that the title company properly paid PGW \$1,531.14 to satisfy a lien on the property. Answer at 1.

A hearing was held on October 15, 2008. By Initial Decision issued on December 30, 2008, Administrative Law Judge (ALJ) Guy M. Koster dismissed the Complaint. The ALJ concluded, "The Commission lacks jurisdiction and authority to contravene the provisions of the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 *et seq.* and/or the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. § 2201 *et seq.*" Conclusion of Law 2.

The Complainant filed Exceptions on January 16, 2009, and PGW filed timely Replies to Exceptions on March 16, 2009.

Our *April 2009 Order* denied the Complainant's Exceptions and adopted the ALJ's Initial Decision, consistent with that Opinion and Order.

As previously stated, the Complainant filed the Petition on May 4, 2009. She did not, however, serve the Respondent with a copy of her Petition. According to correspondence that PGW filed with the Commission on May 18, 2009, PGW became aware of the Petition by reviewing the Commission's agenda for the Public Meeting of May 14, 2009, at which we adopted an order granting the Petition pending review and consideration of the merits (the *May 2009 Order*). PGW's Answer to the Petition was received in the Secretary's Bureau on May 18, 2009.

Also on May 18, 2009, PGW filed a Certificate of Satisfaction with the Commission pursuant to 52 Pa. Code § 5.24(b). PGW stated "further Commission action in this matter is no longer necessary." By copy of the letter, the Complainant was advised of her right to object to the Certificate within ten days. No objection has been filed.

Discussion

We note that any issue we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties.

Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993).

Petition for Reconsideration

The *Duick* Standards for Reconsideration

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa.

C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Complainant’s Petition for Reconsideration

In her Petition, the Complainant reiterates her argument that the title company improperly paid PGW. She submits that she had no knowledge of a gas lien on the Chadwick Street Property until she went to closing on the sale of the property. She states that the title company gave her one week to show that there was no gas lien on the property. The Complainant alleges that she contacted PGW and was told that there was no gas lien on the Chadwick Street Property at the time she purchased it or at the time she sold it. Nevertheless, the title company paid PGW from the proceeds of closing because the title company believed PGW had a lien on the Chadwick Street Property. Petition at 1.

In its Answer, PGW argues that the Complainant fails to meet the *Duick* standards for reconsideration. PGW contends that the Petition fails to raise new or novel arguments not previously considered by the Commission. According to PGW, the Petition simply restates the facts and arguments that the Complainant offered at the hearing and in her Exceptions. PGW further states “it is beyond the Commission’s jurisdiction to adjudicate such lien issues as they are within the exclusive jurisdiction of the Courts of Common Pleas.” Answer at 2.

Disposition

The *Duick* Standards

We will grant Reconsideration and vacate the *April 2009 Order*. In that Order, we quoted Sections 1414(a) and 2212(n) of the Code, 66 Pa. C.S. §§ 1414(a) and 2212(n). We then stated:

We do not believe [these] provisions were intended to give this Commission authority to adjudicate disputes over the validity and enforceability of PGW’s alleged liens. Such

authority remains with the courts. We therefore find that the Commission lacks jurisdiction over the instant matter.

April 2009 Order at 6-7.

In reaching this conclusion, we did not address a previous decision of this Commission that was not cited by either Party to this proceeding. In *Chapter 14 Implementation*, Docket No. M-00041802F0002 (Order entered September 12, 2005) (*Second Implementation Order*), we stated at pages 68-69 (emphasis added):

Historically, our policy on collection efforts has been based on Supreme Court precedent that we have no authority to preclude the utility from exercising its legal right to commence suit in local court to collect the delinquent accounts receivable nor in any other way effect the jurisdiction of the Court of Common Pleas. *Bell Telephone Co. of Pa. v. Philadelphia Warwick Co.*, 355 Pa. 637, 50 A.2d 684 (1947). The Commission has lacked authority to prohibit a utility from instituting civil collection action or to in any way preclude a local court from exercising its statutory jurisdiction vis-à-vis civil remedies available to the creditor utility.

* * *

Now, Chapter 14 clearly authorizes PGW, and only PGW, to refuse to provide service to an applicant who has a pending lien or judgment unless the applicant enters into a payment arrangement covering the amount of the lien or judgment. It is clear that the General Assembly sought to give PGW an additional collection tool to assist the Company in improving its overall collection rates. *Even more significant, it appears, is that the General Assembly placing this authority under the Public Utility Code puts the full power and authority of Commission jurisdiction over the lien process, 66 Pa. C.S. §501, and the accessibility of the Commission's formal complaint procedures to PGW customers who have a dispute with the lien process. 66 Pa. C. S. §701; 52 Pa. Code §§56.140-181.* However, we do not believe that an implementation order is the proper vehicle to

disseminate our conclusions on the scope of our jurisdiction over lien-related issues. We shall address lien provisions through two methods: (1) approval of filed tariff supplements and, (2) cases brought before the Office of Administrative Law Judge via formal complaints. In this manner, we shall address these issues on a case-by-case basis.

We grant reconsideration and vacate our *April 2009 Order* to eliminate the apparent inconsistency in our decisions regarding Commission jurisdiction over PGW liens. For the reasons set forth below, however, we need not address this question further at this time.

Merits

With regard to the merits of the Complainant's Petition, PGW asserts that no further Commission action is warranted because the Parties have submitted a Certificate of Satisfaction. We disagree.

The Certification of Satisfaction indicates that the Parties have reached a settlement. The Parties, however, have not provided us with any information regarding their settlement.

The Commission considered a similar fact situation in *Kaufman v. Verizon Pennsylvania Inc.*, Docket No. C-20055680 (Order entered December 1, 2006). In that case, the ALJ sustained the Complaint and recommended that the respondent be ordered to pay a civil penalty. The respondent subsequently filed a Certificate of Satisfaction. We noted that the Commission's Regulations generally require a party desiring to withdraw a pleading in a contested proceeding to file a Petition for Leave to Withdraw a Pleading. 52 Pa. Code § 5.94. We treated the Certificate of Satisfaction as a Petition for Leave to Withdraw the Complaint, which we denied, stating:

In our view, it would not be appropriate to permit the Complaint to be withdrawn at this late stage of the proceeding. Verizon has had fifteen years to address the Complainant's service problems prior to the date of the filing of his Complaint on December 16, 2005. After the filing of the Complaint, Verizon had an additional opportunity to address the Complainant's service problems prior to the evidentiary hearing and the issuance of the ALJ's Initial Decision on October 2, 2006.

At this point, the proceeding is not solely a private matter between Verizon and the Complainant. The Commission's resources have been expended in the holding of the hearing and the writing of the Initial Decision by the ALJ. Additionally, the matter of the recommended \$18,000 penalty imposed by the ALJ on Verizon for violation of Section 1501 of the Code is not one that can be satisfied privately between Verizon and the Complainant. Penalties are imposed by the Commission, in part, in order to discourage utilities from committing similar violations in the future, and are meant to protect the public at large. Approving the instant Petition to withdraw the Complaint would, in essence, constitute a waiver of this penalty without a review of its merits. Sanctioning such a procedure would encourage, rather than discourage, utilities to be unresponsive to customers' service complaints.

Kaufman (December 1, 2006 Order) at 3.

Verizon subsequently petitioned for reconsideration, arguing that our Regulations at 52 Pa. Code § 5.24 permit a Certificate of Satisfaction to be filed at any stage during the litigation of a formal complaint. We rejected this argument and held that a Certificate of Satisfaction cannot be filed after the issuance of an Initial Decision.

Kaufman v. Verizon Pennsylvania Inc., Docket No. C-20055680 (Order entered November 19, 2008). We stated at pages 13-14:

[T]he Commission expends considerable resources in conducting a hearing and preparing an Initial Decision. Those

resources should not be expended simply to give one party or the other additional leverage at the bargaining table. Moreover, when a Complainant files a Certificate of Satisfaction, the terms of the underlying settlement need not be presented to the Commission. Particularly where, as here, the Initial Decision involves a recommended civil penalty, we are reluctant to permit the parties to void the ALJ's ruling without Commission review based on a confidential agreement. In short, we continue to believe that a proceeding is not solely a private matter between the parties following the issuance of an Initial Decision. The public has an interest that must be protected, as reflected in our Regulation at Section 5.94.

We disagree with Verizon that this ruling is inconsistent with our policy of encouraging settlements. This decision merely clarifies the procedure for withdrawing a case after a settlement has been reached. Based on their settlement, Parties can file a Certificate of Satisfaction pursuant to Section 5.24 until an Initial Decision is issued. If the settlement is reached after an Initial Decision is issued, Parties must file a Motion to Withdraw a Pleading pursuant to Section 5.94.

The present case is factually different from *Kaufman* in that the instant case involves a formal complaint that was dismissed by the ALJ and the Commission, as distinguished from a formal complaint that was sustained by the ALJ. We believe this is a distinction without a difference. The public still has an interest in this on-going litigation that must be protected, as reflected by Section 5.94. Moreover, we see no basis in our regulations for allowing a Certificate of Satisfaction to be filed after an Initial Decision is issued in favor of a respondent but not after an Initial Decision is issued in favor of a complainant. We therefore affirm our prior holding that, if a settlement is reached after an Initial Decision is issued, the Parties must file a Motion to Withdraw a Pleading pursuant to Section 5.94 rather than a Certificate of Satisfaction pursuant to Section 5.24.

Consistent with the November 2006 Order in *Kaufman*, we will treat the Certificate of Satisfaction filed by PGW on May 18, 2009, as a Motion to Withdraw a

Pleading pursuant to Section 5.94. Due to the lack of any information about the Parties' settlement, we cannot approve that Motion as submitted. Rather than denying the Motion at this time, we will offer the Parties the opportunity to file additional information in support of their Motion within the next sixty (60) days.

Conclusion

Based on the foregoing, we shall: grant Delphine Matthew's Petition for Reconsideration; vacate our *April 2009 Order* in this proceeding; treat PGW's Certificate of Satisfaction as a Motion to Withdraw a Pleading; and permit the Parties to submit additional information supporting said Motion; all consistent with this Opinion and Order;

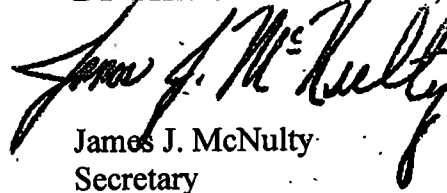
THEREFORE,

IT IS ORDERED:

1. That the Petition for Reconsideration filed by Delphine Matthews on May 4, 2009, is granted.
2. That the Commission's Order in these proceedings, entered on April 17, 2009, is vacated.
3. That the Certificate of Satisfaction, filed by Philadelphia Gas Works on May 18, 2009, shall be treated as a Motion to Withdraw a Pleading pursuant to 52 Pa. Code § 5.94.
4. That Delphine Matthews and Philadelphia Gas Works may submit further information to the Commission in support of the Motion to Withdraw a Pleading within sixty (60) days of the date this Opinion and Order is entered.

5. That, upon receipt of the information referenced in Ordering Paragraph 4 above or the passage of sixty (60) days, the Commission shall issue an Order on the Motion to Withdraw a Pleading.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large, sweeping initial "J".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 23, 2009
ORDER ENTERED: July 28, 2009

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Delphine Matthews v.
Philadelphia Gas Works

Public Meeting July 23, 2009
2029557-OSA
Docket No. C-2008-2029557

STATEMENT OF
COMMISSIONERS KIM PIZZINGRILLI AND
ROBERT F. POWELSON
DISSENTING IN PART

Before the Commission for disposition is the Petition for Reconsideration of Delphine Matthews seeking reconsideration of the Commission's April 17, 2009 Order in this matter. Procedurally, following the issuance of the Commission's April 2009 Order, Ms. Matthews filed the instant Petition for Reconsideration, to which PGW filed an Answer. Concurrent with its Answer, PGW also filed a Certificate of Satisfaction. Ms. Matthews did not object to the filing of the Certificate of Satisfaction.

The majority in this case believes, in accord with its vote in *Kauffman v. Verizon Pennsylvania Inc.*, Docket No. C-20055680 (Order entered November 19, 2008), that the Certificate of Satisfaction should be rejected and converted to a Motion to Withdraw Pleading.

As we did in the *Kauffman* matter, we respectfully disagree. We continue to believe that a plain reading of our Regulation at 52 Pa. Code Section 5.24 allows for the filing of Certificates of Satisfaction at any time during a proceeding. In this matter, only one customer is affected and there are no overarching policy concerns present that support displacing or superseding the interests of the litigants in favor of broad public interest concerns.¹ We therefore believe that the Certificate of Satisfaction should be accepted, thereby disposing of this matter.

We note, however, that we are only dissenting from that portion of the Order discussing the *Kauffman* case and requesting additional information from the parties; we are in agreement with the portion of the Order vacating the April 2009 Order so as to eliminate any inconsistency regarding jurisdiction over PGW.


KIM PIZZINGRILLI
COMMISSIONER


ROBERT F. POWELSON
COMMISSIONER


DATE: July 23, 2009

¹ We are cognizant of the Commission's duty to uphold and protect the public interest, and we take that charge very seriously. In this matter, however, we believe that the public interest is *de minimus*, particularly when compared to the interests of the litigants.

VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel to the Philadelphia Gas Works; and that as such, I am authorized to make this verification on its behalf, that the facts set forth in the foregoing Answer are true to the best of my knowledge, information and belief, and that I expect to be able to prove these at a hearing held in this matter. I make this verification subject to the penalties of 18. Pa. C.S. §4904, pertaining to false statements to authorities.

Date: August 12, 2009



Laureto Farinas

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:

Ms. Delphine Mathews
2121 N. 17th Street
Philadelphia, PA 19121

August 12, 2009



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