



Philadelphia Gas Works

800 West Montgomery Avenue, Philadelphia, PA 19122

Kristine Trock, Paralegal

Legal Department

Direct Dial: (215) 684-6862

Fax: (215) 684-6798

E-mail: kristine.trock@pgworks.com

October 28, 2009

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

Re: Joseph McGuckin v. PGW, Docket No. C – 2009 – 2134762

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original of its Preliminary Objections to the Complaint 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, appearing to read "Kristine Trock", is written over the typed name.

Kristine Trock

Enclosure

cc: Mr. Joseph McGuckin (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph McGuckin

v.

Philadelphia Gas Works

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:
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:
:

Docket No. C – 2009 – 2134762

NOTICE TO PLEAD

To: Joseph McGuckin, Complainant

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objection and Motion to Strike, within ten (10) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

October 28, 2009



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph McGuckin	:	
	:	
v.	:	Docket No. C – 2009 – 2134762
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works’
Preliminary Objection and
Motion to Strike Impertinent Matter**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objections to the Complaint filed in the above captioned matter on the grounds that the Complaint includes impertinent matter in its requested relief to reimburse the Complainant for “all documented expenses...” associated with the instant matter.¹ Further PGW moves to strike that requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a) (2).

In support of its preliminary objection and motion to strike, PGW hereby avers the following:

1. On or about October 9, 2009, the Complainant filed a formal complaint against PGW with the Commission under Docket No. C – 2009 – 2134762, averring that PGW forcibly entered 3331 Longshore Avenue, Philadelphia, PA (Service Address) and damaged the alarm system while responding to an emergency gas leak call on September 28, 2009.

2. The Commission has authorized PGW to use forcible means when necessary under emergency conditions to gain access to a Service Address through its approval of the PGW Gas Service Tariff §8.4 Access To Premises, which is attached hereto as Exhibit “A.”

¹ Complaint, page 5, Paragraph 5 Relief – Subparagraph “Four”

3. The Complainant further avers that PGW damaged property and failed to secure the Service Address, properly after PGW addressed the emergency call.

4. The Complainant has been in contact with the PGW Risk Management Department concerning his claim.

5. Among the requested relief, the Complaint Paragraph 5 – Subparagraph “Four,” is a prayer for the reimbursement to the Complainant for “all documented expenses...” These include, but are not limited to, alarm technician service call fees, fax fees, postage for filing the Complaint in the instant matter. As such, this prayer for relief is for damages, the result of the incident, which is the subject matter of the complaint.

6. Under the Commission’s Rules of Administrative Practice and Procedure at 52 Pa. Code §5.101, the treatment of preliminary objections is comparable to that of Pennsylvania civil practice. (See: Order Sustaining Preliminary Objection in *Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757 (May 21, 2009))

The Commission’s regulations provide, in relevant part:

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections...must state specifically the legal and factual grounds relied upon and be limited to the following:

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
52 Pa. Code §5.101(a) (2)²

7. Pennsylvania law is well settled that the Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Morrow v. Bell Telephone Co. of Pennsylvania*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Public Utility Commission*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v.*

I.F.T., Inc., 402 Pa.Super. 87, 586 A.2d 409 (1991); *Terminato v. Pa. National Insurance Company*, 538 Pa. 60, 645 A.2d 1287(1994).

8. In the instant matter, the Commission cannot grant the Complainant's request for reimbursement of monetary damages.

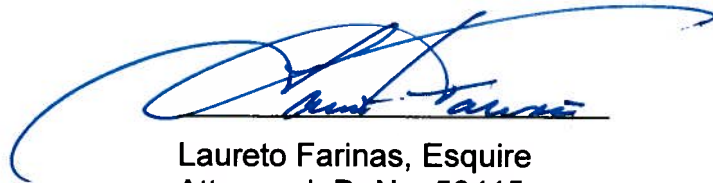
9. A prayer for damages that are not legally recoverable in the cause of action before this Commission is irrelevant to the cause of action and therefore "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2).³

10. The request for relief in the Complaint Paragraph 5 – Subparagraph "Four," for the reimbursement to the Complainant for "all documented expense, including alarm technician service call fees, fax fees, postage for filing the Complaint in the instant matter is a request for monetary damages and should be stricken from the complaint.

Wherefore, PGW respectfully requests that this Commission sustain PGW's preliminary objection and strike off the requested relief for monetary damages as impertinent matter.

Respectfully submitted,

October 28, 2009



Laureto Farinas, Esquire
Attorney I. D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

² 52 Pa. Code §5.101(a) (2) emphasis added.

³ *Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757 (May 21, 2009)

EXHIBIT A

VERIFICATION

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

October 28, 2009



Laureto Farinas, Esquire

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).

For Complainant:

Mr. Joseph McGuckin
3331 Longshore Avenue
Philadelphia, PA 19149

October 28, 2009



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