



**Philadelphia Gas Works**

800 West Montgomery Avenue, Philadelphia, PA 19122

Kristine Trock, Paralegal

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November 19, 2009

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

**Re: Jean Charles v. PGW, Docket No. C – 2009 – 2138638**

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. Jean Charles (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Jean Charles**

**v.**

**Philadelphia Gas Works**

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**Docket No. C – 2009 – 2138638**

**NOTICE TO PLEAD**

**To: Jean Charles, Complainant**

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objections 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,

November 19, 2009



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Jean Charles**

**v.**

**Philadelphia Gas Works**

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**Docket No. C – 2009 – 2138638**

**Philadelphia Gas Works’  
Preliminary Objections 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 Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief to remove (or forbear collection of) the lien, and moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a)(1) and (2).

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

1. On or about October 30, 2009, the Complainant filed a formal complaint against PGW with the Commission under Docket No. C-2009-2138638, regarding unpaid debt for gas service to 5040 Whitaker Avenue, Philadelphia, Pennsylvania (5040 Whitaker) and the filing of a lien upon 5040 Whitaker, the result of unpaid PGW debt, alleging that the debt associated with the lien was for usage at the Complainant’s other property 4737 N. Broad Street, Philadelphia, PA (4737 N. Broad).
2. The City of Philadelphia, as owner of PGW, filed a lien against 5040 Whitaker Avenue, as shown on the Civil Docket Report, which is attached hereto as Exhibit “A.” Pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, (Municipal Lien Act) the City of Philadelphia on behalf of PGW has the right to collect on debt owed to PGW for gas service to the Service Address.

3. The Complaint incorrectly avers that the debt associated with the lien that is the subject of the instant matter was incurred through gas usage at 4737 N. Broad Street, Philadelphia, PA (4737 N. Broad).
4. According to PGW records, the Complainant established gas service at 5040 Whitaker on June 9, 1989. Gas service to 5040 Whitaker was terminated for nonpayment in 1996 with an outstanding account balance of \$12,055.37.
5. For the period from June 9, 1989 through 1996, the Complainant was the Customer of Record for the PGW gas account for gas service to 5040 Whitaker.
6. On August 12, 1997, the City of Philadelphia as owner of PGW, filed a lien against 5040 Whitaker Avenue on behalf of PGW as shown on the Civil Docket Report, which is attached hereto as Exhibit "A," pursuant to the Municipal Lien Act.
7. On September 25, 2007, the Complainant became the Customer of Record for gas service at 4737 N. Broad. The Complainant's previous account balance of \$12,055.37 was transferred to the gas account for 4737 N. Broad, as shown on the account documents, which are attached hereto as Exhibit "B."
8. The Complaint requests relief in the form of an order to remove the lien filed against 5040 Whitaker and (presumably) to file another lien against 4737 N. Broad.
9. 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:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(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)<sup>1</sup>

10. In this case, as the Complaint erroneously states that the bills that are the subject of the lien were for gas service to 4737 N. Broad and not the 5040 Whitaker. The Complainant opines that under circumstances, the lien should be filed against 4737 N. Broad.

11. Pursuant to the Natural Gas Choice and Competition Act, 66 Pa. C.S.A Section 2201 et seq., section 2212(n), which 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.” Thus, under 66 Pa. C.S.A Section 2212(n), the Commission has no jurisdiction over the filing of such a lien.<sup>2</sup>

12. Pursuant to the Responsible Utility Customer Protection Act at 66 Pa. Cons. Stat. § 1414, which states: “[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 ...,” clarifies and confirms such rights to impose a lien.

13. The lien against 5040 Whitaker is for unpaid gas consumption at that address and not 4737 N. Broad. The City of Philadelphia filed the lien against the appropriate address, where the gas was consumed.

14. A prayer for relief that is beyond the Commission’s authority (i.e. the removal of a lien field by the City of Philadelphia under the Municipal Lien Act)

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<sup>1</sup> 52 Pa. Code §5.101(a) (2) emphasis added.

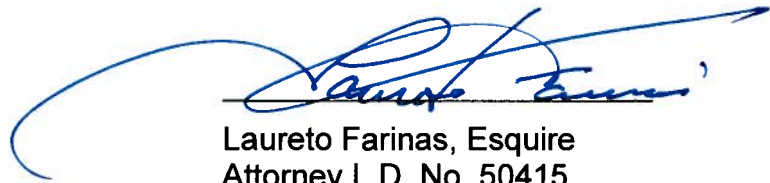
<sup>2</sup> 52 Pa. Code §5.101(a) (1)

cannot be acquired in the cause of action before this Commission. It is irrelevant to the instant cause of action and therefore "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2) and, should be stricken from the Complaint pursuant to Pa. Code §5.101(a)(2).

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

November 19, 2009



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

# **EXHIBIT A**

# Civil Docket Report

## Case Description

**Case ID:** 970830441  
**Case Caption:** CITY OF PHILA VS CHARLES ETAL  
**Filing Date:** Monday , August 11th, 1997  
**Court:** JUDGMENTS  
**Location:** City Hall  
**Jury:** NON JURY  
**Case Type:** CLAIM FOR GAS SERVICE  
**Status:** GAS SERVICE CLAIM JDGMNT FILED

## Related Cases

*No related cases were found.*

## Case Event Schedule

*No case events were found.*

## Case Parties

Seq #	Assoc	Expn Date	Type	Name
1			PLAINTIFF	CITY OF PHILADELPHIA
<b>Address:</b>	C/O LAW DEPARTMENT 1515 ARCH ST, 15TH FLOOR PHILADELPHIA PA 19102-1595		<b>Aliases:</b>	<i>none</i>
2			DEFENDANT	CHARLES, JEAN
<b>Address:</b>	5040 WHITAKER AVE PHILADELPHIA PA 19100		<b>Aliases:</b>	<i>none</i>
3			DEFENDANT	CHARLES, PAULETTE
<b>Address:</b>	5040 WHITAKER AVE PHILADELPHIA PA 19100		<b>Aliases:</b>	<i>none</i>

## Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount	Approval/Entry Date

11-AUG-1997 03:25 PM	GAS SERVICE CLAIM JDGMNT FILED		\$12,055.37	09-SEP-1997 12:00 AM
<b>Docket Entry:</b>	<i>none.</i>			

# **EXHIBIT B**

Account Financial History: Jean Rene-Charles



Help

Account... 0021 1300 3710

Name: Jean Rene-Charles



Trans Date	Type	Service	Actual Amount	Actual Balance	Current Amount	Current Balance	Deposit on Hand
11/18/2009	XFER	U	-12,133.32	0.00	-12,133.32	0.00	0.00
11/18/2009	REACT	U	12,133.32	12,133.32	12,133.32	12,133.32	0.00
11/18/2009	XFER	U	-1.00	0.00	-1.00	0.00	0.00
11/18/2009	XFER	U	1.00	1.00	1.00	1.00	0.00
07/01/1999	BILL	N	0.00	0.00	0.00	0.00	0.00
01/30/1998	WO	U	-12,133.32	0.00	0.00	0.00	0.00
09/25/1997	TREF	U	12,055.37	12,133.32	0.00	0.00	0.00
01/01/1996	CONVRC	U	77.95	77.95	0.00	0.00	0.00

Financial Details...

Action Launch

USA... 9961301373 G2-GS, Active, GSR

Account: 0021 1300 3710 Jean Rene-Charles  
Effective Period: 04/11/1996 - 08/29/1997  
Rate... GSR  General Service Residential  
Tariff Map:   
CCDB Account:   
Customer Class: 2 - Residential Heat and Domestic  
Rate Class: GS - General Service  
Revenue Code...  
Collection Path: RESNOPH - Residential Coll No Telephone

Arrears	
0 - 30	0.00
31 - 60	0.00
61 - 90	0.00
91 Up	0.00
Total:	0.00

Financial Summary	
Total Amount Due:	0.00
Regular Balance:	0.00
Late Payment Charges:	0.00
Current Amount Due:	0.00
Budget Enrollment Date:	
Monthly Budget:	0.00

Premise: 4737 N Broad St,1f/Philadelphia,Pa

- Main
- Misc 1
- Misc 2
- Tax Exemption
- Service Points
- Contract Riders
- Interruptions
- P&L Plan
- Suppliers

**Miscellaneous Adjustment: TREF - 12,055.37**

Action Launch

Adjustment: 100848179      Frozen

Status	Date	By
Created	09/25/1997	Conversion, July 1999
Frozen	09/25/1997	Conversion, July 1999

Account: 0021 1300 3710      Name: Jean Rene-Charles

SA: G2-GS, Active      Adjustment Amount: 12,055.37

Type

SA      SA: 9961301373      G2-GS, Active

Deposit

	Begin	+Adj	=Final	Revenue Month/Year
Total Amt Due		12,055.37		9/1997
Current Amt Due		0.00		
Write Off Amt		0.00		

Check Nbr: \_\_\_\_\_

Check Date: \_\_\_\_\_

Adjustment Code: TREF       Transfer Account To New

Adjustment Amount: 12,055.37      Comments: \_\_\_\_\_

Memo Adjustment

Appear on Next Bill      Description: 1510/1511 Conversion

Main

Financial Details

Tax Location

GL Accounting

**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.

November 19, 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:

For Complainant:

Mr. Jean Charles  
5040 Whitaker Avenue  
Philadelphia, PA 19124

November 19, 2009



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