



Philadelphia Gas Works

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November 30, 2009

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

Re: Candace Koerber v. PGW, Docket No. C – 2009 – 2140527

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 that reads "Kristine Trock". The signature is written in a cursive style with a large "K" and "T".

Kristine Trock

Enclosure

cc: Ms. Candace Koerber (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Candace Koerber

v.

Philadelphia Gas Works

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Docket No. C – 2009 – 2140527

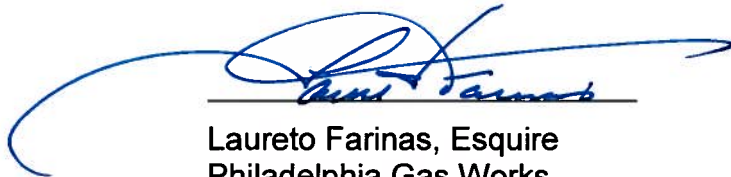
NOTICE TO PLEAD

To: Candace Koerber, 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 30, 2009



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Candace Koerber

v.

Philadelphia Gas Works

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Docket No. C – 2009 – 2140527

**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 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 November 10, 2009, the Complainant filed a formal complaint against PGW with the Commission under Docket No. C – 2009 – 2140527, regarding unpaid debt for gas service to 3509 N. 18th Street, 1st Floor, Philadelphia, Pennsylvania (3509 N. 18th Street).
2. For the period from September 2005 through July 1, 2009, Gerard Bell was the Customer of Record for the PGW gas account for gas service to 3509 N. 18th Street.
3. The City of Philadelphia, as owner of PGW, has filed a municipal lien upon 3509 N. 18th Street for the unpaid PGW debt of Gerard Bell, pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq. (“Municipal Lien Act”).

4. Pursuant to the Municipal Lien Act, PGW as owned by the City of Philadelphia has the right to collect on municipal claims owed to PGW for gas service to a Service Address.

5. The Complaint avers that since the gas was consumed by a tenant, the Complainant should not be held responsible for the unpaid debt of Gerard Bell, the tenant, for \$11,574.95 for gas usage for the period beginning September 2005 through July 1, 2009.

6. The Complaint requests relief in the form of a Commission order finding that the Complainant is not responsible for payment of the outstanding unpaid municipal claim for gas service rendered to 3509 N. 18th Street under the account of Gerard Bell, and to do so by having the lien on 3509 N. 18th Street removed.

7. 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. (*Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757 (May 21, 2009), See: Order Sustaining Preliminary Objection in *Nathaniel Lewis Mooney, Jr. v. Philadelphia Gas Works*, Docket No. C-2009-2134673 (November 23, 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)¹

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

8. In this case, as the Complaint states that the bills that are the subject of the lien were from gas service from a tenant's gas account and not her PGW account. The Complainant opines that under circumstances, she should not be held responsible and the lien should be removed. This Commission is without the authority to grant this relief.

9. 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.² Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (19676).

10. 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.

11. The Complainant disputes the imposition of the lien because she did not incur the debt for gas service.

12. The nature of a lien is such that it encumbers the real estate, regardless who caused the event, which results in the imposition of a municipal claim. PGW may collect as a municipal claim, unpaid debt for gas service rendered, even when the gas service was not rendered to the owner of the property. *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwith. 2000)

13. In the instant matter, the Complainant simply wishes not to be responsible for the payment of the gas that she did not use. As PGW has not

² 52 Pa. Code §5.101(a) (1)

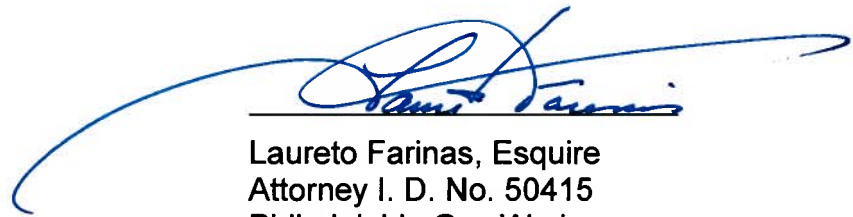
held the Complainant personally responsible for the unpaid balance for gas service rendered to 3509 N. 18th Street under the account of Gerard Bell, the Commission need not grant the requested relief of having the Complainant not be personally responsible for the unpaid balance for gas service rendered under the tenant's PGW account. Furthermore the Commission has no jurisdiction over the rules governing the effect of the lien (encumbering real estate) to grant the requested relief.

14. A prayer for relief from a condition that does not exist (held personally responsible for unpaid balance for gas service rendered to another) is not recoverable 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 30, 2009



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

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 30, 2009`



Laureto Farinas, Esquire

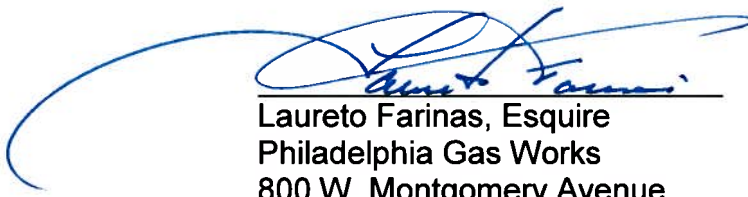
CERTIFICATE OF SERVICE

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:

Ms. Candace Koerber
One Columbus Place
Cliffside Park, NJ 07010

November 30, 2009



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