



**Philadelphia Gas Works**

800 West Montgomery Avenue, Philadelphia, PA 19122

Kristine Trock, Paralegal

**Legal Department**

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January 26, 2010

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

**Re: 2020 Passyunk Avenue, Inc. v. PGW, Docket No. C – 2010 – 2150856**

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". The signature is written in a cursive, flowing style.

Kristine Trock

Enclosure

cc: Andrew L. Miller, Esquire (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>2020 West Passyunk Avenue, Inc.</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2010 – 2150856</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**NOTICE TO PLEAD**

**To: 2020 West Passyunk Ave., Inc., Complainant, c/o Andrew L. Miller, Esq.**

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,

January 26, 2010

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>2020 West Passyunk Avenue, Inc.</b>	:	
	:	
v.	:	<b>Docket No. C – 2010 – 2150856</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**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, that the Complaint lacks sufficient specificity 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)(2) and (3).

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

1. On or about December 30, 2009, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter regarding unpaid debt for gas service to 2020 West Passyunk Avenue, Philadelphia, Pennsylvania (Service Address).
2. The Complainant is the owner of the Service Address, that the Complainant leased to the Complainant’s former tenant, Young Kwon Lee.
3. In August 2009, the gas service to the Service Address was terminated for nonpayment under the account of the Complainant’s former tenant. The outstanding balance is \$68,090.62, as shown on the Statement of Account, which is attached hereto as Exhibit “A.”
4. According to PGW’s investigation, the Complainant’s former tenant, Young Kwon Lee had leased the Service Address and the dry cleaning business, NU Way Discount Cleaners, from the Complainant pursuant to a type of a

lease/purchase agreement of the property and the dry cleaning business. Upon Young Kwon Lee's breach of their agreement, the property and the dry cleaning business reverted to the Complainant. As such, the reversion of the dry cleaning business to the Complainant includes all assets and liabilities of the going concern.

5. PGW has not transferred the balance on the account of Young Kwon Lee to an account in the name of the Complainant.

6. The City of Philadelphia as owner of PGW filed a lien against the Service Address for a previous account balance, 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 as owner of PGW reserves the right to collect on debt owed to PGW for gas service to the Service Address under the Municipal Lien Act.

7. The Complaint avers that PGW is holding the Complainant personally responsible for the unpaid debt of the Complainant's former tenant.

8. The Complaint avers that PGW's billing practices and procedures concerning the complaint and Service Address are, inter alia, in violation of the Public Utility Code, 66 Pa. C.S.A. §101, et seq. (Code), but does not state with any specificity how PGW's billing practices and procedures violate the Code or which sections of the Code are violated.

9. The Complaint requests relief in the form of a Commission order that the Complainant should not be responsible for the outstanding unpaid balance for gas service rendered to the Service Address under the account of the Complainant's former tenant, and to do so by having the lien on the Service Address removed.

10. On or about October 26, 2009, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter regarding unpaid debt for gas service to 2020 West Passyunk Avenue, Philadelphia, Pennsylvania (Service Address). In response to that complaint, PGW filed timely an Answer and Preliminary Objections.

11. In that matter, the Commission issued an Initial Decision dated December 18, 2009 in that matter a copy of which is attached hereto as Exhibit "B." That Initial Decision sustained PGW's preliminary objection challenging the jurisdiction of the Commission over the matter concerning the filing of the lien pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101 and dismissed the Complaint. The Complainant did not file exceptions to the Initial Decision. The Commission's final decision is pending

12. 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.
  - (3) Insufficient specificity of a pleading.
  - (4) Legal insufficiency of a pleading.
  - (5) Lack of capacity to sue...
- 52 Pa. Code §5.101(a) (2)<sup>1</sup>

13. 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 that was terminated for nonpayment in August 2009. The Complaint states that the

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

Complainant did receive an explanation for a bill for previously unbilled service issued to the Customer of Record (Complainant's tenant) in August 2008. The Complainant opines that under circumstances, PGW's billing practices and procedures are in violation of the Code, and it should not be held responsible for the bill, necessitating the removal of the lien.

14. 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>

15. 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.

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

17. 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. Cmwlth. 2000)

18. In the instant matter, the Complainant simply wishes not to be responsible for the gas he did not use and to remove the lien that has been filed by the City of Philadelphia.

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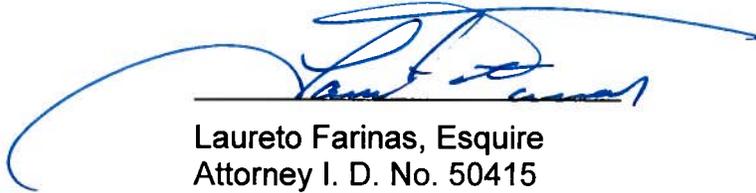
<sup>2</sup> 52 Pa. Code §5.101(a) (1)

19. A prayer for relief (the removal of the lien) 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,

January 26, 2010



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

# **EXHIBIT A**

Specific Service Agreement Statement of Account SA- 9961417270

Customer Name	From Date	To Date
YOUNG KWON LEE	1/26/2006	1/26/2010

Service address	Account Number	SA Number	Meter	Rate
2020 W PASSYUNK AVE PHIL, PA 191453506	9113880926	9961417270	2024886	GS

STATEMENT

Transaction Date	Type	Reading	Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
02/14/2006	LPC					0.00				\$8.84	\$615.36	\$615.36
02/14/2006	BILL	4691	R	32	0.13	0.00	811		03/10/2006	\$19.53	\$634.89	\$634.89
03/15/2006	LPC					0.00				\$9.13	\$644.02	\$644.02
03/15/2006	BILL	5900	R	29	0.12	0.00	731		04/07/2006	\$19.51	\$663.53	\$663.53
04/13/2006	LPC					0.00				\$9.43	\$672.96	\$672.96
04/13/2006	BILL	7180	R	29	0.13	0.00	499		05/09/2006	\$19.53	\$692.49	\$692.49
05/15/2006	LPC					0.00				\$9.72	\$702.21	\$702.21
05/15/2006	BILL	8461	R	30	0.13	0.00	142		06/08/2006	\$19.53	\$721.74	\$721.74
06/14/2006	LPC					0.00				\$10.01	\$731.75	\$731.75
06/14/2006	BILL	9674	R	32	0.12	0.00	50		07/10/2006	\$19.53	\$751.28	\$751.28
06/21/2006	PAY					0.00		Check		(\$721.14)	\$30.14	\$30.14
07/14/2006	LPC					0.00				\$0.45	\$30.59	\$30.59
07/14/2006	BILL	10648	R	30	0.1	0.00	0		08/08/2006	\$19.46	\$50.05	\$50.05
08/14/2006	LPC					0.00				\$0.74	\$50.79	\$50.79
08/14/2006	BILL	11584	R	29	0.09	0.00	0		09/07/2006	\$19.44	\$70.23	\$70.23
09/13/2006	LPC					0.00				\$1.03	\$71.26	\$71.26
09/13/2006	BILL	12466	R	32	0.09	0.00	4		10/06/2006	\$19.44	\$90.70	\$90.70
10/12/2006	LPC					0.00				\$1.32	\$92.02	\$92.02
10/12/2006	BILL	13332	R	29	0.09	0.00	58		11/06/2006	\$19.44	\$111.46	\$111.46
11/13/2006	LPC					0.00				\$1.61	\$113.07	\$113.07
11/13/2006	BILL	14291	R	29	0.1	0.00	388		12/06/2006	\$19.46	\$132.53	\$132.53
12/13/2006	LPC					0.00				\$1.91	\$134.44	\$134.44

Transaction Date	Type	Reading	Reading Code	Reading	# of Days	CCF Usage	Average CCF/Days	Heating DDP's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
12/13/2006	BILL	15433	R	33	0.11	0.00	566			01/10/2007	\$19.47	\$153.91	\$153.91
01/17/2007	LPC					0.00					\$2.20	\$156.11	\$156.11
01/17/2007	BILL	16682	R	35	0.12	0.00	678			02/09/2007	\$19.48	\$175.59	\$175.59
01/22/2007	PAY					0.00			Check		(\$153.91)	\$21.68	\$21.68
02/14/2007	LPC					0.00					\$0.32	\$22.00	\$22.00
02/14/2007	BILL	17838	R	28	0.12	0.00	1050			03/12/2007	\$19.48	\$41.48	\$41.48
03/15/2007	LPC					0.00					\$0.61	\$42.09	\$42.09
03/15/2007	BILL	18927	R	29	0.11	0.00	869			04/10/2007	\$19.47	\$61.56	\$61.56
04/09/2007	PAY					0.00			Check		(\$61.56)	\$0.00	\$0.00
04/16/2007	BILL	20053	R	30	0.11	0.00	556			05/09/2007	\$19.47	\$19.47	\$19.47
05/15/2007	LPC					0.00					\$0.29	\$19.76	\$19.76
05/15/2007	BILL	21204	R	31	0.12	0.00	220			06/08/2007	\$19.48	\$39.24	\$39.24
06/15/2007	LPC					0.00					\$0.58	\$39.82	\$39.82
06/15/2007	BILL	22280	R	30	0.11	0.00	21			07/10/2007	\$19.48	\$59.30	\$59.30
06/25/2007	PAY					0.00			Check		(\$39.24)	\$20.06	\$20.06
06/27/2007	PAY					0.00			Check		(\$59.30)	(\$39.24)	(\$39.24)
07/16/2007	BILL	23267	R	30	0.1	0.00	4			08/08/2007	\$19.44	(\$19.80)	(\$19.80)
08/14/2007	BILL	24286	R	31	0.1	0.00	0			09/07/2007	\$19.44	(\$0.36)	(\$0.36)
09/13/2007	BILL	25183	R	30	0.09	0.00	6			10/08/2007	\$19.43	\$19.07	\$19.07
10/01/2007	PAY					0.00			Check		(\$19.07)	\$0.00	\$0.00
10/12/2007	BILL	26207	R	29	0.1	0.00	17			11/06/2007	\$19.44	\$19.44	\$19.44
11/06/2007	PAY					0.00			Check		(\$19.44)	\$0.00	\$0.00
11/13/2007	BILL	27242	R	29	0.1	0.00	268			12/07/2007	\$19.44	\$19.44	\$19.44
12/13/2007	LPC					0.00					\$0.29	\$19.73	\$19.73
12/13/2007	BILL	28337	R	33	0.11	0.00	758			01/10/2008	\$19.46	\$39.19	\$39.19
12/26/2007	PAY					0.00			Check		(\$19.44)	\$19.75	\$19.75
01/15/2008	LPC					0.00					\$0.29	\$20.04	\$20.04
01/15/2008	BILL	29424	R	33	0.11	0.00	832			02/08/2008	\$19.46	\$39.50	\$39.50
01/25/2008	PAY					0.00			Check		(\$39.19)	\$0.31	\$0.31
02/13/2008	LPC					0.00					\$0.00	\$0.31	\$0.31
02/13/2008	BILL	30345	R	29	0.09	0.00	856			03/10/2008	\$19.43	\$19.74	\$19.74
03/13/2008	LPC					0.00					\$0.29	\$20.03	\$20.03

Transaction Date	Type	Reading	Reading Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
03/13/2008	BILL	31324	R	29	0.1	0.00	752		04/08/2008	\$19.45	\$39.48	\$39.48
04/14/2008	LPC					0.00				\$0.58	\$40.06	\$40.06
04/14/2008	BILL	32353	R	30	0.1	0.00	506		05/07/2008	\$19.45	\$59.51	\$59.51
05/13/2008	LPC					0.00				\$0.87	\$60.38	\$60.38
05/13/2008	BILL	33520	R	31	0.12	0.00	200		06/06/2008	\$19.48	\$79.86	\$79.86
05/14/2008	INTAPL					0.00				(\$601.53)	(\$521.67)	(\$521.67)
05/14/2008	DEPAPL					0.00				(\$3,897.00)	(\$4,418.67)	(\$4,418.67)
06/12/2008	BILL	34684	R	30	0.12	0.00	75		07/08/2008	\$19.50	(\$4,399.17)	(\$4,399.17)
07/14/2008	BILL	35718	R	30	0.1	0.00	0		08/06/2008	\$19.48	(\$4,379.69)	(\$4,379.69)
08/13/2008	BILL	36579	R	31	0.09	0.00	0		09/08/2008	\$19.45	(\$4,360.24)	(\$4,360.24)
08/14/2008	CANB					0.00				(\$19.45)	(\$4,379.69)	(\$4,379.69)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,379.69)	(\$4,379.69)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,399.17)	(\$4,399.17)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,399.17)	(\$4,399.17)
08/14/2008	CANB					0.00				(\$19.50)	(\$4,418.67)	(\$4,418.67)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,418.67)	(\$4,418.67)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,438.15)	(\$4,438.15)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,438.15)	(\$4,438.15)
08/14/2008	LPCWVE					0.00				(\$0.87)	(\$4,439.02)	(\$4,439.02)
08/14/2008	CANB					0.00				(\$19.45)	(\$4,458.47)	(\$4,458.47)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,458.47)	(\$4,458.47)
08/14/2008	LPCWVE					0.00				(\$0.58)	(\$4,459.05)	(\$4,459.05)
08/14/2008	CANB					0.00				(\$19.45)	(\$4,478.50)	(\$4,478.50)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,478.50)	(\$4,478.50)
08/14/2008	LPCWVE					0.00				(\$0.29)	(\$4,478.79)	(\$4,478.79)
08/14/2008	CANB					0.00				(\$19.43)	(\$4,498.22)	(\$4,498.22)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,498.22)	(\$4,498.22)
08/14/2008	LPCWVE					0.00				\$0.00	(\$4,498.22)	(\$4,498.22)
08/14/2008	CANB					0.00				(\$19.46)	(\$4,517.68)	(\$4,517.68)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,517.68)	(\$4,517.68)
08/14/2008	LPCWVE					0.00				(\$0.29)	(\$4,517.97)	(\$4,517.97)
08/14/2008	CANB					0.00				(\$19.46)	(\$4,537.43)	(\$4,537.43)

Transaction Date	Type	Reading	Reading Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,537.43)	(\$4,537.43)
08/14/2008	LPCWVE					0.00				(\$0.29)	(\$4,537.72)	(\$4,537.72)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,557.16)	(\$4,557.16)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,557.16)	(\$4,557.16)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,576.60)	(\$4,576.60)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,576.60)	(\$4,576.60)
08/14/2008	CANB					0.00				(\$19.43)	(\$4,596.03)	(\$4,596.03)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,596.03)	(\$4,596.03)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,615.47)	(\$4,615.47)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,615.47)	(\$4,615.47)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,634.91)	(\$4,634.91)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,634.91)	(\$4,634.91)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,654.39)	(\$4,654.39)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,654.39)	(\$4,654.39)
08/14/2008	LPCWVE					0.00				(\$0.58)	(\$4,654.97)	(\$4,654.97)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,674.45)	(\$4,674.45)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,674.45)	(\$4,674.45)
08/14/2008	LPCWVE					0.00				(\$0.29)	(\$4,674.74)	(\$4,674.74)
08/14/2008	CANB					0.00				(\$19.47)	(\$4,694.21)	(\$4,694.21)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,694.21)	(\$4,694.21)
08/14/2008	CANB					0.00				(\$19.47)	(\$4,713.68)	(\$4,713.68)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,713.68)	(\$4,713.68)
08/14/2008	LPCWVE					0.00				(\$0.61)	(\$4,714.29)	(\$4,714.29)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,733.77)	(\$4,733.77)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,733.77)	(\$4,733.77)
08/14/2008	LPCWVE					0.00				(\$0.32)	(\$4,734.09)	(\$4,734.09)
08/14/2008	CANB					0.00				(\$19.48)	(\$4,753.57)	(\$4,753.57)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,753.57)	(\$4,753.57)
08/14/2008	LPCWVE					0.00				(\$2.20)	(\$4,755.77)	(\$4,755.77)
08/14/2008	CANB					0.00				(\$19.47)	(\$4,775.24)	(\$4,775.24)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,775.24)	(\$4,775.24)
08/14/2008	LPCWVE					0.00				(\$1.91)	(\$4,777.15)	(\$4,777.15)

Transaction Date	Type	Reading	Reading Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
08/14/2008	CANB					0.00				(\$19.46)	(\$4,796.61)	(\$4,796.61)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,796.61)	(\$4,796.61)
08/14/2008	LPCWVE					0.00				(\$1.61)	(\$4,798.22)	(\$4,798.22)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,817.66)	(\$4,817.66)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,817.66)	(\$4,817.66)
08/14/2008	LPCWVE					0.00				(\$1.32)	(\$4,818.98)	(\$4,818.98)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,838.42)	(\$4,838.42)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,838.42)	(\$4,838.42)
08/14/2008	LPCWVE					0.00				(\$1.03)	(\$4,839.45)	(\$4,839.45)
08/14/2008	CANB					0.00				(\$19.44)	(\$4,858.89)	(\$4,858.89)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,858.89)	(\$4,858.89)
08/14/2008	LPCWVE					0.00				(\$0.74)	(\$4,859.63)	(\$4,859.63)
08/14/2008	CANB					0.00				(\$19.46)	(\$4,879.09)	(\$4,879.09)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,879.09)	(\$4,879.09)
08/14/2008	LPCWVE					0.00				(\$0.45)	(\$4,879.54)	(\$4,879.54)
08/14/2008	CANB					0.00				(\$19.53)	(\$4,899.07)	(\$4,899.07)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,899.07)	(\$4,899.07)
08/14/2008	LPCWVE					0.00				(\$10.01)	(\$4,909.08)	(\$4,909.08)
08/14/2008	CANB					0.00				(\$19.53)	(\$4,928.61)	(\$4,928.61)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,928.61)	(\$4,928.61)
08/14/2008	LPCWVE					0.00				(\$9.72)	(\$4,938.33)	(\$4,938.33)
08/14/2008	CANB					0.00				(\$19.53)	(\$4,957.86)	(\$4,957.86)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,957.86)	(\$4,957.86)
08/14/2008	LPCWVE					0.00				(\$9.43)	(\$4,967.29)	(\$4,967.29)
08/14/2008	CANB					0.00				(\$19.51)	(\$4,986.80)	(\$4,986.80)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,986.80)	(\$4,986.80)
08/14/2008	LPCWVE					0.00				(\$9.13)	(\$4,995.93)	(\$4,995.93)
08/14/2008	CANB					0.00				(\$19.53)	(\$5,015.46)	(\$5,015.46)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,015.46)	(\$5,015.46)
08/14/2008	LPCWVE					0.00				(\$8.84)	(\$5,024.30)	(\$5,024.30)
08/14/2008	CANB					0.00				(\$19.54)	(\$5,043.84)	(\$5,043.84)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,043.84)	(\$5,043.84)

Transaction Date	Type	Reading	Reading Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
08/14/2008	LPCWVE					0.00				(\$8.55)	(\$5,052.39)	(\$5,052.39)
08/14/2008	CANB					0.00				(\$19.53)	(\$5,071.92)	(\$5,071.92)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,071.92)	(\$5,071.92)
08/14/2008	LPCWVE					0.00				(\$8.25)	(\$5,080.17)	(\$5,080.17)
08/14/2008	CANB					0.00				(\$550.65)	(\$5,630.82)	(\$5,630.82)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,630.82)	(\$5,630.82)
08/14/2008	BILL	13332	R	365	258.33	0.71	4196		09/09/2008	\$755.70	(\$4,875.12)	(\$4,875.12)
08/14/2008	BILL	26207	R	365	1.29	0.00	4375		09/09/2008	\$233.54	(\$4,641.58)	(\$4,641.58)
08/14/2008	BILL	36579	R	305	1.04	0.00	4247		09/09/2008	\$194.60	(\$4,446.98)	(\$4,446.98)
08/14/2008	CANB					0.00				(\$194.60)	(\$4,641.58)	(\$4,641.58)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,641.58)	(\$4,641.58)
08/14/2008	CANB					0.00				(\$233.54)	(\$4,875.12)	(\$4,875.12)
08/14/2008	BSEGCN					0.00				\$0.00	(\$4,875.12)	(\$4,875.12)
08/14/2008	CANB					0.00				(\$755.70)	(\$5,630.82)	(\$5,630.82)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,630.82)	(\$5,630.82)
08/14/2008	BILL					0.00				\$550.65	(\$5,080.17)	(\$5,080.17)
08/14/2008	BILL					0.00				\$19.53	(\$5,060.64)	(\$5,060.64)
08/14/2008	CANB					0.00				(\$19.53)	(\$5,080.17)	(\$5,080.17)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,080.17)	(\$5,080.17)
08/14/2008	CANB					0.00				(\$550.65)	(\$5,630.82)	(\$5,630.82)
08/14/2008	BSEGCN					0.00				\$0.00	(\$5,630.82)	(\$5,630.82)
08/14/2008	BILL					0.00				\$2,146.26	(\$3,484.56)	(\$3,484.56)
08/14/2008	BILL					0.00				\$2,712.63	(\$771.93)	(\$771.93)
08/14/2008	BILL	13332	R	303	11252	37.14	3133		09/09/2008	\$22,958.34	\$22,186.41	\$22,186.41
08/14/2008	BILL	26207	R	365	12875	35.27	4375		09/09/2008	\$24,534.68	\$46,721.09	\$46,721.09
08/14/2008	BILL	36579	R	305	10372	34.01	4247		09/09/2008	\$20,224.68	\$66,945.77	\$66,945.77
09/12/2008	BILL	37628	R	30	1049	34.97	0		10/13/2008	\$2,309.41	\$69,255.18	\$69,255.18
10/11/2008	LPC					0.00				\$1,038.82	\$70,294.00	\$70,294.00
10/11/2008	BILL	38452	R	29	824	28.41	60		11/04/2008	\$1,779.42	\$72,073.42	\$72,073.42
11/06/2008	BPTOCC					0.00				\$191.51	\$72,264.93	\$72,264.93
11/06/2008	PAY					0.00		Check		(\$2,491.51)	\$69,773.42	\$69,773.42
11/10/2008	BILL	39066	R	29	614	21.17	286		12/05/2008	\$1,330.83	\$71,104.25	\$71,104.25

Transaction Date	Type	Reading	Reading Code	# of Days	CCF Usage	Average CCF/Days	Heating DDD's	Payment Type	Due Date	Transaction Amount	Current Balance	Actual Balance
11/11/2008	INTAPL					0.00				(\$4.17)	\$71,100.08	\$71,100.08
11/11/2008	DEPAPL					0.00				(\$4,228.00)	\$66,872.08	\$66,872.08
12/12/2008	BILL	39963	R	34	897	26.38	803		01/09/2009	\$1,935.35	\$68,807.43	\$68,807.43
01/09/2009	PAY					0.00		Check		(\$1,935.35)	\$66,872.08	\$66,872.08
01/14/2009	LPC					0.00				\$1,003.08	\$67,875.16	\$67,875.16
01/14/2009	BILL	40912	R	33	949	28.76	937		02/09/2009	\$1,976.93	\$69,852.09	\$69,852.09
02/06/2009	PAY					0.00		Cash		(\$3,822.00)	\$66,030.09	\$66,030.09
02/12/2009	BILL	41874	R	29	962	33.17	1000		03/10/2009	\$1,895.38	\$67,925.47	\$67,925.47
03/13/2009	BILL	42781	R	29	907	31.28	753		04/07/2009	\$1,703.20	\$69,628.67	\$69,628.67
04/07/2009	PAY					0.00		Multiple Tenders used		(\$5,966.00)	\$63,662.67	\$63,662.67
04/15/2009	BILL	43726	R	32	945	29.53	545		05/08/2009	\$1,648.43	\$65,311.10	\$65,311.10
05/14/2009	BILL	44602	R	29	876	30.21	193		06/08/2009	\$1,529.48	\$66,840.58	\$66,840.58
06/05/2009	PAY					0.00		Cash		(\$4,807.00)	\$62,033.58	\$62,033.58
06/13/2009	LPC					0.00				\$930.50	\$62,964.08	\$62,964.08
06/13/2009	BILL	45417	R	30	815	27.17	39		07/08/2009	\$1,384.30	\$64,348.38	\$64,348.38
07/15/2009	LPC					0.00				\$951.26	\$65,299.64	\$65,299.64
07/15/2009	BILL	46201	R	32	784	24.50	3		08/06/2009	\$1,265.90	\$66,565.54	\$66,565.54
08/13/2009	BILL	46894	R	29	693	23.90	0		09/04/2009	\$1,121.20	\$67,686.74	\$67,686.74
09/14/2009	BILL	47148	R	10	254	25.40	0		10/07/2009	\$403.88	\$68,090.62	\$68,090.62

# **EXHIBIT B**



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

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: December 18, 2009

C-2009-2138727

LAURETO FARINAS ESQ  
800 W MONTGOMERY AVENUE  
PHILADELPHIA PA 19122

**COPY**

2020 West Passyunk Avenue Inc  
v.  
Philadelphia Gas Works

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Wayne L Weismandel. 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 2<sup>ND</sup> 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  
rlj



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2020 West Passyunk Avenue Inc.

v.

Philadelphia Gas Works

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:  
:  
:  
:

C-2009-2138727

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTION**

Before  
Wayne L. Weismandel  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On October 26, 2009, 2020 West Passyunk Avenue Inc.<sup>1</sup> (complainant) filed a formal Complaint (Complaint) against the Philadelphia Gas Works (respondent) with the Pennsylvania Public Utility Commission (Commission), Docket Number C-2009-2138727. The Complaint alleged that complainant owned a property located at 2020 West Passyunk Avenue, Philadelphia, PA (Premises) upon which a lien<sup>2</sup> had been placed for unpaid natural gas service bills from respondent incurred by a tenant of the Premises. Complainant requested that the lien be removed.

The Complaint was served on the respondent on October 30, 2009, by the Commission's Secretary's Bureau.

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<sup>1</sup> Complainant is a Pennsylvania business corporation, incorporated September 4, 1997.

<sup>2</sup> "A lien is a charge on property, either real or personal, for the payment or discharge of a particular debt or duty in priority to the general debts or duties of the owner. It encumbers property to secure payment or performance of a debt, duty or other obligation. Liens fall into three categories: common law liens, equitable liens and statutory liens." *London Towne Homeowners Ass'n v. Karr*, 866 A.2d 447, 451 (Pa.Cmwlth. 2004) (citations and internal footnotes omitted).

On November 20, 2009, the respondent filed (served November 19, 2009) its Answer (Answer) stating that a lien was filed by the City of Philadelphia (City) against the Premises, in the amount of \$68,090.62, to collect the unpaid balance owed by Young Kwon Lee, the customer of record at the Premises until August 2009, when the account was terminated for nonpayment.

Also on November 20, 2009, respondent filed (served November 19, 2009) its Preliminary Objections (Preliminary Objections), endorsed with a notice to plead, averring that the Commission lacks jurisdiction over the subject matter of the Complaint and requesting that the portion of the Complaint seeking relief in the form of a Commission order that the lien on the Premises be removed be stricken as impertinent matter.<sup>3</sup>

By Motion Judge Assignment Notice dated November 25, 2009, respondent's Preliminary Objections were assigned to Administrative Law Judge (ALJ) Kandace F. Melillo for a ruling.

On November 30, 2009, complainant filed (served November 25, 2009) its Answer to respondent's Preliminary Objections (Preliminary Objections Answer).

By Motion Judge Assignment Notice dated December 1, 2009, respondent's Preliminary Objections were reassigned to me for a ruling.

Respondent's Preliminary Objections are procedurally ready to be ruled upon.

### FINDINGS OF FACT

1. Complainant is the owner of the Premises.

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<sup>3</sup> Statements in a pleading that are legally irrelevant to the cause of action or that could not have influence in leading to a result are "impertinent" and subject to being stricken. Cf., *Jefferies v. Hoffman*, 417 Pa. 1, 207 A.2d 774 (1965).

2. The customer of record at the Premises, until the account was terminated for nonpayment in August, 2009, was Young Kwon Lee.

3. Young Kwon Lee's account was terminated with an outstanding balance of \$68,090.62.

4. The City, pursuant to the provisions of 53 P.S. § 7101 et seq. (the Municipal Claim and Tax Lien Law), placed a lien upon the Premises in the amount of \$68,090.62 for unpaid natural gas service.

### DISCUSSION

This case is another in a series of recent cases in which the complaining party is requesting that the Commission order the City to remove a municipal lien it has placed on a property for unpaid gas service rendered by the respondent. These cases are not about respondent's bills or billing practices. What the complainant is contesting is the municipal lien filed against the Premises by the City.

Respondent has filed two Preliminary Objections to the Complaint; one challenging the Commission's jurisdiction, and the other requesting that impertinent matter in the Complaint be stricken.

Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Cf., *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

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 be

accompanied by a notice to plead, 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)(1), (2)

In this case respondent questions the Commission's subject matter jurisdiction and requests that the portion of the Complaint seeking relief in the form of a Commission order that the City's lien be removed from the Premises be stricken as impertinent matter.

Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs.

Riedel v. The Human Relations Comm'n Of the City Of Reading, 559 Pa. 33; 39, 739 A.2d 121; 124 (1999).

The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Comm'n*, 157 Pa.Super. 595, 43 A.2d 348 (1945).

Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Cf., *Hughes v. Pa. State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390 (1992), app. denied, 536 Pa. 633, 637 A.2d 293 (1993).

Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa.Super. 148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel, *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa.Cmwlth. 1995).

Keeping the foregoing principles regarding jurisdiction in mind, the issue is whether or not the Commission has jurisdiction with respect to the City's municipal lien.

Acting under the authority and power granted in the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 et seq., the City files a lien to enforce municipal claims against property for unpaid natural gas service rendered by respondent at a specific property.

Only the City, being a municipality, can file a municipal lien. Respondent is a municipal utility that is wholly owned by the City. Respondent consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders. *Public Advocate v. Philadelphia Gas Comm'n*, 544 Pa. 129, 674 A.2d 1056 (1996).

Respondent does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. § 7101. Consequently, when respondent provides natural gas service to an entity within the borders of the City and is not paid, it is the City that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service.

The procedure which the City must follow to establish a lien on a specific property, such as the Premises, is set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. §§ 7106(b), (c), 7143. The lien is docketed with the Prothonotary (a clerk of the court) and maintained in an in rem index (an index maintained by property identification rather than by party name). See, 53 P.S. § 7106(b). Enforcement of the lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties. See, *Newberry Twp. v. Stambaugh*, 848 A.2d 173 (Pa.Cmwlt. 2004), app. denied, 580 Pa. 708, 860 A.2d 491 (2004), 53 P.S. §§ 7106(c), 7283. Ultimate recovery of the amount of the municipal claims resulting in the lien is effectuated by a court ordered sheriff's sale. 53 P.S. § 7283.

The proceeding to obtain and enforce the City's municipal claim lien is an in rem proceeding.<sup>4</sup> "Accordingly, the lien is either valid or invalid as to the property in question rather than as to the respective property interests involved." *Borough of Towanda v. Brannaka*, 61 Pa.Cmwlth. 622; 625-626, 434 A.2d 889; 891 (1981). What this means is that the Premises, not complainant nor its former tenant, is responsible for satisfying the claim secured by the municipal lien. No personal responsibility is asserted against the complainant by the filing of the lien on the Premises. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). See, also, *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir. 1988).

The difference between an in personam judgment and an in rem municipal lien is best explained by an example. If A obtains a personal judgment against B in the amount of \$100,000 and enters the judgment in County X, where B owns three pieces of real property worth \$25,000 each, A can have all three properties sold by the Sheriff of County X to satisfy the judgment. However, if City A enters a municipal lien in the amount of \$30,000 against Property 1 of three separate pieces of real property worth \$25,000 each that B owns in County X, only Property 1 can be sold to satisfy the lien. The debt can only be recovered from the specific property upon which the in rem municipal lien has been placed. If the specific property was being rented by a landlord to a tenant, neither is personally liable for payment of the municipal claim amount. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). Only the *thing*, the specific property subject to the municipal lien, is liable for the amount owed.

In the instant case, the entire proceeding for the effectuation of and defense to the statutory lien of the City is within the jurisdiction of the Court of Common Pleas of Philadelphia County<sup>5</sup>, not the Commission. Municipal lien proceedings are exclusively matters of judicial, not administrative, jurisdiction.

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<sup>4</sup> "A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*. An 'action in rem' is a proceeding that takes no cognizance of owner but determines right in specific property against all the world, equally binding on everyone." Black's Law Dictionary 713 (5<sup>th</sup> ed. 1979).<sup>4</sup>

<sup>5</sup> Or the Municipal Court of Philadelphia if the amount is within its jurisdiction. 53 P.S. § 7101 et seq.

Additionally, keeping in mind that the lien is that of the City, not respondent, as to the lien proceeding there is no public utility involved. In obtaining a municipal lien upon the Premises, the City is acting in its capacity as a municipality only. The Commission is given jurisdiction over public utilities by the Public Utility Code, 66 Pa.C.S.A. § 101 et seq., not over municipalities acting in their municipal capacity.<sup>6</sup>

The Commission has previously recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. *Cornelia Strowder v. Philadelphia Gas Works*, 2002 WL 32069511 (2002) (*Strowder*), *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket Number C-20066672, Final Order entered January 22, 2007 (*Lawrence*), *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket Number C-2008-2029672, Final Order entered February 23, 2009 (*Young*).

These Commission decisions are consistent with established principles of jurisdiction and are buttressed by two separate provisions of the Public Utility Code, 66 Pa.C.S.A. § 101 et seq. (Code).

66 Pa.C.S.A. § 1414(a) provides:

**(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).

66 Pa.C.S.A. § 1414(a) (footnotes omitted)

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<sup>6</sup> The Commission has jurisdiction over municipalities providing public utility service outside of their municipal boundaries, but only as to the public utility service being rendered. *Petition of Borough of Boyertown*, 77 Pa.Cmwlth. 357, 466 A.2d 239 (1983). The instant case does not involve municipal extra-territorial service, nor is the lien proceeding public utility service.

Code section 1414(a) reiterates the General Assembly's determination that the previously existing right of the City to enforce payment for natural gas service rendered by the respondent through the municipal claim and lien procedure of the Municipal Claim and Tax Lien Law remains unabated.

The reference to "chapter 22" (of the Code) in section 1414(a) is especially revealing as to the legislature's intent.

66 Pa.C.S.A. § 2212(n) states:

**(n) Collections.**--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) (footnote omitted)

Code section 2212(n) specifically states that "[n]othing contained in this title", that is; Title 66, the entire Code, shall abrogate the right of the City to collect unpaid bills for natural gas service through the mechanisms provided by the Municipal Claim and Tax Lien Law. As explained above, those mechanisms are not within the jurisdiction of the Commission.

The Commission's holdings in *Strowder*, *Lawrence*, and *Young*, that it does not have subject matter jurisdiction over cases such as this one, is legally correct. Complainant's relief, if any, must be obtained under the procedures established by the Municipal Claim and Tax Lien Law. Respondent's Preliminary Objection under 52 Pa.Code § 5.101(a)(1) challenging the Commission's subject matter jurisdiction is sustained.

Having determined that the Commission lacks subject matter jurisdiction over the Complaint, there is no reason to discuss respondent's second Preliminary Objection requesting that the portion of the Complaint seeking relief in the form of a Commission order that the lien on the Premises be removed be stricken as impertinent matter.

## CONCLUSIONS OF LAW

1. The complainant objects to the municipal lien filed against the Premises.
2. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections.
3. The Commission's regulations provide for a Preliminary Objection that the Commission lacks jurisdiction.
4. Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs.
5. The Commission must act within, and cannot exceed, its jurisdiction.
6. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.
7. Jurisdiction may not be conferred by the parties where none exists.
8. Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist.
9. Jurisdiction cannot be obtained by waiver or estoppel.
10. Acting under the authority and power granted in the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 et seq., the City files a lien to enforce municipal claims against property for unpaid natural gas service rendered by respondent.

11. A lien is a charge on property, either real or personal, for the payment or discharge of a particular debt or duty in priority to the general debts or duties of the owner. It encumbers property to secure payment or performance of a debt, duty or other obligation.
12. It is only the City, as a municipality, that can file a municipal lien to enforce municipal claims against property for unpaid natural gas service rendered by respondent.
13. Respondent is a municipal utility that is wholly owned by the City. Respondent consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders.
14. The procedure which the City must follow to establish a lien on a specific property, such as the Premises, is set forth in the Municipal Claim and Tax Lien Law.
15. The lien obtained for the enforcement of the City's municipal claim is an in rem proceeding.
16. "In rem" is a technical term used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions, which are said to be in personam.
17. The City's lien is either valid or invalid as to the property in question rather than as to the respective property interests involved.
18. No personal responsibility is asserted against the complainant by the City's filing of a lien on the Premises.
19. Enforcement of the City's lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties.

20. Ultimate recovery of the amount of the municipal claims resulting in the City's lien is effectuated by a court ordered sheriff's sale.

21. Lien proceedings are exclusively matters of judicial, not administrative, jurisdiction.

22. The Commission has recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. *Strowder, Lawrence, and Young*.

23. Code section 1414(a) reiterates the General Assembly's determination that the previously existing right of the City to enforce payment for natural gas service rendered by the respondent through the municipal claim and lien procedure of the Municipal Claim and Tax Lien Law remains unabated.

24. Code section 2212(n) specifically states that "[n]othing contained in this title", that is; Title 66, the entire Code, shall abrogate the right of the City to collect unpaid bills for natural gas service through the mechanisms provided by the Municipal Claim and Tax Lien Law.

25. The Commission's holdings in *Strowder, Lawrence, and Young*, that it does not have subject matter jurisdiction over cases such as this one, is legally correct.

26. Complainant's relief, if any, must be obtained under the procedures established by the Municipal Claim and Tax Lien Law.

27. Respondent's Preliminary Objection challenging the Commission's subject matter jurisdiction under 52 Pa.Code § 5.101(a)(1) is legally correct.

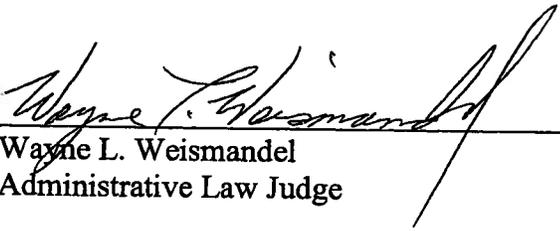
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed on November 20, 2009, by the Philadelphia Gas Works in the above-captioned case challenging the jurisdiction of the Pennsylvania Public Utility Commission is sustained.
2. That the Complaint filed October 26, 2009, by 2020 West Passyunk Avenue Inc. against the Philadelphia Gas Works, Docket Number C-2009-2138727, is dismissed.
3. That the record at Docket Number C-2009-2138727 be marked closed.

Date: December 8, 2009

  
\_\_\_\_\_  
Wayne L. Weismandel  
Administrative Law Judge

**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.

January 26, 2010



Laureto Farinas, Esquire

**CERTIFICATE OF SERVICE**

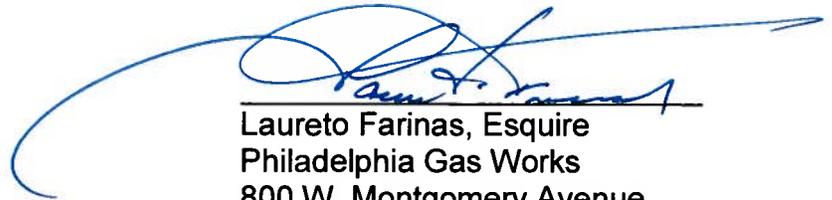
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

For Complainant:

For Complainant:

2020 West Passyunk Avenue, Inc.  
c/o Andrew L. Miller, Esq.  
15 St. Asaph's Road  
Bala Cynwyd, PA 19004

January 26, 2010



Laureto Farinas, Esquire  
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Philadelphia, PA 19122  
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