



Philadelphia Gas Works

800 West Montgomery Avenue, Philadelphia, PA 19122

Danielle Ross, Paralegal
Legal Department
Direct Dial: (215) 684-6862
Fax: (215) 684-6798
E-mail: Danielle.Ross@pgworks.com

June 2, 2010

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

Re: Joon Kap Kim v. PGW, Docket No. C – 2010 – 2175913

Dear Secretary Chiavetta:

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,


Danielle Ross

Enclosure

cc: Mr. Joon Kap Kim
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joon Kap Kim

v.

Philadelphia Gas Works

:
:
:
:
:

Docket No. C – 2010 – 2175913

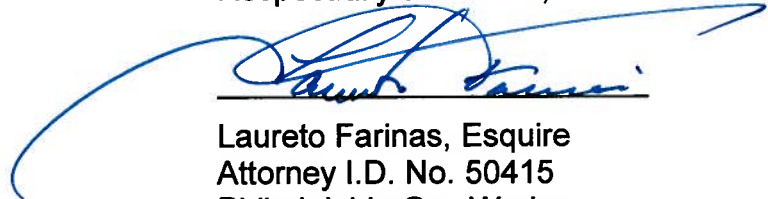
NOTICE TO PLEAD

To: Joon Kap Kim, 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,

June 2, 2010



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joon Kap Kim

v.

Philadelphia Gas Works

:
:
:
:
:

Docket No. C – 2010 – 2175913

**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 May 10, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 2725 W. Girard Avenue, 3rd Floor Front, Philadelphia, Pennsylvania (Subject Property).
2. The Complainant avers that the money owed for gas used by his tenant Charles Paul Dillihay III is not his responsibility to pay his tenant’s outstanding utility bill at the Subject Property.
3. For the period from October 2008 through October 2009, the Complainant’s tenant owed \$3,363.15 for unpaid gas service at the Subject Property under an account where the Complainant’s tenant was the Customer of Record.

4. The City of Philadelphia, as owner of PGW, has filed a municipal lien upon the Subject Property for the unpaid debt for gas service to the Subject Property on the account of the Complainant's tenant, 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), Under the Municipal Lien Act, the City of Philadelphia as owner of PGW has the right to collect on municipal claims owed to PGW for gas service to a Service Address.

5. The Complaint requests relief in the form of a Commission order to PGW to not make the Complainant responsible for the outstanding unpaid balance for gas service rendered to the Subject Property and to do so by having the lien removed.

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:

(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.

7. In this case, as the Complaint states the bills that are the subject of the lien were from gas service under the account of his tenant. The Complainant opines that under circumstances, he should not be held responsible.

8. 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 *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673 (Final Decision and Order May 20, 2010)

9. 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.

10. 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)

11. In the instant matter, the Complainant simply wishes not to be responsible for the gas he did not use. As PGW has not held the Complainant personally responsible for the unpaid balance for gas service rendered to the Subject Property, the Commission need not grant the requested relief of having the Complainant not be personally responsible for the unpaid balance.

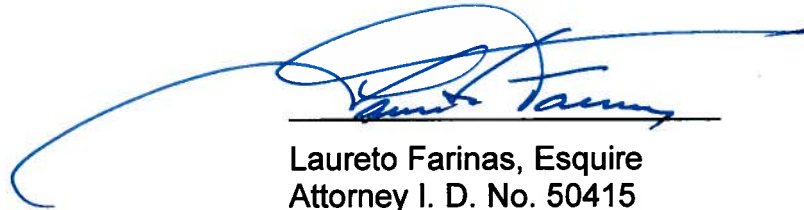
² 52 Pa. Code §5.101(a) (1)

12. 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,

June 2, 2010



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.

June 2, 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:

Mr. Joon Kap Kim
2725 W. Girard Avenue
3rd Floor Front
Philadelphia, PA 19130

June 2, 2010



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