



Philadelphia Gas Works

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July 15, 2010

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

Re: Tracey Smith v. PGW, Docket No. C – 2010 – 2183841

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,

A handwritten signature in blue ink that reads "Danielle Ross". The signature is written in a cursive, flowing style.

Danielle Ross

Enclosure

cc: Mr. Tracey Smith
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tracey Smith

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2183841

NOTICE TO PLEAD

To: Tracey Smith, 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,

July 15, 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**

Tracey Smith

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2183841

**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 June 23, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 611 E. Locust Avenue, Philadelphia, Pennsylvania 19144 (Subject Property).

2. The Complainant avers that PGW is charging her for someone else’s usage, that of a tenant or tenants at the Subject Property which has two meters serving a rental property. The Complaint requests that the lien should be removed and all funds should be returned to the Complainant but does not specify the amount of funds that should be returned.

3. According to Philadelphia real estate property records, the Complainant acquired the deed to the Subject Property on March 5, 2002.

4. PGW records indicate that a tenant, Tanya Smith, was the Customer of Record for the account of the Subject Property that serves an appliance or appliances providing for the entire building for the period from May 20, 2002 through July 2, 2003. PGW finalized Tanya's Smith's account on August 1, 2003, with a balance of \$2,471.28.

5. PGW has not transferred the amount owed by Tanya Smith on her PGW account into the Complainant's account. Therefore, PGW does not hold the Complainant personally responsible for the unpaid debt of Tanya Smith.

6. PGW records also indicate that another tenant, Tampa Hack, who currently resides at the Subject Property, has large outstanding balances (some of which were subject to write off status). PGW has not transferred the amounts owed by Tampa Hack on her PGW account at the Subject Property into the Complainant's account. Therefore, PGW does not hold the Complainant personally responsible for the unpaid debt of Tampa Hack.

7. The City of Philadelphia, as owner of PGW, may file a municipal lien upon the Subject Property for the unpaid debt for gas service to the Subject Property on the accounts of the Complainant's tenants, 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.

8. 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 and returning funds to the Complainant.

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)¹

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

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.² *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673 (Final Decision and Order entered January 13, 2010)

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

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

² 52 Pa. Code §5.101(a) (1)

distribution service and other related costs, including natural gas supply ...," clarifies and confirms such rights to impose a lien.

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

14. 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)

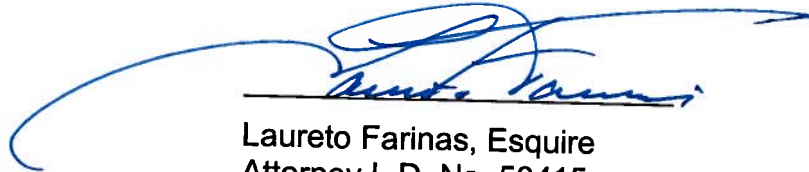
15. In the instant matter, the Complainant simply wishes not to be responsible for the gas that she did not use. As PGW has not held the Complainant personally responsible for the unpaid balance for gas service rendered to the Subject Property, the Commission need not grant the requested relief of having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

16. 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 these preliminary objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

July 15, 2010



Laureto Farinas, Esquire
Attorney I. D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
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(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.

July 15, 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:

Ms. Tracey Smith
2477 W. 77th Avenue
Philadelphia, PA 19150

July 15, 2010



Laureto Farinas, Esquire
Philadelphia Gas Works
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