



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

September 21, 2010

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

Re: Lula Stokes v. PGW, Docket No. C – 2010 – 2196471

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: Ms. Lula Stokes
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lula Stokes

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2196471

NOTICE TO PLEAD

To: Lula Stokes,

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

September 21, 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**

Lula Stokes

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2196471

**Philadelphia Gas Works
Preliminary Objections and Motion to Strike**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objection to the Complaint filed in the above captioned matter on the grounds that the Commission is without authorization to grant the Complainant’s request from compensation for damages as the sole form of relief, and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant’s request for compensation.

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

1. On or about August 26, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding excavations by PGW on the sidewalk in front of 2163 N. 15th Street, Philadelphia, Pennsylvania (Subject Property).

2. The Complainant avers that on June 22, 2010, PGW was excavating the street in front the Subject Property and that a machine that PGW left on the sidewalk hit her water service causing the water pipes to leak.

3. On May 24, 2010, PGW excavated the sidewalk in front of the Subject Property.

4. The Complaint requests relief in the form of PGW paying all expenses to have the water service repaired at the Subject Property.

5. Pursuant to 52 Pa. Code §5.101, PGW objects to the Complaint on the grounds that the Commission is without authorization to grant the Complainant’s request from compensation for damages, which is the sole form of

relief requested. PGW therefore moves to strike the Complainant's request for compensation as "impertinent matter" pursuant to 52 Pa. Code §§5.101(a) (1) and (2).

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:

...

(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

7. In this case, as the Complaint states that PGW is the cause of the damage to her property and the Complainant opines that under these circumstances, she should not have to pay for the damage.

8. In the instant matter, the Complainant simply wishes the Commission to order PGW to compensate her for damages to the Subject Property, for which she alleges that PGW is responsible.

9. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (1977); *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984)

10. A prayer for relief in the form of monetary compensation for damages is not recoverable in the cause of action before this Commission as the Commission is without authorization to award compensation for damages. The

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

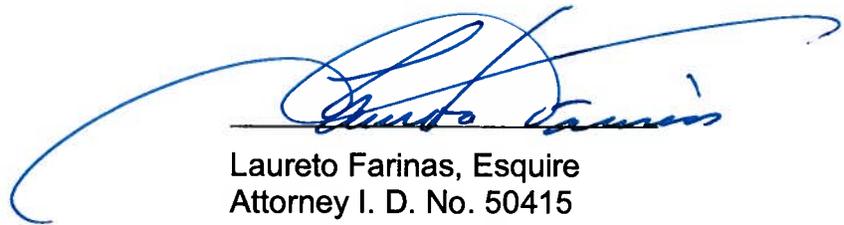
request for relief is irrelevant to the instant cause of action and therefore "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2).

11. The Complainant's request for compensation for damages as the sole form of relief 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 objection to the Complaint and strike off the requested relief as impertinent matter.

Respectfully submitted,

September 21, 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.

September 21, 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. Lula Stokes
6517 N. Bouvier Street
Philadelphia, PA 19126

September 21, 2010



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