



Philadelphia Gas Works

800 West Montgomery Avenue, Philadelphia, PA 19122

Danielle Ross, Paralegal

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September 28, 2010

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

Re: Inez M. Frisby v. PGW, Docket No. F – 2010 – 2198205

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".

Danielle Ross

Enclosure

cc: Ms. Inez M. Frisby
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Inez M. Frizby

v.

Philadelphia Gas Works

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Docket No. F – 2010 – 2198205

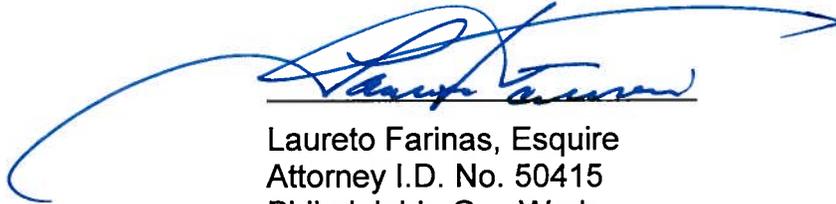
NOTICE TO PLEAD

To: Inez M. Frisby,

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,

September 28, 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**

Inez M. Frisby	:	
	:	
v.	:	Docket No. F – 2010 – 2198205
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works’
Preliminary Objections**

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 has the authority to grant the requested relief, and that the Complaint includes impertinent matter in its requested relief to award damages.

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

1. On or about September 7, 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 to 3721 N. 18th Street, Philadelphia, Pennsylvania (Subject Property).
2. The Complainant avers that approximately two years ago, she was approved for weatherization at the Subject Property and that the weatherization has not yet been completed.
3. The Complainant avers that she would have realized a thirty percent reduction on her heating bills if the weatherization had been completed.
4. The Complaint requests relief in the form of a \$1,752.00 credit on her PGW account and a thirty percent discount on her PGW bill until the weatherization is completed.
5. Pursuant to 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 as "impertinent matter" pursuant to 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. PEO 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 stat specifically the legal and factual grounds relied upon and be limits 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, the Complaint states that PGW did not complete the weatherization at the Subject Property and the Complainant opines that under these circumstances, she should have a thirty percent reduction in her PGW bill.

8. In the instant matter, the Complainant simply wishes the Commission to order PGW to compensate her in the amount that she believes would have been the reduction in her bills if the weatherization was completed. This is a request for damages.

9. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damage 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 (1948)

10. A prayer for relief in the form of monetary compensation for damages is not recoverable in the cause of action before the Commission as the

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

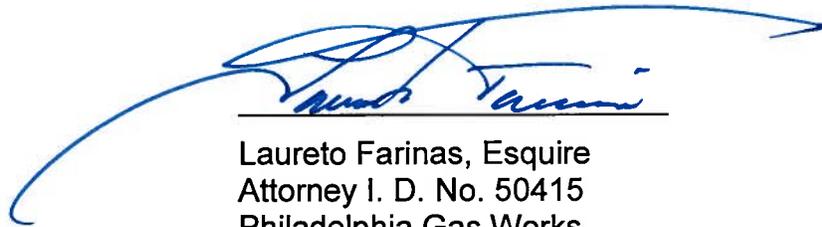
Commission is without authorization to award compensation for damages. The request for relief is irrelevant to the instant cause of action and therefore "impertinent matter" within the use and meaning of 52 Pa/ Code §55.101 (a) (2).

11. The Complainant's request for compensation for damages as a 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 objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

September 28, 2010



Laureto Farinas
Laureto Farinas, Esquire
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Philadelphia Gas Works
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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.

September 28, 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. Inez M. Frisby
3721 N. 18th Street
Philadelphia, PA 19140

September 28, 2010



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Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
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