



Philadelphia Gas Works

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Danielle Ross, Paralegal

Legal Department

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October 19, 2010

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

Re: Marta L. Diaz v. PGW, Docket No. C – 2010 – 2201496

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 cursive script that reads "Danielle Ross". The signature is written in black ink and is positioned above the printed name.

Danielle Ross

Enclosure

cc: Ms. Marta L. Diaz
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marta Diaz

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2201496

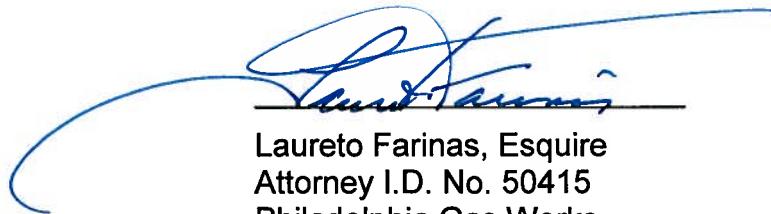
NOTICE TO PLEAD

To: Marta Diaz, 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,

October 19, 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**

Marta Diaz

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2201496

**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 (or forbear collection of) 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 September 25, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unauthorized usage charges for gas service to 512 W. Luray Street, Philadelphia, Pennsylvania (Subject Property).

2. The Complainant avers that her tenants, Ana Maria Santini and Jose Feliciano used the gas service that resulted in the debt owed to PGW and that the Complainant was not informed of the unauthorized usage.

3. For the period November 1999 through July 2009, the debt owed is \$8,986.01 for unauthorized usage at the Subject Property.

4. The Complaint requests relief in the form of a Commission order to refund of the \$8,986.01 paid at the time of settlement, that was collected as an unpaid municipal claim under the Municipal Claim and Tax Lien Law, Act 153 of

1923, P.: 207 53 P.S. §7101. The City of Philadelphia has the right to collect on debt owed to PGW for gas service to the Service Address as a municipal claim.

5. Pursuant to Pa. Code §5.101, PGW objects to the Complaint on the grounds that the Commission is without jurisdiction over the collection of Municipal claims. PGW therefore moves to strike the Complainant's request as "impertinent matter" pursuant to Pa. Code §§5.101(a) (1) and (2).

6. The Municipal Claim and Tax Lien Law, Act 153 of 1923, P.: 207 53 P.S. §7101, the City of Philadelphia has the right to collect on debt owed to PGW for gas service to the Service Address.

7. 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:

- ...
 - i. 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

8. In this case, as the Complaint states that the unauthorized usage is a result of her tenants' fraudulent deeds. The Complainant opines that under circumstances, she should not be held responsible.

9. The Complainant disputes the imposition of the unauthorized usage because she was not informed of her tenant's unauthorized usage.

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

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

without jurisdiction over the collection of Municipal liens. 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 relief in the form of refund 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,

October 19, 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.

October 19, 2010



Laureto Farinas, Esquire

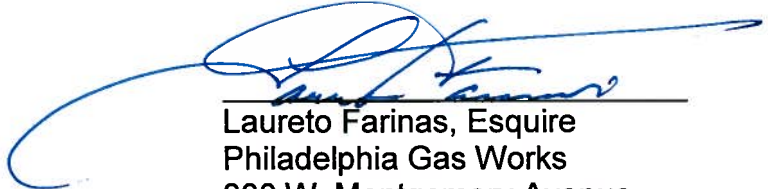
CERTIFICATE OF SERVICE

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. Marta L. Diaz
2837 N. 5th Street
Philadelphia, PA 19133

October 19, 2010



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