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October 29, 2010

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

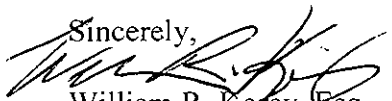
Re: Catherine Alpohoritis v. PGW, Docket No. C – 2010- 2200860

Dear Secretary Chiavetta:

Enclosed in Complainant's Response to PGW's preliminary objections in the above captioned matter. Additionally, enclosed in the same packet is a New Matter in further support of Complainant's claim against PGW.

If additional information is required, please contact me. Thank you for your assistance in this matter.

Sincerely,



William R. Korey, Esq
Counsel for Complainant

Enclosure

Cc: Laureto Farinas, Esq (counsel for PGW)
Danielle Ross (PGW)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Catherine Alpothoritis :
v. : **Docket No. C – 2010-2200860**
Philadelphia Gas Works :

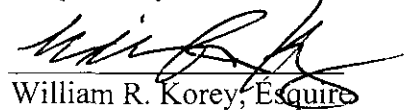
NOTICE TO PLEAD

To: Philadelphia Gas Works, Respondent/Defendant

Pursuant to 52 Pa. Code Section 5.101, you are hereby notified to file a written response to the enclosed Answer to Preliminary Objections and Motion to Strike, together with Complainant's New Matter and Amended Complaint, with ten (10) days from service hereof or you may be deemed to be in default, and relevant facts stated in these pleading may be deemed admitted and judgment may be granted against you

October 29, 2010

Respectfully submitted,



William R. Korey, Esquire

Attorney # 50253

6821 Torresdale Avenue

Philadelphia, PA 19135

(215) 332-1125

Attorney for Catherine Alpothoritis

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Catherine Alpothoritis

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Docket No C - 2010-2200860

Philadelphia Gas Works

**Complainant's (Catherine Alpothoritis') Answer
To Philadelphia Gas Work's Preliminary Objections and Motion to Strike**

Philadelphia Gas Works (PGW), having filed Preliminary Objections and Motion to Strike to Catherine Alpothoritis' Complaint in the above captioned matter, now comes the Complainant's Answer to the Preliminary Objections, plus New Matter, and Amended Complaint, requesting the following relief.

In support of its Answer to PGW's Preliminary Objections and Motion to Strike, Complainant hereby avers the following:

1. Admitted. However, no debt is owed by the Complainant to PGW in the disputed matter, as she is part owner of the property at 6904 Torresdale Avenue, Philadelphia, PA (subject property), but such property contains a store on the first-floor, and the account at issue was taken out in another party's name, meaning there was no privity of contract between Catherine Alpothoritis and PGW concerning gas supplied to the first-floor commercial property (a pizzeria).
2. Admitted. Complainant has no involvement in PGW's contractual arrangement with the first-floor tenant (operator of pizzeria), and therefore she had no way of knowing of any delinquency of payment by such tenant to PGW for gas provided. In fact, PGW has asserted to Complainant that is cannot discuss billing regarding the property at issue due to confidentiality, with the Complainant not being a party to the

contract for gas that was supplied at all times relevant hereto to the first floor property at issue (the pizzeria).

3. Denied, as Complainant has no knowledge, except for alleged claims by PGW that a delinquency occurred for the subject property, as Catherine Alpohoritis did not open the account for gas at issue. Such claim for \$4,335.39 is a private matter between PGW and the first-floor tenant of the pizzeria. Complainant did not open such account, act as guarantor on such account, receive any benefit from such account, or have any involvement whatsoever in the use of the gas allegedly at issue in this matter. Moreover, Complainant was not provided any timely notice of such alleged delinquency purportedly involving the sum of \$4,335.39, and therefore was prevented by PGW's lack of timely notice to mitigate any damages by the tenant.

4. Admitted that the City of Philadelphia has filed a lien on the property at issue, but such lien was improperly filed and is in violation of the law, with no debt being owed to PGW by the Complainant.

5. Admitted.

6. Admitted in part; denied in part. It is admitted that the Commission is to rule on preliminary objections in ways that are comparable to Pennsylvania Civil Practice. However, applying the Commission's Rules of Administrative Practice and Procedure at 52 Pa. Code Section 5.101, concerning the treatment of preliminary objections, as cited in PGW's legal argument (citing *Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757, May, 2009), the Commission must not dismiss the Complaint filed by Catherine Alpohoritis for (1) lack of jurisdiction, or (2) for such complaint failing to conform to proper procedure, as PGW erroneously and

disingenuously alleges an the filing of an “impertinent matter” (under 52 Pa. Code Section 5.101(a) (2)). Clearly, the Complaint at issue conforms to the Commission’s Rules of Administrative Practice and Procedure, and PGW’s preliminary objection on this point of law is an exaggeration, misdirection effort, disingenuous assertion, breach of good faith, frivolous filing, and abuse of process that should generate sanctions. Moreover, such claim of “impertinent matter” is a mere conclusion of law with no support in fact or law for such mean-spirited assertion to avoid the striking of the municipal lien.

7. Admitted that the Complaint alleges the bills for gas service at issue are not owed to PGW by Catherine Alpohoritis, as she is not the tenant of record, and had no involvement in the account at issue, and no privity of contract with PGW on the matter at issue, nor did she act as guarantor on the account, and therefore she should not be held responsible simply by being landlord of a commercial property that was rented to a tenant to use as a pizzeria. PGW is simply going after the wrong party, as is the city of Philadelphia in placing the lien at issue.

8. Denied. The Natural Gas Choice and Competition Act cited by PGW does not permit the imposition of the lien at issue, nor does such Act permit PGW to make a claim against Catherine Alpohoritis for an alleged debt possibly caused by a tenant. Complainant is not the proper debtor, and therefore no delinquent receivables were generated against her to warrant the placement of a lien on her property. Thus, the Commission has jurisdiction to rule on her Complaint over the filing of the lien, as linked to the related erroneous claim for \$4,335.39. The *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673 (2010) is not controlling in this matter, as it is not

on point with regards to the legal issues and facts presented in this case, and once again represents a wandering assertion not linked to the merits of this case.

9. Denied. The Responsible Utility Customer Protection Act at 66 Pa Cons. Stat.

Section 1414 only permits the assessment of a municipal lien against the proper/responsible party, and not an innocent landlord for the alleged debt accumulated by a commercial tenant. Complainant is not the proper/responsible party, and not guarantor for the debt at issue.

10. Admitted. Complainant has no involvement in the debt at issue.

11. Denied. PGW may not impose an obligation on a party that has no involvement in the debt at issue, regardless of who caused the debt. PGW, through the overreaching imposition of a municipal lien, may not burden the property owner for a debt incurred by the tenant. PGW for some strange reason cites *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwlth. 2000) in support of its preliminary objections, but such case is not on point for at least three reasons:

a) In *Newberry*, the underlying debt was based on a city ordinance involving *all* town properties, as all residents benefited from trash collection, whereas in the instant case a major distinguishing feature is the alleged debt does not arise from an ordinance involving *all properties*. In *Newberry*, all properties generated trash, unlike the instant case where some properties use gas heat, other use electric, solar, etc.

b) In *Newberry*, there was no opportunity for a property owner to limit coverage, as all properties were covered by the ordinance, whereas in the instant case only those properties under express obligation to PGW by way of a contract

to receive gas are covered under the obligation to pay. That is, only certain owners or tenants entering into contractual arrangements with PGW are obligated due to receiving gas.

c) It is hornbook law that to impose an assessment on a property, the property owner must have benefited from usage of goods or a service, and the owner needs to be given notice (notice requirement in *Newberry* case) of such obligation—the core of any municipal claim and action of a property owner. In the instant case, PGW had, for many years, billed the commercial tenant of the property at issue, and not the Complainant. PGW may have a valid claim against the tenant who contracted for the gas for the period of time at issue, but not against the Complainant.

12. Admitted. Complainant “wishes her property to not ne (sic) held responsible for the gas the Complainant did not use.” That’s the law in Pennsylvania, as it goes without saying, with no benefits come no burdens.

13. Denied. Complainant’s prayer for relief is within the law, and is the only just and fair decision possible under the law, and in equity. What PGW calls an impertinent matter is basic fundamental fairness.

WHEREFORE, Claimant, Catherine Alpothitis respectfully requests that this Commission deny and dismiss PGW’s preliminary objections to the Complaint, and permit the matter to proceed for administrative review.

NEW MATTER

14. The averments set forth in Paragraphs 1 through 13 of the Answer to the Preliminary Objections are incorporated by reference as though the same were

fully set forth herein.

15. As the public utility supply gas to the commercial tenant occupying the pizzeria located at 6904 Torresdale Avenue, first floor, Philadelphia, PA 19135, PGW knew, or should have known that the Complainant had no knowledge of the rate of usage of gas, or of the alleged delinquency at issue for non-payment of the bill for gas, as Catherine Alpohoritis had no privity of contract with such utility for the gas being consumed in the first floor commercial establishment at issue.

16. PGW failed to give the Complainant timely notice of any delinquency by the commercial tenant, and therefore limited the Complainant's opportunity to mitigate damages by way of communicating with the commercial tenant to secure timely payment, with such failure to give notice by PGW to the Complainant lasting several months during a period of alleged delinquency in payment by Fani Manos, upon information and belief, being the tenant using the first floor of the premises at issue as a pizzeria.

Equitable Estoppel

17. Due to PGW's failure to contact the property owner in a timely matter, to give notice of such delinquency in payment by the tenant, Complainant was prevented from learning of the failure to pay by the commercial tenant, and therefore PGW is equitable estopped from making a claim against Catherine Alpohoritis.

18. As further direct and proximate result of PGW's failure to give proper and timely notice to the Complainant of the breach of agreement by the first-floor commercial tenant using the property as a pizzeria at 6904 Torresdale Avenue, Philadelphia, PA 19135, Complainant has been harmed by the placement of the

lien at issue.

Unjust Enrichment

19. As further direct and proximate result of PGW's action, and to the City of Philadelphia filing a lien against the Complainant's property, if PGW and/or the City of Philadelphia receive money to secure the removal of the lien at issue, these two parties will be unjustly enriched at Complainant's detriment and expense.

Laches

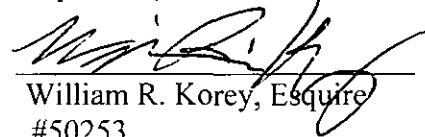
20. Due to PGW's failure to give the Complainant timely notice of the alleged breach of agreement, and failure to pay for gas supplied to the pizzeria at issue operated by the commercial tenant, and not Catherine Alpohoritis, an unnecessary and harmful delay occurred, which limited Complainant's ability to confront the commercial tenant about such delinquency, so as to secure the assurance of prompt payment of the gas bill to PGW by the tenant operating the pizzeria.

21. Unless equitable relief is granted and entered, Complainant will continue to suffer immediate and irreparable harm, with such lien reducing the marketability of the property at issue.

22. WHEREFORE, Complainant seeks the above listed relief, and any other relief the Commission deems just and appropriate.

October 29, 2010

Respectfully submitted,



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TO: ROSEMARY CHIAUETTA
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