

Philadelphia Gas Works



800 West Montgomery Avenue, Philadelphia, PA 19122

Laureto A. Farinas, Senior Attorney

Legal Department

Direct Dial: 215-684-6982

FAX: 215-684-6798

E-mail: laureto.farinas@pgworks.com

November 26, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: William Petravich v. PGW, Docket No. C – 2010 – 2188984
PGW's Reply to Complainant's Exceptions to the Initial Decision

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, and the your letter dated November 16, 2010, the Philadelphia Gas Works ("PGW") hereby files an original and nine (9) copies of the Reply to Complainant's Exceptions to the Initial Decision in the above captioned matter.

If you need additional information about this matter, please contact me at my direct-dial number above. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laureto A. Farinas". The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the main text.

Enclosures

cc: Service List
Anne Marie Cromley

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Petravich

v.

Philadelphia Gas Works

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Docket No. C – 2010 – 2188984

**PHILADELPHIA GAS WORKS’
REPLY TO COMPLAINANT’S EXCEPTIONS**

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated November 16, 2010, in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files an original and nine (9) copies of its reply to the Complainant’s exceptions to the October 28, 2010 Initial Decision (Initial Decision).

I. INTRODUCTION

In this matter, the Complainant, on behalf of his mother-in-law, Martha Evans, disputes the collection of \$1,231.25 that was the subject of a municipal claim for unpaid debt for gas service consumed at 1358 Ruan Street, Philadelphia, Pennsylvania (Service Address). The City of Philadelphia, as owner of PGW, filed a municipal lien upon 1358 Ruan Street for the unpaid debt for gas service for the account of Ms. Evans’ tenant Vanessa Cruz, at the Service Address. Such a filing is permissible 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 unpaid gas service to a Service Address.

On or about July 15, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, seeking the refund of \$1,231.25, which represents the unpaid debt for gas service to the Service Address, the municipal claim. For the period January 2009 through June 2009, Ms. Evans’ tenant, Ms. Cruz owed \$1,231.25 for unpaid gas service under an account where Ms. Cruz was the Customer of Record at the Service Address.

The Complaint requests relief in the form of a refund of the \$1,231.25 that a title company withheld at the time of the settlement of the sale of 1358 Ruan Street, Philadelphia, Pennsylvania.

PGW filed an answer and preliminary objections to the Complainant on the grounds that the Municipal Lien Act is not among the statutes over which Commission has no jurisdiction over the filing of the municipal lien.

On October 28, 2010, the Commission issued the Initial Decision, dismissing the Complaint. Concluding that the Commission does not have jurisdiction to adjudicate a lien imposed by PGW on the Complainant's property for unpaid gas service from January 2, 2009 to June 3, 2009.

On or about November 8, 2010, the Complainant filed exceptions to the Initial Decision. By letter dated November 16, 2010, the Secretary served PGW with the Complainant's exceptions and an instruction to file any reply by November 26, 2010. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to point to any error in fact or law contained in the Initial Decision. In his exceptions, the Complainant appears to argue that PGW was wrong in allowing Ms. Evans' tenant, Ms. Cruz, to obtain gas services at the Service Address when Ms. Cruz owed a balance on her PGW account from previous addresses. The Complainant's argument fails to consider the nature of contracting for utility services in the Commonwealth of Pennsylvania under the Public Utility Code and the PGW Tariff approved by this Commission. Before Ms. Cruz could have arranged for the turn on of gas service to the Service Address, she would have had to make a payment agreement on any outstanding balance owed on her account from a previous address. Only under certain circumstances could PGW have denied gas service to Ms. Cruz without payment in full. With the turn on of Ms Cruz' gas service at the Service Address; she would have had a payment agreement of some kind that conformed to income guidelines that apply to all PGW customers. Under these circumstances, PGW provides adequate services to its payment-troubled customers. The Commission should deny the Complainant's exception.

The Complainant's exception also includes argument based upon the Complainant's political commentary on the government of the City of Philadelphia. This argument seemingly attributes the Initial Decision's dismissal of this matter upon PGW's Preliminary Objections as a reflection of city politics. Such argument has little to do with the applicable law in this matter. The Initial Decision found quite correctly that, the Commission had not jurisdiction over the imposition of municipal liens.

As stated above, The Complainant's exceptions fail to point to any error in fact or law contained in the Initial Decision. 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:

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:

Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

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

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

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

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)

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

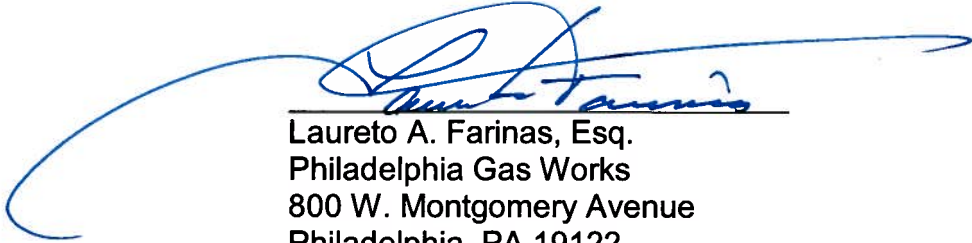
The nature of a lien is such that it encumbers the real estate, regardless who caused the event, which results in the imposition of a municipal claim. PGW may collect as a municipal claim, unpaid debt for gas service rendered, even when the gas service was not rendered to the owner of the property. *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwlth. 2000)

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant’s exceptions to the Initial Decision.

Respectfully submitted,

November 26, 2010



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

² 52 Pa. Code §5.101(a) (1)

CERTIFICATE OF SERVICE

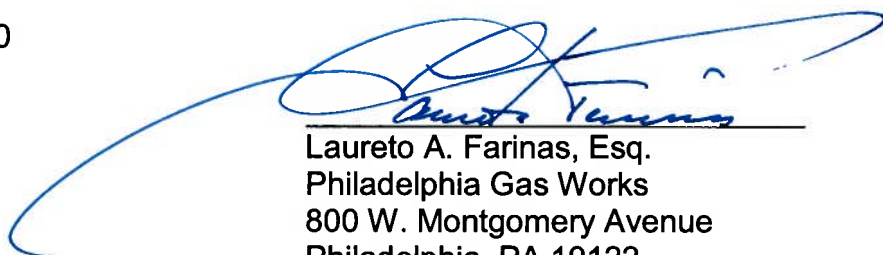
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. William Petravich
C/o Martha Evans
81 Bentwood Drive
Malaga, NJ 08328

November 26, 2010



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122