

**Philadelphia Gas Works**



800 West Montgomery Avenue, Philadelphia, PA 19122

Laureto A. Fariñas, Senior Attorney  
Legal Department  
Direct Dial: 215-684-6982  
FAX: 215-684-6798  
E-mail: laureto.farinas@pgworks.com

February 9, 2011

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

**RE: Stephen L. Hymowitz v. PGW, Docket No. C – 2010 – 2217354**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §§5.63 and 5.101, the Respondent, Philadelphia Gas Works ("PGW") hereby files its answer to the new matter contained in the Complainant's Answer (signed and dated January 29, 2011) to PGW's Preliminary Objections to the Complaint filed in the above captioned matter. PGW filed its Answer and Preliminary Objections to the Complaint on Tuesday, January 18, 2011, timely. For the reasons set forth below, PGW further moves that the Complainant's Answer to Preliminary Objections with New Matter be stricken as filed untimely.

The cover letter of the Complainant's answer to Preliminary Objections with new matter (dated January 28, 2011) states that PGW's Answer to the Complaint and PGW's Preliminary Objections are untimely and should be dismissed. This is false. PGW's filings are timely. Pursuant to the Commission's procedural rules at 52 Pa. Code §5.21(c), the Commission served the Complaint upon PGW, the Respondent, on December 27, 2010. Even though the Complainant filed the Complaint with the Commission on December 20, 2010, the date of the Commission's service of the Complaint upon the Respondent represents the date of service from which the computation of the time for response begins.

From the date of service (December 27, 2010), pursuant to 52 Pa. Code §5.21(c), PGW is obligated to file an Answer to the Complaint within twenty (20) days. Pursuant to 52 Pa. Code §5.101(d) PGW may also file any Preliminary Objections within the same 20 days. Calculating 20 days from December 27, 2010 is Sunday, January 16, 2011. Pursuant to 52 Pa. Code §1.12(a) – Computation of Time, however, PGW's timely filing of the Answer and Preliminary Objections to the Complaint was Tuesday, January 18, 2011, as the 20<sup>th</sup> day fell on Sunday, January 16, 2011 and Monday, January 17, 2011 was a legal holiday in our Commonwealth, Martin Luther King, Jr. Day. Thus, PGW timely filed its Answer and Preliminary Objections to the Complaint.

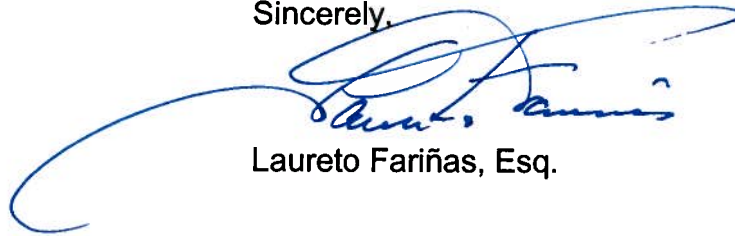
Curiously, the timeliness of the Complainant's Answer to Preliminary Objections is called into question. Pursuant to 52 Pa. Code §5.101(f)(1), one is obligated to answer preliminary objections within ten (10) days of the date of Service. As PGW timely filed and served the Complainant with its Preliminary Objections on January 18, 2011, the Complainant was obligated to file its answer on or before, January 28, 2011.

The date appearing the cover letter, notwithstanding, the Complainant's Answer to the Preliminary Objections bears a signature and hand written date, submitted to the Commission on "1-29-2011," that is Saturday, January 29, 2011. Furthermore, the Certificate of Service also bears a signature and a hand written date of January 29, 2011, certifying that Complainant's counsel "...did cause a true and correct copy of the foregoing Answer to Preliminary Objections and New Matter via first class U.S. mail..." to PGW and to the Commission on Saturday, January 29, 2011. Thus, the Complainant's Answer to Preliminary Objections appears to have been filed untimely. That is according to the dated signature line, the Complainant's Answer to Preliminary Objections had to have been placed in the mail at least one day beyond that date prescribed by the Commission procedural rules at 52 Pa. Code §5.101(f)(1).

Therefore, PGW respectfully requests that the Commission strike the Complainant's Answer to the Preliminary Objections dated January 29, 2011 as untimely, sustain PGW's Preliminary Objections, and dismiss the Complaint.

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

Sincerely,



Laureto Fariñas, Esq.

cc: Mr. Stephen L. Hymowitz  
Scott A. Petri, Esq.  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Stephen Hymowitz</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2010 – 2217354</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**Philadelphia Gas Works' Answer to New Matter  
In Complainant's Answer to Preliminary Objections**

Pursuant to 52 Pa. Code §§5.63 and 5.101, the Philadelphia Gas Works ("PGW") hereby files its answer to new matter contained in the Complainant's Answer to PGW's Preliminary Objections to the Complaint filed in the above captioned matter.

**Introduction**

On or about December 20, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 1233 Bainbridge Street, Philadelphia, Pennsylvania (Service Address).

The Complainant avers that PGW never informed the Complainant that his commercial tenant failed to make payments totaling \$10,151.58 for gas service at the Service Address for the period from October 2002 through October 2006 or, that the City of Philadelphia, as owner of PGW, filed a lien against the Service Address for the unpaid gas service of their commercial tenant 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). The Complaint requests relief in the form of a Commission order to PGW to remove the municipal lien against the Service Address.

On January 18, 2011, PGW filed an Answer and Preliminary Objections to the Complaint. The Preliminary Objections argue mainly that [1] the Commission is without jurisdiction to decide on matters involving the imposition of the

municipal lien; [2] the Complainant's request for relief is "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2) and; [3] the request for relief, as impertinent matter, should be stricken from the Complaint, pursuant to Pa. Code §5.101(a)(2). To PGW's Preliminary Objections, the Complainant filed an answer with new matter to which PGW now responds.

### **Answer To New Matter**

14. Denied as a conclusion of law. By way of further answer, the City of Philadelphia, as owner of PGW, is able to lien properties for unpaid gas service rendered to properties 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 gas service to a Service Address.

15. Denied as a conclusion of law. By way of further answer, the new matter of Paragraph 15 of the Complainant's Answer to Preliminary Objections with New Matter fails to specify the Statute of Limitations applicable to this action before the Pennsylvania Public Utility Commission as well as the applicability to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq.

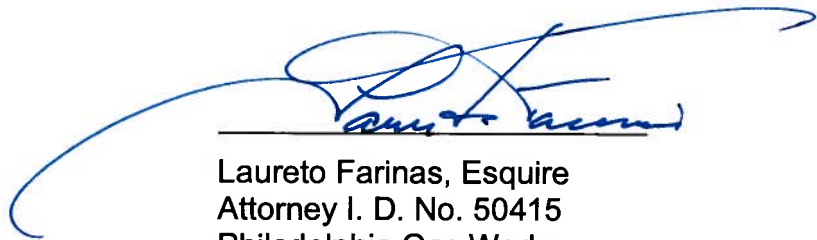
16. Denied. PGW denies that the "lien claim" is barred because PGW did not obtain authority to install gas service from the Complainant who did not contract with PGW to provide gas service. By way of further answer, PGW obtained authority from and contracted with Philadelphia House Plant, Glenn Behrman, principal, (House Plant) the party who lawfully occupied the Service Address for the period that PGW rendered gas service that is in dispute. House Plant was the Complainant's tenant, and occupied the Service Address pursuant to a commercial lease agreement with the Complainant. 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) In the instant matter, the Complainant simply wishes his property not to be held responsible for the gas the Complainant did not use and for the Commission to order the removal of the lien. Such a request is beyond the jurisdiction and authority of the Commission.

**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,

February 9, 2011



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.

February 9, 2011



Laureto Farinas, Esquire

**CERTIFICATE OF SERVICE**

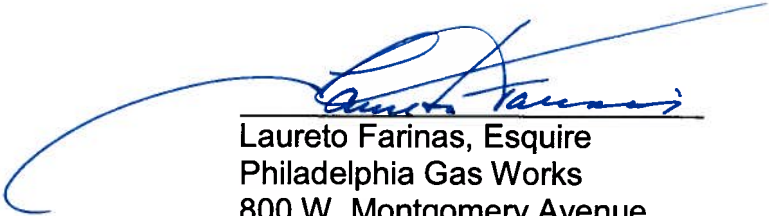
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

For Complainant:

Mr. Stephen L. Hymowitz  
237 S. 18<sup>th</sup> Street  
Philadelphia, PA 19103

Scott A. Petri, Esq.  
680 Middleton Boulevard  
Langhorne, PA 19047

February 9, 2011



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