



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Ross, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.ross@pgworks.com

March 25, 2011

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

Re: Ardelle Jackson v. PGW, Docket No. C – 2009 – 2119940

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter date March 16, 2011, 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 March 1, 2011, Initial Decision (Initial Decision).

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,


Danielle Ross

Enclosure

cc: Ms. Ardelle Jackson (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ardelle Jackson

v.

Philadelphia Gas Works

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Docket No. C – 2009 – 2119940

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

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated March 16, 2011, 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 March 1, 2011, Initial Decision (Initial Decision).

I. INTRODUCTION

In this matter, the Complainant claims that PGW placed incorrect liens on her property located at 3768 Lankenau Road, Philadelphia, Pennsylvania (Subject Property). After the Complainant moved from the Subject Property, she began leasing the Subject Property to tenants. When the Complainant attempted to sell the Subject Property, she was informed by the title insurance company that there were two liens on the Subject Property totaling \$5,277.32. The City of Philadelphia, as owner of PGW, has a municipal claim and may file liens for unpaid debt for gas service to properties within the City of Philadelphia. 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).

On or about July 17, 2009, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, seeking the refund of \$5,277.32, which represents the unpaid debt for gas service to the Subject Property, the municipal claim, which the title insurance company paid to PGW.

PGW filed an answer denying the material allegations of the complaint, but did not deny that liens had been filed for unpaid gas service to the Subject Property. PGW also denied that it had charged the Complainant twice for the lien and that the balance owed was carried over from the Complainant’s bankruptcy matter.

Hearings were held before Administrative Law Judge Charles E. Rainey, Jr. (ALJ Rainey), on April 13, 2010 and June 21, 2010. On June 28, 2010, PGW submitted at ALJ Rainey's request, the late filed Exhibit – 11.

On March 1, 2011, 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.

On or about March 8, 2011, the Complainant filed exceptions to the Initial Decision but did not serve PGW with a copy of the Exceptions. By letter dated March 15, 2011, the Secretary served PGW with the Complainant's exceptions and an instruction to file any reply by March 25, 2011. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to address adequately any error in fact or law contained in the Initial Decision. In the exceptions, the Complainant fails to address the finding that the Commission lacks jurisdiction over the subject matter (liens) of the complaint.

Exception 1 – The Complainant's receipt of the Initial Decision¹

Exception 2 – PGW did not implement the Responsible Utility Consumer Protection Act (Act 201) After August 9, 2006. With regards to liens being filed on landlord tenant properties.

The City of Philadelphia, as owner of PGW, has filed a municipal lien upon the Subject Property for the unpaid debt for gas service to the Subject Properties on the accounts of the Complainant's tenants, 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). As the Municipal Lien Act has been in effect since 1923, the City of Philadelphia as owner of PGW had authority to collect on municipal claims owed to PGW for gas service to a Service Address.

¹ Exception 1 – "I just received this mail because the PUC sent it to the wrong address in February. They mailed it to P.O. Box 561 Bala Cynwyd, Pa 19004." PGW feels that it need not reply to Exception 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 jurisdiction over the filing of such a lien.² *Cornelia Strowder v. Philadelphia Gas Works*, 2002 WL 32069511 (2002) (*Strowder*), *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket Number C-20066672, Final Order entered January 22, 2007 (*Lawrence*), *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket Number C-2008-2029672, Final Order entered February 23, 2009 (*Young*), *Dung Phat, LLC v. Philadelphia Gas Works*, Docket Number C-2009-2135667, Final Order entered January 13, 2010 (*Dung Phat*), *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673, Final Decision and Order entered January 13, 2010 (*Mooney*), *David Golan v. Philadelphia Gas Works*, Docket Number C-2009-2138115, Final Order entered February 4, 2010 (*Golan*), *2020 West Passyunk Avenue Inc. v. Philadelphia Gas Works*, Docket Number C-2009-2138727, Final Order entered February 4, 2010 (*2020 West Passyunk*), *Jean Charles v. Philadelphia Gas Works*, Docket Number C-2009-2138638, Final Order entered February 5, 2010 (*Charles*).

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. Thus, it is clear that the legislature did not intend the Commission to have jurisdiction over the Municipal Lien Act. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (1967). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Commission*, 43A.2d 348 (1945)

Exception – 3 This property was tenant occupied since 2003 with Katrina Brown and Kevin Stanton, proof of utility bills were submitted along with leases. This was a tenant occupied property.

Exception – 4 These two liens in the amount of \$4,351.71 were filed on March 2005 which was tenant occupied property. How is it legal for PGW to add \$925.61 after the liens were already filed on March 2005.

Exception – 5 Ms Kelly, PGW Customer Review Officer testified under oath that Kevin Stanton and Katrian Brown never applied for gas service and never had service at 3768 Lankenau Rd., therefore I was responsible for the Gas payments.

Exception – 6 The gas bills for Kevin Stanton and Katrina Brown were submitted into evidence PGW stated that there were to tenants in the property which was clearly misrepresented by PGW or to bluntly say a lie.

Exception – 7 Any liens filed against the owner occupied property at 3768 Lankenau Rd which was place on me from PGW was Paid off in my Chapter 13 as submitted into evidence.

Exception – 8 Clearly PGW does not represent the correct facts of this case. This is not a case where PGW has placed a municipal lien on the owner occupied property. Which I as the owner already paid.

Exception – 9 PGW has placed a municipal lien on a landlord tenant property in March 2005, which by the law was not implemented until after August 2006. Again let's clearly see the facts: This was a landlord tenant property not a owner occupied property when these liens were placed on this property.

In this case, as the Complaint states that the bills that are the subject of the liens were from gas service under the accounts of his tenants. The Complainant opines that under circumstances, she should not be held responsible.

The Complainant disputes the imposition of the lien because he did not incur the debt for gas service. 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) As stated in the Initial Decision, the proceeding to obtain the City's municipal claim is an *in rem* proceeding. As such, the City asserts no personal responsibility against the Complainant, but rather,

the Subject Property is responsible for satisfying the municipal claim. *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir.1988)

As there was extensive testimony on the various accounts for gas service at the Subject Property, ALJ Rainey requested additional written information on the matter. In PGW Exhibit 11, PGW sorted out the various accounts held by the Complainant and her tenants. Regretfully, PGW witness Kelly misspoke during the live hearing concerning the existence of the tenants' accounts, Ms. Kelly provided clarity in PGW Exhibit 11. The record reflects that in PGW Exhibit 11, the amount owed that was the subject of the Municipal liens were from the Complainant's tenants and not from the Complainant's bankruptcy proceeding. In addition, in PGW Exhibit 11, PGW shows that the additional amount of the liens \$933.47 was not a double charge from the Complainant's account but rather an amount that went unpaid, the result of the Complainant's check returned for insufficient funds.

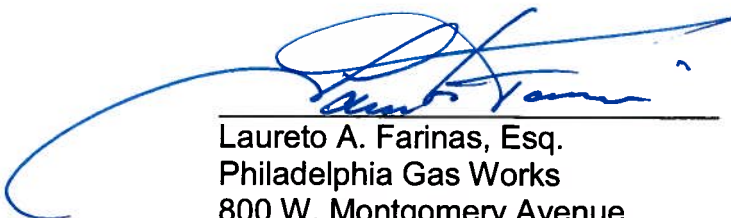
In the instant matter, the Complainant simply wishes not be held responsible for the gas the Complainant did not use and for the Commission to order the removal of the lien. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, the Complainant's exceptions should be denied.

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant's exceptions to the Initial Decision and adopt, completely the Initial Decision issued March 1, 2011 in this matter.

Respectfully submitted,

March 25, 2011



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

CERTIFICATE OF SERVICE

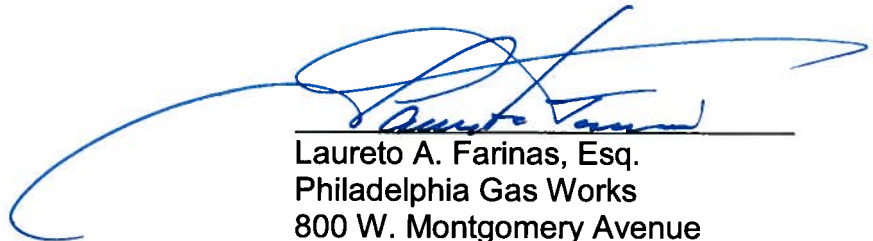
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Ms. Ardelle Jackson
P.O. Box 391683
Snellville, GA 30039

March 25, 2011



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