



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

April 14, 2011

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

Re: Marvin Black v. PGW, Docket No. C – 2011 – 2218474

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated April 4, 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 7, 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: Mr. Marvin Black (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marvin Black

v.

Philadelphia Gas Works

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Docket No. C – 2011 – 2218474

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

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated April 4, 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 7, 2011, Initial Decision (Initial Decision).

I. INTRODUCTION

In this matter, the Complainant claims that PGW incorrectly placed liens on his properties located at 1541 and 1545 Belfield Avenue, Philadelphia, Pennsylvania (Subject Properties). The Complaint asserted that the liens were from the unpaid debt for gas service in which the Complainant’s tenants were PGW customers. The liens from three separate tenants totaled 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 January 24, 2011, PGW filed an answer denying the material allegations of the complaint, but did not deny that liens the Subject Properties were subject to the collection of the unpaid debt of the Complainant’s tenants pursuant to the Municipal Lien Act. With its Answer, PGW also filed Preliminary Objections and a Motion to Strike Impertinent Matter, that its actions were legal and justified and that the Commission is without jurisdiction to decide on matters involving the imposition of the Municipal Lien.

On March 7, 2011, the Commission issued the Initial Decision, dismissing the Complaint. Concluding that the Commission does not have jurisdiction to adjudicate a lien imposed by the City of Philadelphia on behalf of PGW on the Complainant’s property for unpaid gas service.

On or about March 24, 2011, the Complainant filed exceptions to the Initial Decision but did not serve PGW with a copy of the Exceptions. By letter dated April 4, 2011, the Secretary served PGW with the Complainant's exceptions and an instruction to file any reply by April 14, 2011. PGW's 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. The Exceptions includes to documents obtained from PGW's website concerning the operation of the Municipal Lien Act the PGW's Landlord Cooperation Program (LCP).

Exception 1 – This Exception states that PGW's document shows that the imposition of Municipal Liens was to be prospective from August 9, 2006 for landlord tenant properties operating under the LCP. The Exception further states that the other document from PGW's website reflects that the features of the LCP exclude commercial landlord tenant properties.

PGW'S REPLY

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. The City's authority to file Municipal Liens on behalf of PGW has existed and was used prior to the creation of LCP.

As the Exception states, the Subject Properties are commercial properties and are not afforded the protection of the LCP, including the prospective application of the filing

of Municipal Liens for the unpaid debt of tenants.¹ The Complainant misinterprets PGW's website that designed to give information to potential participating landlords in LCP. As the Subject Properties have a commercial end use, the City of Philadelphia may file Municipal Liens on behalf of PGW without regard to the creation of LCP.

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, he 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 Properties are responsible for satisfying the municipal claim. *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir.1988)

The Complainant simply wishes for the Commission to order the removal of the lien. 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 Stowder v. Philadelphia Gas Works*, 2002 WL 32069511 (2002), *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket Number C-20066672, Final Order entered January 22, 2007, *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket Number C-2008-2029672, Final Order entered February 23, 2009, *Dung Phat, LLC v. Philadelphia Gas Works*, Docket

¹ The Subject Properties are properties with commercial end uses. These are auto repair and car alarm shops. See also the Complaint, p. 6

Number C-2009-2135667, Final Order entered January 13, 2010, *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673, Final Decision and Order entered January 13, 2010, *David Golan v. Philadelphia Gas Works*, Docket Number C-2009-2138115, Final Order entered February 4, 2010, *2020 West Passyunk Avenue Inc. v. Philadelphia Gas Works*, Docket Number C-2009-2138727, Final Order entered February 4, 2010, *Jean Charles v. Philadelphia Gas Works*, Docket Number C-2009-2138638, Final Order entered February 5, 2010.

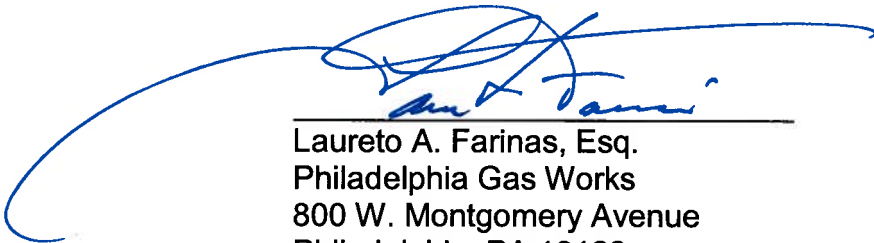
Pursuant to the Responsible Utility Customer Protection Act at 66 Pa. Cons. Stat. §1414, which states: “[a] city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply ...,” clarifies and confirms such rights to impose a lien. 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) 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 exception to the Initial Decision and adopt, completely the Initial Decision issued March 7, 2011 in this matter.

Respectfully submitted,

April 14, 2011



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

CERTIFICATE OF SERVICE

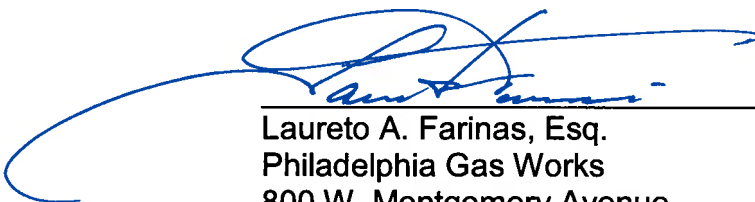
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Marvin Black
75 McFadden Drive
Huntingdon Valley, PA 19006

April 14, 2011



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