



PHILADELPHIA GAS WORKS

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April 18, 2011

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

Re: Abraham Ituah v. PGW, Docket No. C – 2011 – 2232679

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original of its Preliminary Objections to the Complaint in the above captioned matter.

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. Abraham Ituah (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Abraham Ituah

v.

Philadelphia Gas Works

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Docket No. C – 2011 – 2232679

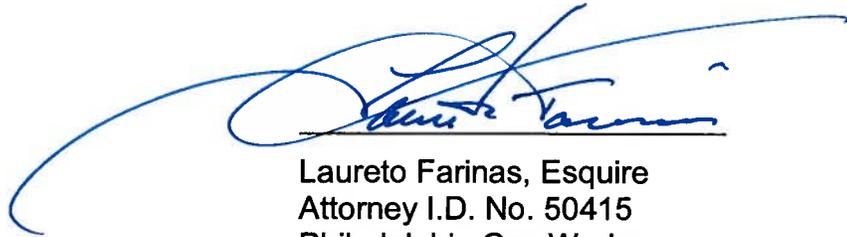
NOTICE TO PLEAD

To: Abraham Ituah,

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objection and Motion to Strike, within ten (10) days from service hereof or you may be deemed to be in default and relevant facts stated in these pleadings may be deemed admitted and a judgment may be entered against you.

Respectfully submitted,

April 18, 2011



Laureto Farinas, Esquire
Attorney I.D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Abraham Ituah	:	
	:	
v.	:	Docket No. C – 2011 – 2232679
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works
Preliminary Objection and Motion to Strike**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objection to the Complaint filed in the above captioned matter on the grounds that the Commission is without authorization to grant the Complainant’s request from compensation for damages as the sole form of relief, and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant’s request for compensation.

In support of its preliminary objection and motion to strike, PGW hereby avers the following:

1. On or about February 24, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, alleging, *inter alia*, the wrongful termination of gas service to 4021 Neilson Street, Philadelphia, Pennsylvania (Service Address).

2. The Complainant avers that on January 5, 2011, PGW wrongfully terminated gas service to the Service Address, damaged the Complainant’s property, and unjustifiably charged the Complainant for gas service for the period that he occupied the Service Address.

3. The Complaint requests relief in the form of a refund of payment for gas service due to PGW’s negligent failure to terminate gas service, reimbursement for damaged property and other compensatory damages.

4. Pursuant to 52 Pa. Code §5.101, PGW objects to the Complaint on the grounds that the Commission is without authorization to grant the Complainant’s request in the form of compensation for damages. PGW therefore

moves to strike the Complainant's request for compensation as "impertinent matter" pursuant to 52 Pa. Code §§5.101(a) (1) and (2).

5. 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:

(a) *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:

...
(2) 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

6. In this case, as the Complaint states that PGW is the cause of the damage to his property and the Complainant opines that under these circumstances, the Commission should order PGW to compensate the Complainant for these damages.

7. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (1977); *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984); *Elkin v. Bell Telephone Co. of Pennsylvania*, 420 A.2d 371 (1980); *Terminato v. Pa National Insurance Co.*, 645 A.2d 1287 (1994)

8. A prayer for relief in the form of monetary compensation for damages is not recoverable in the cause of action before this Commission as the Commission is without authorization to award compensation for damages. The request for relief, in this regard is irrelevant to the instant cause of action and

¹ 52 Pa. Code §5.101(a) (2).

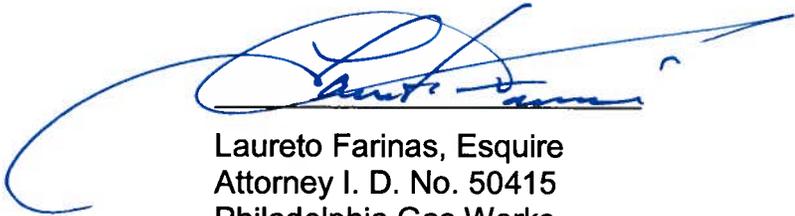
therefore "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2).

9. The Complainant's request for compensation for damages should be stricken from the Complaint pursuant to Pa. Code §5.101(a) (2).

Wherefore, PGW respectfully requests that this Commission sustain PGW's preliminary objection to the Complaint and strike off the requested relief as impertinent matter.

Respectfully submitted,

April 18, 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.

April 18, 2011



Laureto Farinas, Esquire

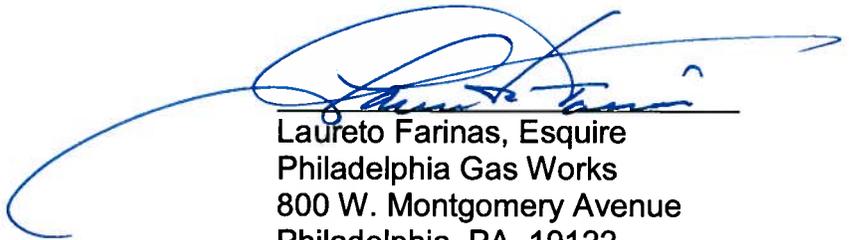
CERTIFICATE OF SERVICE

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. Abraham Ituah
4021 Neilson Street
Philadelphia, PA 19124

April 18, 2011



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Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982