



**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](mailto:danielle.ross@pgworks.com)

April 21, 2011

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

**Re: Shira Meng and Master Holding, LP v. PGW, Docket No. C – 2010 – 2213316**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files an original and nine (9) copies of its reply to the Complainant's exceptions to the March 23, 2011, Initial Decision in the above captioned matter (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: Shira Meng (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Shira Meng and Master Holding, LP</b>	:	
	:	
v.	:	<b>Docket No. C – 2010 – 2213316</b>
	:	
<b>Philadelphia Gas Works</b>	:	

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

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, (“PGW”) hereby files an original and nine (9) copies of its reply to the Complainant’s exceptions to the March 23, 2011, Initial Decision in the above captioned matter (Initial Decision). In addition, as the Exceptions were not submitted by counsel pursuant to 52 Pa. Code §1.21 and *Cars R Us v. PGW*, Docket No. C-2008-2033437 (Final Decision entered February 4, 2010), the Commission should not consider the Complainant’s exceptions document.

**I. INTRODUCTION**

In this matter, the Complainant filed a Complaint against PGW, claiming that PGW improperly filed a lien against the Complainant’s property located at 3557 N. 5<sup>th</sup> Street, Philadelphia, Pennsylvania (Subject Property) and requested that the Commission order PGW to remove the lien. On December 20, 2010, PGW filed an answer denying the material allegations of the incorrect nature of the placement of the liens, but did not deny that lien was filed against the Subject Property for the collection of the unpaid debt of the Complainant’s 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 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.

With its Answer, PGW also filed Preliminary Objections and a Motion to Strike Impertinent Matter, stating 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. The Complainant failed to file an answer to PGW's Preliminary Objection.

On March 23, 2011, the Commission issued the Initial Decision, sustaining PGW's Preliminary Objection 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 (Initial Decision).

On or about April 11, 2011, the Complainant filed exceptions to the Initial Decision apparently without representation of counsel. PGW's reply follows.

## **II. PGW'S REPLY TO EXCEPTIONS**

**The Complainant's Exceptions should not be considered by this Commission, as the Exceptions were not submitted by counsel pursuant to 52 Pa. Code §1.21.**

Pursuant to 52 Pa. Code §1.21 and the Commission's decision in *Cars R Us v. PGW*, Docket No. C-2008-2033437 (Final Decision entered February 4, 2010), the Commission should not consider the Complainant's exceptions document. The Complainant's exceptions document bears only the signature of the principal of the Complainant and not that of its counsel. In *Cars R Us*, the Commission held that while corporate officers are permitted to file formal complaints or applications on behalf of its corporation, the Commission's Regulations at 52 Pa. Code §1.23 state that corporations must be represented by licensed attorneys in adversarial proceedings. This complaint proceeding became "adversarial" with PGW's filing of its Answer to the Complaint pursuant to 52 Pa. Code §1.8. Since the filing of the exceptions fails to comply with the Commission's regulations, the Exceptions should be denied.

**The Complainant's Exceptions fail to address any error in fact or law contained in the Initial Decision regarding the Commission's lack of subject matter jurisdiction.**

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 arguments concerning the Pennsylvania legal standard for negligence and alleged related breaches of duty, referring to PGW as a “tortfeasor.”

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 account of the Complainant’s 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). 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 the Service Address. In this case, the Complaint states that the bills that are the subject of the liens were from gas service under the accounts of his tenant. The Complainant opines that under these circumstances, it should not be held responsible.

The Complainant disputes the imposition of the lien because the Complainant did not incur the debt for gas service but rather the debt remained unpaid because the Complainant’s tenant vacated the Subject Property without paying its PGW bill in full. 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. The City of Philadelphia 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.<sup>1</sup> 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)

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

---

<sup>1</sup> Initial Decision, p. 5

otherwise.” Thus, under 66 Pa. C.S.A Section 2212(n), the Commission has no jurisdiction over the filing of such a lien. *Cornelia Strowder 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 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 23, 2011 in this matter.

Respectfully submitted,

April 21, 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).

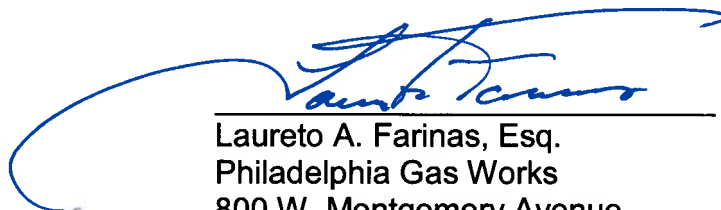
Service List:

For Complainant:

Shira Meng  
Master Holding, L.P.  
P.O. Box 34  
New York, New York 10013

Pennsylvania Public Utility Commission  
Office of Special Assistants  
Third Floor  
Keystone Building  
400 North Street  
Harrisburg, PA 17105 – 3265

April 21, 2011



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