



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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May 11, 2011

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

RE: Joseph Smith v. PGW, Docket No. C – 2010 – 2236961

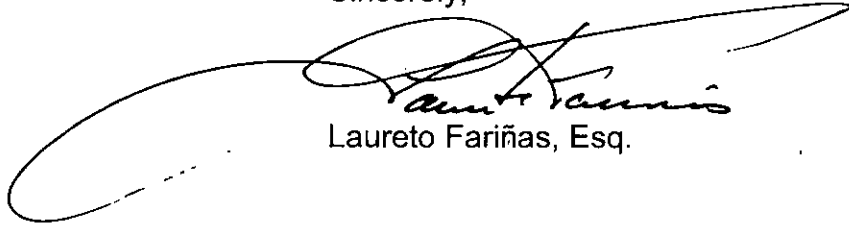
*2011*

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works ("PGW") hereby files its Preliminary Objections to the Complaint in the above captioned matter.

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: Service List (Regular Mail)  
Anne Marie Cromley  
Linda Pereira

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joseph Smith

v.

Philadelphia Gas Works

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Docket No. C – 2011 – 2236961

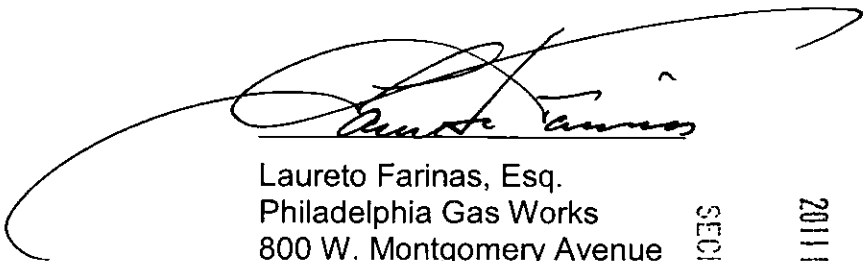
NOTICE TO PLEAD

To: Joseph Smith, Complainant

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objections 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,

May 11, 2011



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

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joseph Smith

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v.

Docket No. C – 2011 – 2236961

Philadelphia Gas Works

**Philadelphia Gas Works’  
Preliminary Objections and  
Motion to Strike Impertinent Matter**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objections to the Complaint filed in the above captioned matter on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief for the removal of the lien, and moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a)(1) and (2).

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

1. On or about April 12, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter disputing the filing of a lien for unpaid debt for gas service to the Complainant’s property located at 4808 Tacony Street, Philadelphia, Pennsylvania (Subject Property). The City of Philadelphia, as owner of PGW, is authorized to collect unpaid debt for gas service in the form of municipal claims 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).

2. The Complainant avers that he did not have a PGW account at the Subject Property and that the unpaid bills were from his tenants.

3. The City of Philadelphia, as owner of PGW has filed Municipal Liens pursuant to the list of unpaid debt during the periods listed below.

Precision Auto Body

July 15, 2003 to June 17, 2007	\$4,634.34
June 18, 2007 to August 8, 2007	\$122.09
October 24, 2007 to December 4, 2007	\$1,851.38
December 4, 2007 to January 11, 2008	\$626.92
Total	\$7,234.73

4. There were other occupants of the Subject Property (New Hanin's Collision Company and Rifi, Inc. (Complainant's previous tenants) whose total unpaid debt for gas service is subject to liens to be filed pursuant to the Municipal Lien Act by the City of Philadelphia, as owner of PGW.

5. Pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, PGW has the right to collect on municipal claims owed to PGW for gas service to a Service Address and may file a lien for such a claim.

6. The Complaint avers that PGW is holding the Complainant personally responsible for the unpaid debt.

7. The Complaint requests relief in the form of a Commission order to PGW not to make the Complainant responsible for the outstanding unpaid balance for gas service rendered to the Subject Property.

8. 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:

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(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

52 Pa. Code §§5.101(a)(1) and (2)<sup>1</sup>

9. In this case, as the Complaint states that the unpaid account balance that is the subject of the lien was from gas service under the PGW account of his tenants. The Complainant opines that under these circumstances, he should not be held responsible.

10. 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.<sup>2</sup> *Cornelia Strowder v. Philadelphia Gas Works*, 2002 WL 32069511(2002); *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket No. C-20066672, Final Order entered January 22, 2007; *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672, Final Order entered February 23, 2009; *Dung Phat, LLC v. Philadelphia Gas Works*, Docket No. C-2009-2135667, Final Order entered January 13, 2010; *Nathaniel Lewis Mooney v. Philadelphia Gas Works*, Docket No. C-2009-2134673, Final Decision and Order entered January 13, 2010; *David Golan v. Philadelphia Gas Works*, Docket No. C-2009-2138115, Final Order entered February 4, 2010; *Jean Chares v. Philadelphia Gas Works*, Docket No. C-2009-2138638, Final Order entered February 5, 2010; *Ronald Daniel v. Philadelphia Gas Works*, Docket No. C-2010-2181983, Final Order entered May 6, 2011.

<sup>1</sup> 52 Pa. Code §§5.101(a) (1) and (2) emphasis added.

<sup>2</sup> 52 Pa. Code §5.101(a) (1)

11. 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.

12. The Complainant disputes the imposition of the lien because he did not incur the debt for gas service.

13. 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)

14. In the instant matter, the Complainant simply wishes not to be responsible for the gas he did not use. As PGW has not held the Complainant personally responsible for the unpaid balance for gas service rendered to the Subject Property, the Commission need not grant the requested relief of having the Complainant not be personally responsible for the unpaid balance for gas service rendered.

15. A prayer for relief from a condition that does not exist (held personally responsible for unpaid balance for gas service rendered to another) is not recoverable in the cause of action before this Commission. It is irrelevant to the instant cause of action and therefore “impertinent matter” within the use and meaning of 52 Pa. Code §5.101(a) (2) and, should be stricken from the Complaint pursuant to Pa. Code §5.101(a) (2).

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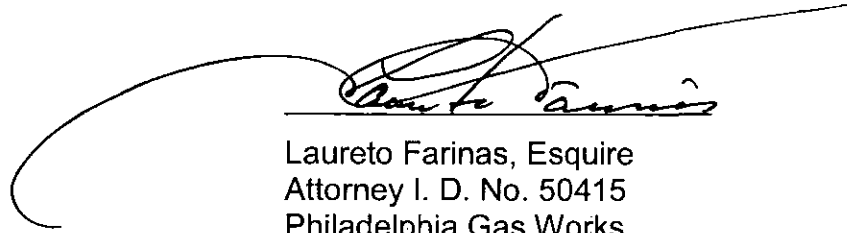
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**Wherefore**, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

May 11, 2011



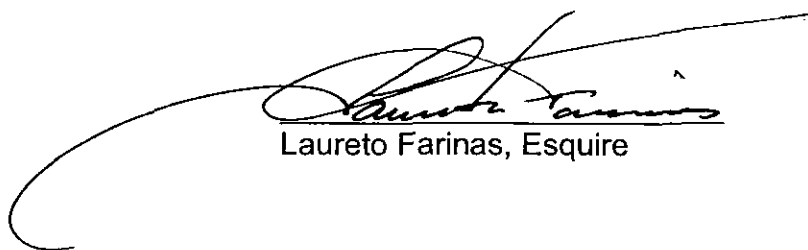
Laureto Farinas, Esquire  
Attorney I. D. No. 50415  
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**VERIFICATION**

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.

May 11, 2011



Laureto Farinas, Esquire

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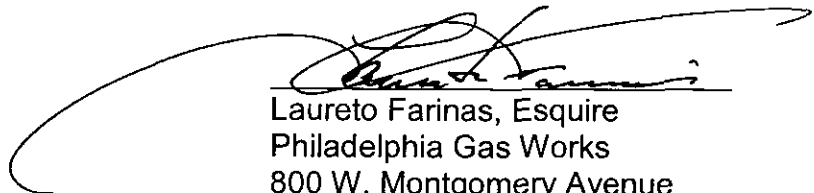
**CERTIFICATE OF SERVICE**

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. Joseph Smith  
P. O. Box 419  
Newtown, PA 18940

May 11, 2011



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Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
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Rosemary Chiavetta, Secretary

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P. O. Box 3265

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