



**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)

May 27, 2011

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

**Re: John F. and Joanne M. McVey v. PGW, Docket No. C – 2011 – 2239859**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.101, 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: John F. and Joanne M. McVey\_(Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**John F. & Joanne M. McVey**

**v.**

**Philadelphia Gas Works**

:  
:  
:  
:  
:

**Docket No. C – 2011 – 2239859**

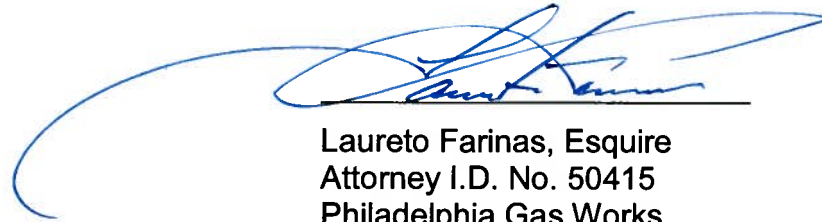
**NOTICE TO PLEAD**

**To: John F. and Joanne M, McVey, Complainants**

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 27, 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**

<b>John F. &amp; Joanne M. McVey</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2011 – 2239859</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**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 to the extent that the matter disputes the imposition of a lien and that the Complaint includes impertinent matter in its requested relief to remove the lien. Consequently, PGW moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a) (1) and (2) and/or dismiss the Complaint.

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

1. On or about April 28, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 8600 Gillespie Street, Philadelphia, Pennsylvania (Subject Property).
2. For the period October 2008 through June 2009, the Complainant’s tenant owed \$1,840.55 for unpaid gas service to the Subject Property under an account where the Complainants tenant was the Customer of Record.
3. The Complaint requests relief in the form of a refund of the \$1,840.55.
4. The debt of \$1,840.55 was paid at the time of settlement, and was collected as an unpaid municipal claim under the Municipal Claim and Tax Lien

Law, Act 153 of 1923, P.:. 207 53 P.S. §7101. The City of Philadelphia has the right to collect on debt owed to PGW for gas service to the Service Address as a municipal claim.

5. The City of Philadelphia, as owner of PGW, may file a municipal lien upon the Subject Property for the unpaid debt for gas service to the Subject Property, 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), Under the Municipal Lien Act, the City of Philadelphia as owner of PGW has the right to collect on municipal claims owed to PGW for gas service to a Service Address.

6. 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:

(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), (2)<sup>1</sup>

7. In this case, as the Complainants state that the bills that are the subject of the debt were from gas service under the account of their tenant. The

---

<sup>1</sup> 52 Pa. Code §5.101(a) (1), (2) and (5) emphasis added.

Complainants opine that under circumstances, they should not be held responsible.

8. The Complainants dispute the collection of the debt at settlement because they did not incur the debt for gas service.

9. 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 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.

10. 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.

---

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

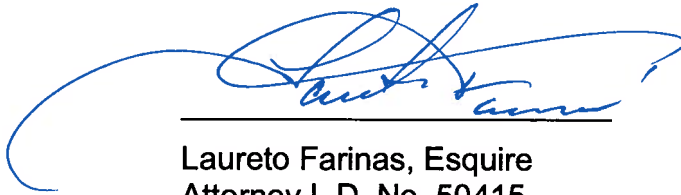
11. The nature of a lien is such that it encumbers the real estate, regardless who caused the event, which results in the imposition of a municipal claim. PGW may collect as a municipal claim, unpaid debt for gas service rendered, even when the gas service was not rendered to the owner of the property. *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwlth. 2000)

12. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, the Complainant's request for relief is "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2) and, should be stricken from the Complaint.<sup>3</sup>

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

Respectfully submitted,

May 27, 2011



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

---

<sup>3</sup> 52 Pa. Code §5.101(a) (2)

**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 27, 2011



Laureto Farinas, Esquire

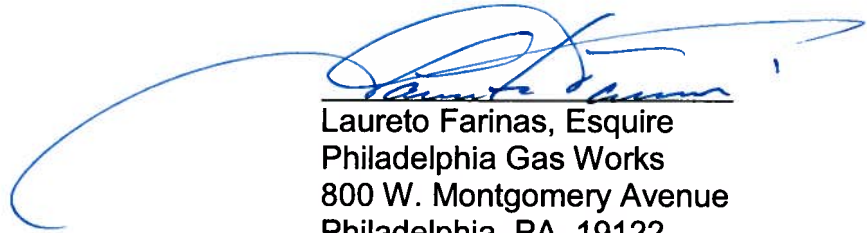
**CERTIFICATE OF SERVICE**

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:

John F. & Joanne M. McVey  
62 Teal Drive  
Langhorne, PA 19047

May 27, 2011



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