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(AREA CODE 215)  
985-0255  
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May 19, 2011

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

**Re: Joseph Smith v. PGW, Docket No. C-201-2236961**

Dear Ms. Chiavetta:

Enclosed is the Answer to the Preliminary Objections and Motion to Strike of the Philadelphia Gas Works in the above captioned matter.

Should you have any questions/comments, please feel free to contact me at (215) 985-0255.

Very truly yours,

STEIN & SILVERMAN, P.C.



Leon W. Silverman

LWS/meh  
Enclosure  
cc: Laureto Farinas, Esquire (w/enc)

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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

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**ANSWER TO THE PRELIMINARY OBJECTIONS AND  
MOTION TO STRIKE OF THE PHILADELPHIA GAS WORKS**

1. Denied in part and admitted in part. It is admitted that a formal complaint against PGW was filed with the Public Utility Commission (“Commission”), but it is denied that the City of Philadelphia (“City”) was authorized to file a lien against 4808 Tacony St., Philadelphia, PA (the “Property”), without giving proper notice to the plaintiff, who is the owner of the Property in this matter.

2. Admitted

3. Denied. The plaintiff, never having been given notice of any unpaid gas bills is without sufficient knowledge and information to admit or deny the factual allegations contained in this paragraph and therefore such allegations are denied. By way of further answer, it is averred that PGW is required to provide the owner of the Property with prior notice of unpaid gas bills before a lien can be placed against the Property.

4. Denied for the reasons set forth in paragraph 3 above.

5. Denied. Before any lien can be filed against the Property proper notice must be given to the owner, particularly where it is admitted that the owner did not contract for or use the gas for which a lien is sought against the Property.

6. Denied as stated. It is unclear as to whether PGW is seeking a judgment against the plaintiff, or is only seeking a lien against the Property.

7. Denied as stated. The complaint requests relief by striking the lien because of improper notice making the lien violative of due process.

8. Admitted.

9. Admitted in part and denied in part. It is admitted that the subject of the lien was due as the result of gas service provided to others and not to the plaintiff. It is further admitted that the complainant should not be held responsible for such gas bills without receiving prior

notice. By way of further answer, it is averred that the lien filed by PGW without prior notice to the owner of the Property violates due process and must be stricken.

10. Denied as stated. The plaintiff does not contest the right of PGW to file liens for unpaid utility services. Plaintiff contests the right of PGW to file such liens without prior notice to the plaintiff as the property owner. Nothing in the cases cited by PGW and the statutes cited by PGW permit liens to be filed against the property and property owner without proper notice and opportunity to defend. Nothing contained in any of the matters cited relieve PGW from the obligation of notifying the Property Owner (in this case, the plaintiff) of delinquent payments for utility services by persons other than the property owner. In the case of Borough of Towanda v. Brannaka, 61 Pa.Cmwlth. 622, 434 A.2d 889 (1981) the Commonwealth Court held that a lien entered without prior notice to the property owner was required to be stricken.

Municipal claims are in rem proceedings. Spramelli v. Borough of Punxsutawney, 102 Pa.Super. 557, 157 A. 522 (1931). Accordingly, the lien is either valid or invalid as to the property in question rather than as to the respective property interests involved. (pg. 625-626)

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We hold, then that ... the record owner is entitled to notice as a pre-condition to a valid municipal claim. (pg. 628)

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Accordingly, we must hold that the Borough's municipal lien claim is invalid and that it should be stricken. (pg. 628)

WHEREFORE, plaintiff demands that the lien taken against the plaintiff and his property be stricken.

Respectfully submitted,

**STEIN & SILVERMAN, P.C.**



Leon W. Silverman, Esquire  
Stein & Silverman, P.C.  
230 S. Broad Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 985-0255

Dated: May 18, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Smith

v.

Philadelphia Gas Works

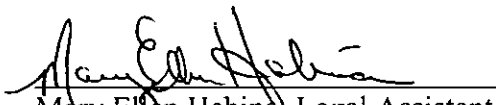
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Docket No. C-2011-2236961

**CERTIFICATE OF SERVICE**

I, Mary Ellen Habina, hereby certify that on May 19, 2011, I served a true and correct copy of the Answer, via first class, postage prepaid mail to the following:

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

  
\_\_\_\_\_  
Mary Ellen Habina, Legal Assistant  
Leon W. Silverman, Esquire

Dated: May 19, 2011

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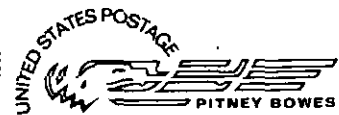
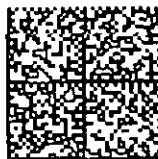
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Rosemary Chiavetta, Secretary  
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P.O. Box 3265  
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