



PHILADELPHIA GAS WORKS

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June 16, 2011

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

Re: Adamo Peters LLC v. PGW, Docket No. C – 2011 – 2243716

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: Adamo Peters LLC (Regular Mail)
Robert E. Cole, Esq. (Regular Mail)
Jonathan Wheeler, Esq. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Adamo Peters LLC, Complainant	:	
v.	:	Docket No. C – 2011 – 2243716
Philadelphia Gas Works, Respondent	:	

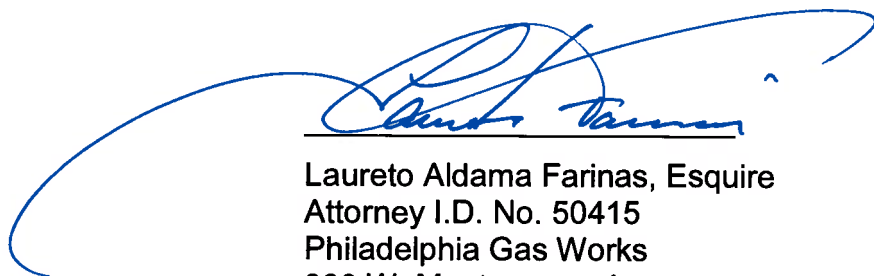
NOTICE TO PLEAD

To: Adamo Peters LLC, 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,

June 16, 2011



Laureto Aldama 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**

Adamo Peters LLC,	:	
Complainant	:	
v.	:	Docket No. C – 2011 – 2243716
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**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 to remove 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 objections and motion to strike, PGW hereby avers the following:

1. On or about May 23, 2010, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding the filing of liens for unpaid debt for gas service to 426 E. Allegheny Avenue, Philadelphia, Pennsylvania (Subject Property). A listing of the liens and the associated PGW Account Numbers and amounts are included on the listing, which is attached hereto as Exhibit “A.”
2. The Complaint includes allegations, inter alia, that the liens are defective as filed, without notice, due process or legal right and that it has no way of collecting the debts owed from the former tenants.
3. The Complainant further alleges that PGW has held the Complainant, Subject Property owner responsible for the unpaid debt of its tenants.

4. For the period from February 2008 through May 2011, the Complainant's tenants owed \$43,360.48 for unpaid gas service to the Subject Property under accounts where the Complainant's commercial and residential tenants were the Customers of Record at the Subject Property.

5. The City of Philadelphia, as owner of PGW, has filed municipal liens upon the Subject Property for the unpaid debt for gas service to the Subject Property on the accounts of the Complainant's commercial and residential tenants, 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. The Complainant requests relief in the form of a Commission order to PGW to remove the liens against the Subject Property.

7. 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) (2)¹

¹ 52 Pa. Code §5.101(a) (2) emphasis added.

8. In this case, as the Complaint states that the bills that are the subject of the liens were from gas service under the accounts of its tenants. The Complainant opines that under the circumstances, it should not be held responsible.

9. PGW has not transferred any debt owed to PGW by its tenants into an account bearing the Complainant's name for which the Complainant can be held personally 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.² *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, *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, *Nathaniel Lewis Mooney v. Philadelphia Gas Works*, Docket No. C-2009-2134673, Final Decision and Order entered May 20, 2010, *Cheryl and Lemuel Stiles v. Philadelphia Gas Works*, C-2010-2200475, Final Decision and Order entered February 4, 2011

11. The Responsible Utility Customer Protection Act at 66 Pa. Cons. Stat. § 1414, which states: "[a] city natural gas distribution operation furnishing

² 52 Pa. Code §5.101(a) (1)

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. Subject matter jurisdiction is a prerequisite for the exercise of the power to decide a controversy. Cf., *Hughes v. Pa. State Police*, 619A.2d 390 (1992), app. Denied, 637 A.2d 293 (1993) The parties may not confer subject matter jurisdiction where none exists. *Roberts v. Martorano*, 235 A.2d 602 (1967)

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

14. The filing of a lien is an *in rem* proceeding, that is, against the property and not a proceeding against a person. *Borough of Towanda v. Brannaka*, 434 A.2d 889 (1981)

15. 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 as owner of 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. Cmwith. 2000)

16. In the instant matter, the Complainant avers that it has been held responsible for gas service that the Complainant did not use and requests that the Commission to order that the Complainant is not to be held responsible for the unpaid debt through the removal of the liens.

17. PGW has not transferred any debt owed to PGW by its tenants into an account bearing the Complainant's name. PGW has not held the Complainant personally responsible for the disputed debt.

18. A request for relief from a condition that does not exist (held personally responsible for unpaid balance for gas service rendered to its tenants) 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

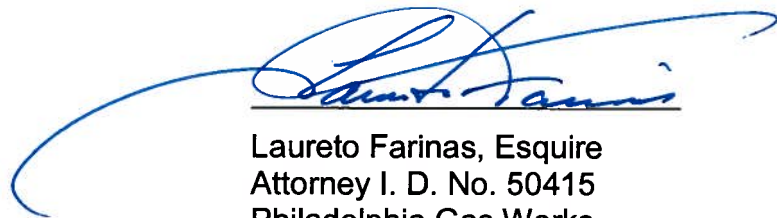
and meaning of 52 Pa. Code §5.101(a)(2) and, should be stricken from the Complaint pursuant to Pa. Code §5.101(a)(2).

19. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal liens, the Complainant's request for relief in the removal of the existing liens is "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).

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,

June 16, 2011



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

EXHIBIT A

EXHIBIT A

The City of Philadelphia, as owner of PGW, has filed multiple liens against the Service Address for municipal claims for gas service owed under various accounts as shown herein.

	PGW Account Nos.	Lien Amounts
1.	129088743	\$2,049.02
2.	129088743	\$1,879.24
3.	129088743	\$3,018.62
4.	129088743	\$2,524.66
5.	131917452	\$4,148.95
6.	182919168	\$584.30
7.	182919168	\$2,122.92
8.	182919168	\$1,140.59
9.	182919168	\$1,039.67
10	182919168	\$885.33
11	182919168	\$2,325.16
12	276131428	\$325.94
13	410283688	\$2,951.38
14	410283688	\$81.79
15	619364668	\$1,313.07
16	667990570	\$3,121.18
17	667990570	\$68.39
18	707452441	\$4,335.03
19	707452441	\$80.76
20	788823158	\$783.11
21	788823158	\$783.11
22	847998302	\$1,351.62
23	949309346	\$1,877.84
24	981801235	\$4,291.97
25	981801235	\$81.79
26	985546094	\$195.04
	TOTAL	\$43,360.48

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.

June 16, 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).

Service List:

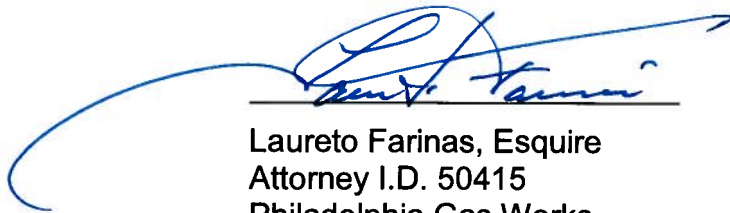
For Complainant:

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June 16, 2011



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