



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

September 1, 2011

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

Re: Faye Payne v. PGW, Docket No. C - 2011- 2247124

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 August 2, 2011, Initial Decision 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,

A handwritten signature in blue ink that reads "Danielle Ross".

Danielle Ross

Enclosure

cc: Faye Payne (Regular Mail)
Michael L. Daiello, Esq. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Faye Payne

v.

Philadelphia Gas Works

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Docket No. C – 2011 – 2247124

**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 August 2, 2011, Initial Decision (Initial Decision) sustaining PGW’s preliminary objection and dismissing the Complaint for lack of jurisdiction.

I. INTRODUCTION

On or about May 23, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 2832 S. Cantrell Street, Philadelphia, Pennsylvania (Subject Property).

The Complainant checked the “There are incorrect charges on my bill” box on the Commission’s formal complaint form and avers that she did not know a balance was owed because she did not use the gas service at the Subject Property.¹ For the period from September 6, 2006 through July 17, 2007 and for the period from February 25, 2008 through December 1, 2008, the Complainant’s tenants owed \$2,016.48 for unpaid gas service to the Subject Property under accounts where the Complainant’s tenants were the Customers of Record.² The Complainant claims that PGW placed “amounts due” on her for gas used at her property during 2006, 2007, and 2009 by her tenants. As the property owner during that time, the Complainant argues that she should not be responsible. The Complainant requests that the Commission order PGW to take the amounts due from her payment and pursue her tenants.³

¹ The Complaint

² PGW’s Preliminary Objections, p. 2

³ The Complaint, Paragraph 5

On July 7, 2011, PGW timely filed an answer denying the material allegations of the complaint, but did not deny that liens had been filed for unpaid gas service to the Subject Property under accounts of the Complainant's tenants. 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 Properties on the accounts of the Complainant's Commercial 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. Furthering the Commission's policy on settlements pursuant to 52 Ps. Code §5.231(a), PGW also sent to the Complainant a letter on the same day inviting the Complainant to engage in settlement discussions.⁴ The letter also described, generally, the formal complaint process in an attempt to engage the Complainant in settlement discussion early in the process.

On July 7, 2011, PGW also filed Preliminary Objections based upon the Commission's long standing recognition of its lack of subject matter jurisdiction over Municipal Liens. PGW's Preliminary Objections included a single cover page, Notice To Plead, pursuant to 52 Pa. Code §5.101, informing the Complainant that she had 10 days to file a written response or she may be deemed to be in default and a judgment may be entered against her. The Complainant did not file a written response to PGW's Preliminary Objections.

By notice dated July 19, 2011, the Commission informed the parties that the matter had been assigned to a Motion Judge for purposes of resolving the issues arising in the preliminary phase of the proceeding (preliminary objections). The notice includes a one-sentence paragraph stating,

An Initial Hearing, **if necessary**, will be scheduled at a later date, and the parties will be promptly notified by mail of the date, time and location for the hearing. (emphasis included)⁵

⁴ PGW's Letter of July 7, 2011, Complainant's Exceptions Ex. "B"

⁵ Motion Judge Assignment Notice, dated July 19, 2011, Complainant's Exceptions Ex. "C"

On August 2, 2011, the Commission issued the Initial Decision, sustaining PGW's Preliminary Objections and dismissing the Complaint, concluding that the Commission does not have jurisdiction to adjudicate a lien imposed on the Complainant's property for unpaid gas service.

On or about August 19, 2011, the Complainant filed exceptions to the Initial Decision arguing that the Complainant did not receive a full and fair hearing of this matter, that the amount of the of the municipal claims are incorrect, and that PGW should have terminated gas service to the tenants and that the Complainant is not responsible for the unpaid charges. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to address adequately any error in fact or law contained in the Initial Decision. Further, the exceptions fail to address the finding that the Commission lacks jurisdiction over the subject matter (liens) of the complaint. The nine (9) numbered paragraph exceptions essentially argue that the complaint stated that amount of unpaid balance for gas service is inaccurate and that the Complainant failed to have a hearing of this matter. PGW summarizes the exception paragraph and replies to the arguments made therein.

Accuracy of the Amounts Charged for Gas Service

Exception 1 – On June 6, 2011, Complainant filed her complaint against PGW.

Exception 2 – The Complainant alleges, inter alia, that the billing charges by PGW were both incorrect and amount and that the Complainant was not responsible for them.

Exception 3 – The Commission has jurisdiction to hear matters concerning the accuracy of bills.

PGW's Reply

In the Complaint, the Complainant checked the "There are incorrect charges on my bill" box on the Commission's formal complaint form and avers that she did not know a balance was owed because she did not use the gas service at the Subject Property.⁶

⁶ The Complaint, Paragraph 5

From the tenor of the additional averments in Paragraph 5 of the Complaint, the Complainant checked the box that was the closest to her concern in the sense that she was “charged” for the gas service rather than her former tenants. The additional averments in Paragraph 5 of the Complaint speak more to the Complainant’s feeling about inaccuracy of placing the amount on her bill, as she understands it. Since the Complainant had no knowledge of how her former tenants used gas, she would not know even generally if the unpaid balances were accurate. To try to raise the accuracy argument in these exceptions is a collateral attack on the authority to collect for unpaid gas debt under the Municipal Lien Act. The exception should be denied.

Full and Fair Hearing

Exception 4 – On July 7, 2011, PGW sent a letter to the Complainant acknowledging receipt of the complaint and informed the Complainant that the Commission would hold a hearing before an Administrative Law Judge (ALJ) to resolve the Complaint.

Exception 5 – PGW’s July 7, 2010 letter advised the Complainant that within “the next few weeks, the Commission would provide detailed instructions about the hearing date, time and hearing room location and other requirements and that the Complainant would have the opportunity to prove her case before the ALJ.

Exception 6 – On July 19, 2011, PUC send a letter to Ms. Payne that an Initial Hearing would be scheduled at a later date and that the parties would be promptly notified by mail of the date time and location of the hearing. The letter also sated that a Judge was assigned to the case. Ms. Payne did not receive any further letters concerning the date, time or place of a hearing from either PUC or PGW between July 19, 2011 and August 1, 2011.

Exception 7 – On August 2, 2011, PUC sent a letter to Ms. Payne informing her that the Judge assigned to the case issued an adverse ruling. Ms. Payne was not informed of the hearing by either PUC or PGW proper to the hearing. Ms. Payne had no reason to know a hearing would be held on August 2, 2011 because PUC’s letter July 19, 2011 stated that the Initial Hearing would be scheduled at a later date and that notice would be given to Ms. Payne.

Exception – 8 As a result of the lack of notice given to Ms. Payne by PUC, Ms. Payne did not receive a full and fair hearing or indeed any hearing at all.

PGW's Reply

As stated above, furthering the Commission's policy on settlements pursuant to 52 Ps. Code §5.231(a), PGW also sent to the July 7, 2011 letter inviting the Complainant to engage in settlement discussions. The letter also described, generally, the formal complaint process in an attempt to engage the Complainant in settlement discussion early in the process. This letter was not an attempt to confuse the Complainant.

In addition, on July 7, 2011, PGW filed Preliminary Objections based upon the Commission's long standing recognition of its lack of subject matter jurisdiction over Municipal Liens. PGW's Preliminary Objections included a single cover page, Notice To Plead, pursuant to 52 Pa. Code §5.101, informing the Complainant that she had 10 days to file a written response or she may be deemed to be in default and a judgment may be entered against her.⁷ The Complainant did not file a written response to PGW's Preliminary Objections. Thus having been informed that a judgment could be entered against her, the Complainant still failed to respond to the PGW's Preliminary Objections.

Irrespective of the effect of PGW's July 7, 2011 letter and its Preliminary Objections upon the Complainant, any confusion would have been relieved by the Commission's notice of July 19, 2011. By that notice, the Commission informed the parties that the matter had been assigned to a Motion Judge for purposes of resolving the issues arising in the preliminary phase of the proceeding (preliminary objections). The notice includes a one-sentence paragraph stating,

An Initial Hearing, **if necessary**, will be scheduled at a later date, and the parties will be promptly notified by mail of the date, time and location for the hearing. (emphasis included)⁸

⁷ Initial Decision, p. 3, Finding of Fact No. 6

⁸ Complainant's Exceptions, Ex. "C"

Thus, the Commission notified the parties that a hearing might not be necessary as it appeared in bold print in the notice. Conspicuously, the exception paragraphs omit the mention of the Commission's statement that the parties would be notified of the hearing date, time, and location, if necessary. To argue that the Complainant was somehow misinformed by the notices and other communications by selectively pointing out some information without addressing the Commission's notice of the scheduling of a hearing only if necessary fails to show how that the Complainant's right to be heard was violated. The Complainant failed to respond to PGW's Preliminary Objections.⁹

Termination of Tenants' Gas Service

Exception 9 – PGW failed to mitigate its damages related to this incident. Specifically, PGW should have discontinued service to the tenants before allowing multi-thousand dollar bill accrue.

PGW's Reply

The Complainant did not raise this argument Complaint and therefore should not be considered as a reason to reverse the Initial Decision. Even if it had been raised, it does not affect the Initial Decision's finding that the Commission lacks jurisdiction over the liens filed under the authority of the Municipal Lien Act.

Despite the arguments made in the exceptions paragraphs, the Complainant in this matter, simply wishes not be held responsible for the gas the Complainant did not use and for the Commission to order the removal of the lien. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, the Complainant's exceptions should be denied.

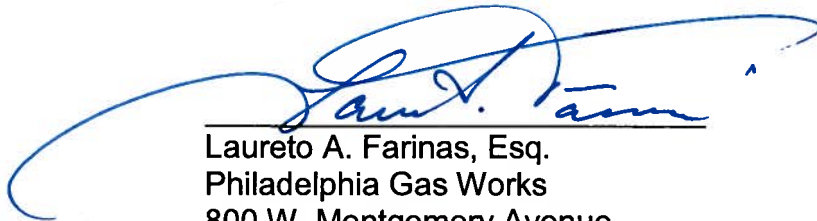
⁹ Initial Decision, p. 3, Finding of Fact No. 6

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant's exceptions to the Initial Decision and adopt, completely the Initial Decision issued August 2, 2011, in this matter.

Respectfully submitted,

September 1, 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).

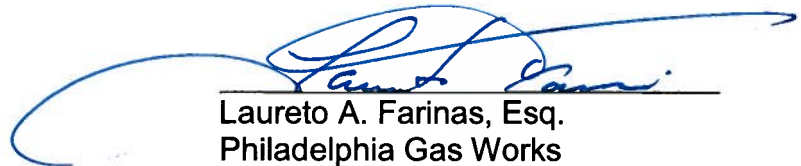
Service List:

For Complainant:

Michael L. Daiello, Esq.
Law Office of William J. Faust, II, Esq.
1301 South Broad Street, Suite 205
Philadelphia, PA 19147

Ms. Faye Payne
1717 Napa Street
Philadelphia, PA 19145

September 1, 2011



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