

Philadelphia Gas Works



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February 10, 2012

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

RE: Larry and Gail Newman v. PGW Docket No. C – 2011 – 2273565

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original and nine (9) copies of its Reply to Exceptions to the Initial Decision issued January 11, 2012, in above captioned matter.

If additional information is needed about this matter, please contact me at my direct-dial number above. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Laureto Farinas", is written over a large, sweeping horizontal line that extends to the left.

Laureto Farinas

cc: Service List
Linda Pereira

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FEB 26 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry and Gail Newman

v.

Philadelphia Gas Works

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Docket No. C – 2011 – 2273565

**PHILADELPHIA GAS WORKS'
REPLY TO COMPLAINANT'S EXCEPTIONS**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated January 11, 2012, covering the Initial Decision in the above captioned matter, the Philadelphia Gas Works, ("PGW") hereby files an original and nine (9) copies of its reply to the Complainant's exceptions to the January 11, 2012, Initial Decision (Initial Decision).

I. INTRODUCTION

In this matter, the Complainants claim that they rent out their property at 8026 Germantown Avenue, Philadelphia, Pennsylvania (Subject Property). The Complaint states that PGW placed liens on the Subject Property for the unpaid debt for gas service used at the Subject Property of former tenants. The City of Philadelphia, as owner of PGW, has a municipal claim and may file liens for unpaid debt for gas service to properties within the City of Philadelphia. Such a filing is permissible 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).

On or about November 14, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, seeking the removal of the liens, which represent the unpaid debt for gas service to the Subject Property, the municipal claims.

On December 8, 2011, PGW 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. On that same day, PGW also filed Preliminary Objections and Motion to Strike Impertinent Matter arguing that the Commission lacks subject matter jurisdiction of the filing such liens.

On January 11, 2012, the Commission issued the Initial Decision, which, *inter alia*, dismissed the Complaint, without prejudice, concluding that the Commission does not have jurisdiction to adjudicate a lien imposed by PGW on the Complainant's property for unpaid gas service¹.

The Complainant filed exceptions to the Initial Decision. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainants' exceptions fail to address any error in fact or law contained in the Initial Decision refuting the Conclusion of Law that the Commission lacks jurisdiction over the subject matter (liens) of the complaint.

Reply to Exception 1 – Exception 1 discusses the Complainants' filing of the answer to the Preliminary Objections.

PGW had received an undated and unsigned copy of an answer to PGW's Preliminary Objections. After a review of the Commission's website document search, PGW assumes that the Commission considers that the Complainants filed their answer to PGW's Preliminary Objections timely.

Reply to Exception 2 – Exception 2 discusses the Commission's jurisdiction over utility service, the Complainants reputation, and their alleged treatment by the owners of PGW, the City of Philadelphia in the filing of the liens.

As stated previously, The Complainants' exceptions fail to address any error in fact or law contained in the Initial Decision refuting the Conclusion of Law that the Commission lacks jurisdiction over the subject matter of the complaint. 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 Properties on the accounts of the Complainant's tenants, pursuant to the Municipal Lien Act.

As the Municipal Lien Act has been in effect since 1923, the City of Philadelphia as owner of PGW had authority to collect on municipal claims owed to PGW for gas service to a Service Address since that time.

¹ Initial Decision, p. 6

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. *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.

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. Thus, it is clear that the legislature did not intend the Commission to have jurisdiction over the Municipal Lien Act. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (1967). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Commission*, 43 A.2d 348 (1945)

Therefore, the Commission should deny the Complainants exception.

Reply to Exception 3 – Exception 3 discusses the Commission’s jurisdiction over utility billing, stating that PGW’s accounting of gas used at the Subject Property while no customer of record could be identified should result in a Commission order to remove the lien.

The Complaint, as filed, did not aver any facts regarding the billing of gas used at the Subject Property. The Complainants’ argument about billing is merely a collateral attack on the filing of the liens. Furthermore, the pleadings show that in attempting to have the user without contract make application for gas service PGW followed its procedures and left notice for the resident of the Subject Property to make application for gas service.²

Therefore, the Commission should deny the Complainants’ exception.

Reply to Exception 4 – Exception 4 discusses PGW actions while the Subject Property had a user with contract in residence.

As stated above, the Complaint, as filed, did not aver any facts regarding the billing of gas used at the Subject Property. The Complaint identified the Complainants’ tenant as the person who used the gas. The Complainants’ argument about this matter is merely a collateral attack on the filing of the liens. Furthermore, the pleadings show that in attempting to have the user without contract make application for gas service, PGW followed procedures by leaving notice for the resident of the Subject Property to make application for gas service or face termination of service. After receiving the notice, the tenant contacted PGW.³

Therefore, the Commission should deny the Complainants’ exception.

Reply to Exception 5 – Exception 5 further discusses PGW actions while the Subject Property had a user with contract in residence.

As stated above, the Complaint, as filed, did not aver any facts regarding the leaving of notices used in contacting a user without contract at the Subject Property. The Complainants’ argument in referring to the leaving of notices as “junk mail” is merely a collateral attack on the filing of the liens. The pleadings show that in

² PGW’s Answer to the Complaint, Paragraph 4, p. 2

³ PGW’s Answer to the Complaint, Paragraph 4, pp. 2 – 3

attempting to have the user without contract make application for gas service PGW followed procedures and left notice for the occupant of the Subject Property to make application for gas service or face termination of service. After receiving the notice, the tenant contacted PGW.⁴

Therefore, the Commission should deny the Complainants' exception.

Reply to Exception 6 – Exception 6 discusses the legislature's intention to allow municipalities to lien for municipal claims.

As stated above, the Municipal Lien Act has been in effect since 1923, the City of Philadelphia as owner of PGW had authority to collect on municipal claims owed to PGW for gas service to a Service Address since that time. The Complainants misinterpret the more recent statutes confirming the City of Philadelphia's right to file such liens as it relates to the jurisdiction of the Commission. As to PGW's actions, PGW followed its procedures and left notice for the occupant of the Subject Property to make application for gas service or face termination of service.⁵

Therefore, the Commission should deny the Complainants' exception.

Reply to Exception 7 – Exception 7 discusses the provision of utility service, the Complainants' socio-economic class, their college age children, their jobs, their adherence to the law in the payment of taxes, and their alleged treatment by PGW.

Even in the last exception, the Complainants fail to address any error in fact or law contained in the Initial Decision refuting the Conclusion of Law that the Commission lacks jurisdiction over the subject matter of the complaint.

In this case, as the Complainants rely on the fact that the bills that are the subject of the liens were from gas service under the account of his tenant. The Complainants opine that, under these circumstances, they should not be held responsible.

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

⁴ PGW's Answer to the Complaint, Paragraph 4, pp. 2 – 3

⁵ PGW's Answer to the Complaint, Paragraph 4, pp. 2 – 3

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) The proceeding to obtain the City's municipal claim is an *in rem* proceeding. As such, the neither the City nor PGW assert personal responsibility against the Complainant, but rather, the Subject Property is responsible for satisfying the municipal claim. *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir.1988)

The Complainants' further discussion of unfair treatment remains a thinly veiled attack on the filing of the liens. The argument they were treated unfairly despite their adherence to the law and good citizenship is similarly flawed. The pleadings show that even as of June 2011, the Complainants did not have a Renter's License from the City of Philadelphia.⁶ Although the Complainants argue they had no notice of PGW's Landlord Cooperation Program (LCP), their lack to notice about LCP was occasioned by the failure to have a Renter's License.⁷

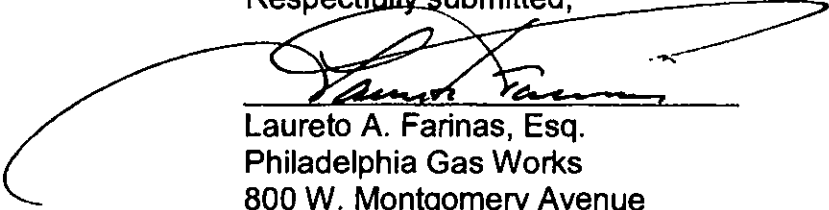
III. CONCLUSION

In the instant matter, the Complainant 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, despite the several unfounded arguments regarding service. As the Commission is without jurisdiction to decide on matters involving the imposition of liens pursuant to the Municipal Lien Act, the Commission should deny the Complainants' exceptions.

For the reasons stated above, the PGW requests that the Commission deny the Complainant's exceptions to the Initial Decision and adopt, completely the Initial Decision issued January 11, 2012 in this matter.

February 10, 2012

Respectfully submitted,



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

⁶ PGW's Answer to Complaint, p. 3

⁷ PGW's Answer to Complaint, p. 3 and Complainants' Answer to Preliminary Objections, p. 4

CERTIFICATE OF SERVICE

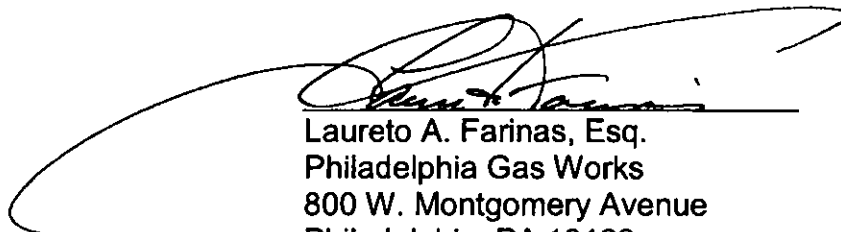
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. & Mrs. Larry and Gail Newman
631 Fernfield Circle
Strafford, PA 19087

February 10, 2012



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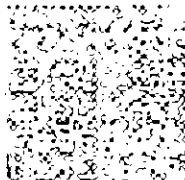
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SECRETARY'S BUREAU

068-3435

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