



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

March 9, 2012

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

Re: Guy Laren v. PGW, Docket No. C - 2008- 2058148

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original and nine (9) copies of it's reply to the Complainant's exceptions to the February 8, 2012, 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,



Danielle Ross

Enclosure

cc: Guy Laren (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Guy Laren

v.

Philadelphia Gas Works

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:
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Docket No. C – 2008 – 2058148

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

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated February 8, 2012, covering the Initial Decision issued February 8, 2012, in the above captioned matter (Initial Decision), the Philadelphia Gas Works, (“PGW”) hereby files an original and nine (9) copies of its reply to the Complainant’s exceptions to the Initial Decision.

I. INTRODUCTION

The latest controversy at the center of this matter is the Complainant’s request to “enforce settlement” by the Complainant’s Petition filed September 4, 2009, of this matter originally settled by letter dated November 19, 2008¹, which is attached hereto as Exhibit “A,” (Settlement Letter) with the Certificate of Satisfaction filed November 21, 2008.

Originally, PGW had billed the Complainant \$9,715.04 (Disputed Amount) for gas use at his commercial rental property 4111 Lancaster Avenue, Philadelphia, Pennsylvania (Service Address) for the period from November 2004 through June 2006 (Disputed Period). As the parties discussed the matter, PGW learned that the Complainant claimed to have had two (2) different tenants at the Service Address who should have applied for gas service during the Disputed Period. In settlement of the matter, PGW agreed to remove the Disputed Amount from the Complainant’s account and bill the Complainant’s tenants for the appropriate periods of their tenancy upon the Complainant’s written confirmation of their tenancies and dates of occupancy of the Service Address.

¹ The Settlement Letter was attached as Exhibit “A” to the Complainant’s Memorandum in support of its position and submitted to Administrative Law Judge Cynthia W. Fordham and served upon PGW, filed on January 6, 2011. (See Initial Decision, p. 3)

After some delay in the Complainant's provision of written confirmation under the terms of the settlement, PGW pro-rated the Disputed Amount between the Complainant's tenants and billed them accordingly. One tenant, the Community Pre-school & Nursery, LLC was still a tenant at the time of the pro-rate and billing. It paid its portion of the Disputed Amount in full.² The other tenant, the Philadelphia Housing Authority (PHA) did not pay the bill for the pro-rated outstanding balance of \$2,760.32, which was in a PGW account in that tenant's name.³

Thereafter, the City of Philadelphia placed liens on the Service Address for the unpaid debt for gas service used there by the Complainant's 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 March 16, 2009, by Secretarial letter the Commission marked case closed. Nevertheless, on September 4, 2009, the Complainant filed the Petition to Enforce Settlement. PGW did not file an answer to the Petition to Enforce Settlement, as the Commission's usual practice is to provide such filings (long after the matter is marked closed) with a new docket number to consider the matter a new complaint for its service upon the respondent utility.

On November 22, 2010, the Complainant filed a Petition to Join an Essential Party, requesting that the Commission join PHA as a party to the action to enforce settlement.

On December 14, 2010, in accordance with the schedule established during the prehearing conference PGW filed an Answer/Objection to the Complainant's Petition to Join an Essential Party, objecting to the request to join PHA as a party.

On January 6, 2011, the Complainant filed a Memorandum, outlining his argument that PGW violated the Settlement Letter by filing a municipal lien and that PHA was an essential party to the matter.

² Initial Decision, p. 5, Findings of Fact, Paragraph 14

³ Initial Decision, p. 5, Findings of Fact, Paragraphs 15, 17 and 19

On February 8, 2012, the Commission issued the Initial Decision, which, *inter alia*, concluded that the City of Philadelphia, as owner of PGW, has the right to collect on municipal claims owed to PGW for gas service and may file liens with the court of common pleas pursuant to the Natural Gas Choice and Competition Act, 66 Pa. C.S.A. §2201 et seq., §2212(n) and ordered that the Complainant's Petition to Enforce Settlement is denied as moot, that the parties complied with the Settlement Letter in that matter filed by the Complainant at Docket No. C-2008-2058148, and that the Complainant's Petition to Join Indispensable Party is denied.⁴

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 that both parties had complied with the terms of the settlement contained in the Settlement Letter of November 19, 2008.

Exception 1

The agreement between the parties states that it is "in complete settlement of all issues in this matter." The underlined emphasis comes directly out of the letter written by counsel for PGW outlining the terms of the settlement.

Exception 2

If the settlement settled all issues in the matter, PGW cannot file a lien against Mr. Laren's property. That was not part of the agreement.

Exception 3

PGW is limited to pursuing collection against the responsible parties, the tenants who used the gas service. That is what the settlement agreement says.

Reply to Exceptions 1, 2 and 3

The words "In complete settlement of all issues in this matter,..." refers to the settlement of the Complaint at the Commission Docket No. C-2008-2058148. In Exception 1, the Complainant seems to argue that the settlement of the billing dispute for unauthorized usage extends beyond the matter contained in the complaint. Under

⁴ Initial Decision, p. 12

the complaint in this docket, PGW found that gas was used at the Service Address, a commercial building. PGW billed the owner of the commercial building as PGW deemed the owner as having possession and control of the building. After the Complainant provided information about his tenants, PGW removed the billed amounts from the Complainant's account and re-billed his tenants. All issues in the matter concerned the appropriate billing for gas used during the Disputed Period and nothing more. PGW removed the Disputed Amount from the Complainant's account. The terms contained in the Settlement Letter do not address anything concerning liens. By the absence of any terms relating to the filing of liens, it appears that the parties had not contemplated the settlement to address any other legal proceeding but the Complaint at C-2008-2058148.

The Complainants' inferring that liens were part of the Settlement Letter is merely a collateral attack on the filing of the liens. It is well settled that the Commission lacks jurisdiction over

Therefore, the Commission should deny Exceptions 1, 2 and 3.

Exception 4

There is no legal distinction between PGW and the City of Philadelphia. *Philadelphia Facilities Management Corporation v. Beister*, 60 Pa.Cmwlth. 366, 431 A.2d 1123

Exception 5

PGW has been referred to as "a marketing name under which the City of Philadelphia sells gas to residents of Philadelphia." *Houser v. Philadelphia Gas Commission, et al*, 14 Phila.Co.Rptr. 605, 617, 1986 WL 5015333 (Pa.Com.Pl. 1986)

Exception 6

The assertion in Paragraphs 6 and 7 of the answer that the city of Philadelphia is the owner of PGW is inaccurate.

Exception 7

The City of Philadelphia is bound by the terms of the settlement and cannot hide behind a legal entity that does not exist in order to violate the agreement.

Reply to Exceptions 4, 5, 6 and 7

The fact that PGW is or is owned by the City of Philadelphia is of no bearing to the soundness of the Initial Decision of this matter. While attempting to underscore the relationship and or distinction between PGW and the City of Philadelphia, the Complainant fails to recognize the distinction between the Complaint in this matter and the filing of a lien under the Municipal Lien Act. The proceeding to obtain and enforce the City's municipal claim line is an *in rem* proceeding. The lien is either valid or invalid at to the property in question rather than as to the respective property interests involved. What this means is that the property, not the Complainant or the tenant is responsible for satisfying the claim secured by the municipal lien. No personal responsibility is asserted against the Complainant by the filing of the lien on the property. *Avner and Gail Yamin v. Philadelphia Gas Works*, Docket No. C-2011-2221883 (Final Order entered June 29, 2011, citing, *Borough of Towanda v. Barannaka*, 61 Pa. Cmwlth. 622; 625 – 626 (1981) and *Philadelphia v. Northwood Textile Mills, Inc.* 149 A.2d 60 (1959)

Whether PGW is owned by or is the City of Philadelphia, the Complainant fails to demonstrate that the Complainant's billing dispute under the above captioned matter is the same as the municipal lien filing in the Court of Common Pleas.

Further, the Commission has repeatedly recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. *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 Opinion 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), *Agron Vata v. Philadelphia Gas Works*, Docket No. C-2009-2149960 (Final Order entered August 24, 2010), *William Petravich v. Philadelphia Gas Works*, Docket No. C-

2010-2188984, (Final Opinion and Order entered February 10, 2011), *Avner and Gail Yamin v. Philadelphia Gas Works*, Docket No. C-2011-2221883, (Final Order entered June 29, 2011), *Ardelle Jackson v. Philadelphia Gas Works*, Docket No. C-2009-2119940 (Final Opinion and Order entered July 1, 2011)

As the Complainant fails to recognize the distinction between the Complaint in this matter and the filing of a lien under the Municipal Lien Act, the Commission should deny Exceptions 4, 5, 6 and 7.

Exception 8

In the settlement agreement, PGW agreed that they would be responsible for pro-rating the bills between the two relevant tenants, re-bill them and either resolve or litigate the dispute. They accomplished this with one tenant.

Exception 9

The Philadelphia Housing Authority has been unresponsive.

Exception 10

PGW may only collect any amounts owed from the Philadelphia Housing Authority.

Exception 11

Since PGW has decided to violate the settlement agreement by initiating collection proceedings against a party who is not responsible, the party that is essential to be joined into the action.

Reply to Exceptions 8, 9, 10 and 11

The Initial Decision, as supported by the undisputed facts, PGW removed the disputed amount from the Complainant's account and billed the Complainant's tenants for the gas usage for the Disputed Period. The Complainant fails to recognize the distinction between the Complaint in this matter and the filing of a lien under the Municipal Lien Act.

Finally, the Exceptions fail to demonstrate how the rights of PHA are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights. PGW and the Complainant are parties to the above captioned matter. The parties entered into a settlement as shown in the Settlement Letter. The

parties complied with the terms of the settlement. PGW billed PHA for its proportionate share of gas use during the disputed period.⁵

Thus, the Commission should deny Exceptions 8, 9, 10 and 11.

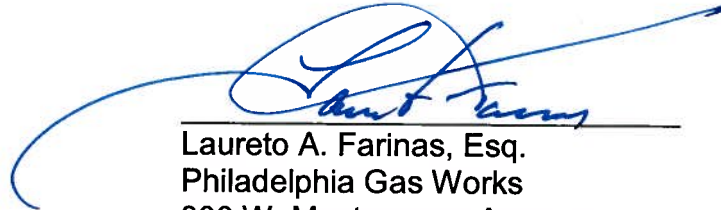
III. CONCLUSION

In the instant matter, the Complainant simply wishes to infer that the settlement of the above captioned matter in November 2009 included municipal liens and raises these arguments as a collateral attached on the applicability of such liens for the Commission to order the removal of the lien.

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 February 8, 2012 in this matter.

Respectfully submitted,

March 9, 2012



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

⁵ Initial Decision, p. 13

Exhibit A

Philadelphia Gas Works



800 West Montgomery Avenue, Philadelphia, PA 19122

Laureto A. Farinas, Senior Attorney
Legal Department

Direct Dial: 215-684-6982

FAX: 215-684-6798

E-mail: laureto.farinas@pgworks.com

November 19, 2008

Mr. Guy Laren
426 S. 44th Street
Philadelphia, PA 19104

RE: Guy Laren v. PGW, Docket No. C – 2008 – 2058148

Dear Mr. Laren:

Pursuant to our settlement conference on November 14, 2008, with Anne Marie Cromley, Senior Customer Review Officer – PGW, this letter confirms the settlement of the above captioned matter.

In complete settlement of all issues in this matter, you have discussed your concerns with your account and reached a settlement with PGW. The parties acknowledge and agree to the following:

1. This matter involves a disputed balance on the account for gas service to 4111 Lancaster Avenue, Philadelphia, Pennsylvania, PGW Acct. No. 0015114564 (Service Address). This is an account for gas service to the Service Address owned and/or managed by the 4041 Corporation, located at 426 S. 44th Street, Philadelphia, PA of which the Complainant in the above referenced matter is the principal owner.
2. The amount in dispute is \$9,715.04 for gas usage to the Service Address from November 2004 through June 2006.
3. You have provided orally occupancy information on two tenants occupying the service address during the disputed period in the form of two leases: [1] Philadelphia Housing Authority – occupancy April 2003 through February 2005, and [2] Community Pre-school & Nursery, LLC – occupancy March 2005 through June 2006 (the Tenants). You have indicated that these tenants were, under the terms of your leases with them, responsible for the payment for gas service and that they had failed to apply for gas service. You will provide written confirmation of the occupancy dates you have provided above according to 4041 Corporation records on corporation stationary within 10 days of the date of this letter.
4. Once the written confirmation is received, PGW will pro-rate the disputed amount between the Tenants of the Service Address for their respective periods of occupancy. If the Tenants dispute the pro-rated bills once PGW has re-billed them for the pro-rated disputed amount, you and 4041 Corporation will provide reasonable assistance to PGW in the resolution and/or litigation of the disputes.
5. Previously, in an attempt to satisfy the outstanding balance of the amount in dispute (\$9,715.04), PGW transferred a credit of \$937.58 from another of the accounts on which you are the Customer of Record. Pursuant to our settlement discussion, PGW will transfer that credit amount back to the account from which it came.
6. You have indicated on the records of this proceeding that you are satisfied with the resolution of this complaint and no longer wish to pursue the above captioned matter.

Sincerely,


Laureto Farinas

cc: Anne Marie Cromley (PGW e-mail)
Linda Pereira (PGW e-mail)

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).

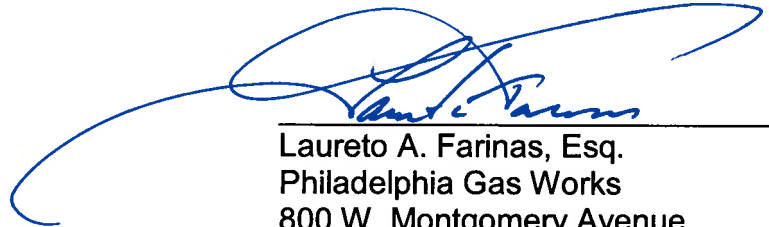
Service List:

For Complainant:

J. Matthew Wolfe, Esq.
4256 Regent Square
Philadelphia, PA 19104

Mr. Guy Laren
426 S. 44th Street
Philadelphia, PA 19104

March 9, 2012



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