



PHILADELPHIA GAS WORKS

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May 2, 2012

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MAY - 2 2012

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Cheryl Fisher v. PGW, Docket No. F – 2010 – 2215047

Dear Secretary Chiavetta:

Pursuant to the instruction of Administrative Law Judge Eranda Vero, Philadelphia Gas works hereby files its Brief of the narrow issue presented in this 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 cursive script, appearing to read 'Danielle Ross'.

Danielle Ross

Enclosure

cc: Administrative Law Judge Eranda Vero
Cheryl Fisher
Aaron Finestone, Esq.
Anne Marie Cromley
Linda Pereira

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Cheryl Fisher

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:
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v.

Docket No. F-2010-2215047

Philadelphia Gas Works

BRIEF OF PHILADELPHIA GAS WORKS

Pursuant to the instruction of Administrative Law Judge Eranda Vero (ALJ) at the conclusion of the April 2, 2012 Initial Telephonic Hearing turned Prehearing Conference, the Respondent, Philadelphia Gas Works (PGW) hereby files its Brief of the narrow issue presented in this matter.

I. Statement of Case

This matter is originally is a dispute against PGW for sending a "lien notification letter" to the Complainant. The lien, which was the subject of the letter, was for the unpaid debt for gas service (\$1,547.53) rendered to the Complainant's rental property at 7801 Fayette Street, Philadelphia, Pennsylvania (Subject Property), under an account of the Complainant's former tenant, Tarressa Holmes, for the period from February 2009 through May 2010, where the Complainant's tenant was the Customer of Record. The filing of the lien is authorized by the Municipal Claim and Tax Lien Law (Municipal Lien Act).¹ 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 Subject Property.

PGW has created the Landlord Cooperation Program (LCP). To enroll in LCP is where participating landlords agree to under certain term and conditions as enumerated on PGW's website. Under the LCP, landlords, in exchange for their cooperation in providing access to their properties, PGW provides protection for the landlords through the forbearance of its right (through the City of Philadelphia) to file municipal liens pursuant to the Municipal Lien Act.

The following facts are not in dispute. The Complainant enrolled in PGW's LCP in

¹ Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq.

2006.² PGW deactivated the Complainant's LCP enrollment on June 12, 2010 when PGW found that the Complainant's City of Philadelphia Rental License (License) expired.³ The Complainant had a rental license until in February 2010 when the Complainant's License expired because the fee had not been paid to the City of Philadelphia, Department of Licenses and Inspections (L&I). The Complainant maintains that L&I failed to bill the Complainant's management company, causing the Complainant to be remiss in payment of the License fee.⁴ The Complainant was not considered registered in LCP from June 12, 2010 through November 1, 2010 because the Complainant's Rental License.⁵ The Complainant was not protected under the LCP program and the Subject Property was subject to be lien.

The Complainant re-enrolled in LCP on October 28, 2010. On August 1, 2010, when the new tenant established service at the Service Address PGW generated a final bill for Ms. Holmes in the amount of \$1,747.89.

On or about December 9, 2010, the Complainant filed a Complaint seeking, *inter alia*, the removal of the lien because the contact for gas service at the Subject property was with the Complainant's tenant.⁶ On December 23, 2010, PGW filed its Answer and its Preliminary Objections requesting the dismissal of the matter on the grounds of the Commission's lack of subject matter jurisdiction of matters involving the Municipal Lien Act.

Administrative Law Judge Eranda Vero presided over an Initial Telephonic Hearing of this matter on April 2, 2012. After some initial testimony by the Complainant concerning the LCP and discussion of Commission's March 29, 2012 issue the Opinion and Order in *Larry and Gail Newman v. PGW*, C-2011-2273565, ALJ Vero stated that the only outstanding issue in this matter is a legal one. ALJ Vero established a briefing schedule, with Briefs due on or before May 2, 2012. There was no need for reply briefs.

² Answer, Paragraph 4b.

³ *Id.*

⁴ Complaint, p. 8, Paragraph 4B, fourth paragraph

⁵ Answer, p. 2, Paragraph 4b.

⁶ Complaint, p. 8, Paragraph 5.

II. Statement of the Question Involved

Whether the alleged breach of obligations between PGW and landlords participating in PGW's Landlord Cooperation Program constitutes an alleged violation of any of the Commission's Regulations or the Public Utility Code, thereby placing the Landlord Cooperation Program within the Commission's jurisdiction?

PGW maintains that the Commission lacks jurisdiction over the Landlord Cooperation Program in this regard.

III. Summary of the Argument:

PGW's Landlord Cooperation Program is comprised of agreements between PGW and individual landlords under certain term and conditions. Under the LCP, landlords, in exchange for their cooperation in providing PGW with access to their properties, receive protection through the forbearance of PGW's right (through the City of Philadelphia) to file municipal liens pursuant to the Municipal Lien Act for unpaid gas service. Such agreements represent private contractual matters. Alleged breaches of LCP obligations are private disputes where the rights of the parties do not arise from a utility's jurisdictional authorizations but from a private contract. As such, these disputes are beyond the jurisdiction of the Commission as any other contract for the purchase of *services into which PGW enters in performance of its duties as a jurisdictional municipally owned natural gas utility.*

III. Argument

The agreement between PGW and a landlord in the Landlord Cooperation Program is not a contract for services within Commission's determination of the provision of reasonable service under the 66 Pa. C.S.A. §1501 because such agreements represent private contractual matters and alleged breaches of LCP obligations are private disputes beyond the jurisdiction of the Commission.

The agreement that is the basis of the Landlord Cooperation Program does not fall under the purview of the Commission's determination of a utility's provision of reasonable service under the Pennsylvania Public Utility Code at 66 Pa. C.S.A. §1501, et seq. The undisputed facts the instant case show that under the LCP, landlords, in exchange for

their cooperation in providing PGW with access to their properties, receive protection through the forbearance of PGW's right (through the City of Philadelphia) to file municipal liens pursuant to the Municipal Lien Act for unpaid gas service. The rights of PGW and the participating landlord under LCP are not derived from a contract to provide gas service under PGW's tariff, neither is the right of the landlord to benefit from the forbearance of the filing of the lien. The Commission lacks jurisdiction over private contractual disputes and not from such authority as a certificate of public convenience or a filed tariff.⁷ Furthermore, the Commission has held that questions regarding the administration and the provision of notices of the LCP are not jurisdictional and the lack of provision of notice of LCP does not constitute a violation of any of the Commission's Regulations or the Public Utility Code, as it is not specifically addressed therein.⁸

IV. CONCLUSION

For the foregoing reasons, PGW respectfully requests that the Commission dismiss the Complaint.

Respectfully submitted,

May 2, 2012

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SECRETARY'S BUREAU



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

⁷ Adams v. PUC, 819 A.2d 631 (2003)

⁸ Larry and Gail Newman v. PGW, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)



PHILADELPHIA GAS WORKS

800 West 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:

Ms. Cheryl Fisher
1123 Lostinda Street
El Cajon, Ca 92019

Aaron Finestone, Esq.
215 S. Broad Street
5th Floor
Philadelphia, PA 19107

May 3, 2012

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Laureto Farinas / DAF

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

00206

00252

SPH1

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Express *US Airbill*

FedEx
Tracking
Number

8996 7490 0684

Form
ID No. 0215

Recipient's Copy

*Packages up to 150 lbs.
For packages over 150 lbs., use the new
FedEx Express Freight US Airbill.*

RECIPIENT: PEEL HERE

1 From This portion can be removed for Recipient's records.

Date 5-2-12 FedEx Tracking Number 899674900684

Sender's Name Laurel Federal Est Phone _____

Company PHILADELPHIA GAS WORKS

Address 800 W MONTGOMERY AVE Dept./Floor/Suite/Room _____

City PHILADELPHIA State PA ZIP 19122 3878

2 Your Internal Billing Reference

3 To

Recipient's Name Baronny Chevrolet, Est Phone _____

Company PA PUC

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REQUIRED. NOT available for
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REQUIRED. Available ONLY for
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FedEx 2Day to select locations.

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4 Express Package Service *To most locations.
NOTE: Service order has changed. Please select carefully.

Next Business Day

FedEx First Overnight
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Priority Overnight
Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Standard Overnight
Next business afternoon.*
Saturday Delivery NOT available.

2 or 3 Business Days

NEW FedEx 2Day A.M.
Second business morning.*
Saturday Delivery NOT available.

FedEx 2Day
Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

FedEx Express Saver
Third business day.*
Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500.

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

No Yes Yes
One box must be checked.
As per attached Shipper's Declaration. Shipper's Declaration not required.

Dry Ice
Dry Ice, 5, UN 1845 _____ x _____ kg

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7 Payment Bill to:

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Sender Acct. No. in Section 1 will be billed. Recipient Third Party Credit Card Cash/Check

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