

Philadelphia Gas Works



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May 8, 2012

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

RE: Eric Carter v. PGW, Docket No. C – 2012 – 2299188

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works ("PGW") hereby files the original Preliminary Objections to the Complaint in the above captioned matter.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Laureto Farinas", is written over a large, stylized blue scribble that extends across the page.

Laureto Farinas

cc: Service List
Anne Marie Cromley
Linda Pereira

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Carter

v.

Philadelphia Gas Works

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:
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:
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Docket No. C – 2012– 2299188

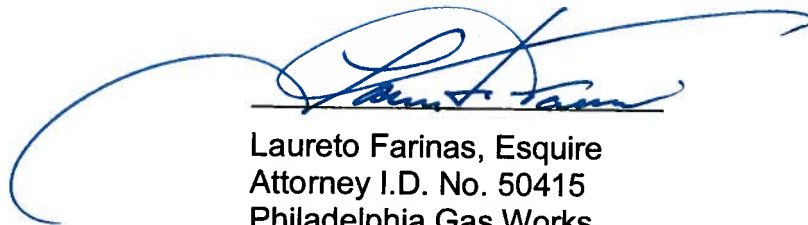
NOTICE TO PLEAD

To: Eric Carter, 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,

May 8, 2012



Laureto 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**

Eric Carter	:	
	:	
v.	:	Docket No. C – 2012 – 2299188
	:	
Philadelphia Gas Works	:	

**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 a 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 objection and motion to strike, PGW hereby avers the following:

1. On or about April 10, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 6412 N. Woodstock Street, Philadelphia, Pennsylvania (Subject Property).
2. The Complaint avers that the unpaid gas service to the Subject Property is under accounts of the Complainant’s tenants.
3. The Complainant avers that he was not informed of the arrears on his tenants accounts until began refinancing.
4. For the period from September 2006 through December 2008, Deborah Harris was the PGW customer of record at the Subject Property and owed \$987.36 for unpaid gas service to the Subject Property.

5. For the period from July 2009 through January 2012, Marcia Reynolds was the PGW customer of record at the Subject Property and owed \$3,901.48 for unpaid gas service to the Subject Property.

6. The City of Philadelphia, as owner of PGW, may file a municipal lien upon the Subject Property for the unpaid debt for gas service on the account of the customer or record, 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.

7. The Complainant requests relief in the form of a Commission order to PGW to remove the lien and/or forbear collection of the municipal claim upon which PGW would base the filing of a lien.

8. The Complainant began registration in the Landlord Cooperation program (LCP) on September 27, 2006. PGW records indicate that the Complainant did not complete the registration process. Landlords must complete a two-step process when registering for LCP. The Complainant only completed the first step.

9. In December 2010, PGW mailed letters to all landlords with active rental licenses who were not registered in LCP.

10. In December 2011, PGW sent letters to all landlords by regular mail and e-mail, informing the landlords that they would be completely dropped from the LCP by January 2012 if they did not complete the registration process.

11. On January 23, 2012, PGW removed the Complainant from LCP.

12. On February 3, 2012, PGW completed a settlement "payoff request" showing the total balance owed for usage at the property.

13. The Complainant avers that the Subject Property should be protected from the collection of the municipal claims because the property was registered in LCP. Further, the Complaint avers that PGW should have taken other steps to notify him of the status of his LCP registration.

14. 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

15. In this case, as the Complaint states that the bills that are the subject of the lien were from gas service under the tenants accounts. The Complainant opines that under circumstances, PGW should try to receive the money from the people who created the bills.

16. 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

17. The Commission has repeatedly recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon

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

² 52 Pa. Code §5.101(a) (1)

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) *Larry and Gail Newman v. Philadelphia Gas Works*, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)

18. 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.

19. 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 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)

20. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, the Complainant's request for relief is "impertinent matter" within the use and meaning of 52 Pa. Code §5.101(a) (2) and, should be stricken from the Complaint.³

21. Participation in the Landlord Cooperation Program represents an agreement between PGW and a landlord. In exchange for their cooperation in providing PGW with access to their properties, the participating landlords receive protection through the forbearance of the right (through the City of Philadelphia) to file municipal liens pursuant to the Municipal Lien Act for unpaid gas service. Such an agreement is a private contractual matter and any alleged breaches of LCP obligations are private disputes beyond the jurisdiction of the Commission.

22. The agreement between PGW and a landlord that forms 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 rights of PGW and participating landlords under LCP are not derived from a contract to provide gas service under PGW's tariff. The Commission lacks jurisdiction over such private contractual disputes. *Adams v. PUC*, 819 A.2d 631 (2003)

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

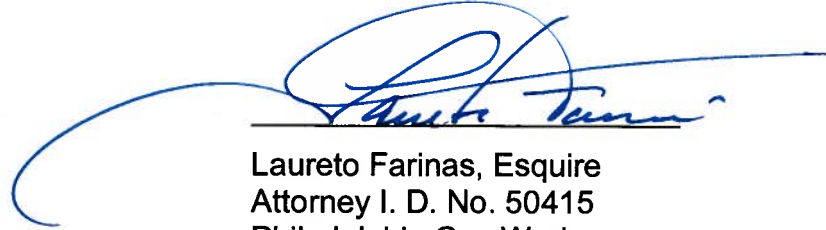
24. The Commission is without jurisdiction to decide disputes involving any alleged breach of the contract between PGW and landlords who participate in the LCP.

³ 52 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,

May 8, 2012



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

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.

May 8, 2012



Laureto Farinas, Esquire

CERTIFICATE OF SERVICE

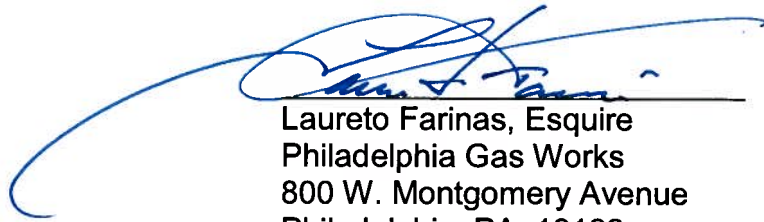
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

For Complainant:

Mr. Eric S. Carter
209 Alloway Place
Townsend, DE 19734

ecarter51@verizon.net

May 8, 2012



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