



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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June 4, 2012

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

**Re: SBG Management Services, Inc. v. PGW, Docket No. C – 2012 – 2304167**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works ("PGW") hereby files the original of its Preliminary Objections to the Complaint 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: SBG Management Services, Inc. (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                                      |
|-------------------------------------|---|--------------------------------------|
| <b>SBG Management Services Inc.</b> | : |                                      |
|                                     | : |                                      |
| <b>v.</b>                           | : | <b>Docket No. C – 2012 – 2304167</b> |
|                                     | : |                                      |
| <b>Philadelphia Gas Works</b>       | : |                                      |

**NOTICE TO PLEAD**

**To: SBG Management Services Inc, Complainant**

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objection 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,

June 4, 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**

|                                    |   |                                      |
|------------------------------------|---|--------------------------------------|
| <b>SBG Management Services Inc</b> | : |                                      |
|                                    | : |                                      |
| <b>v.</b>                          | : | <b>Docket No. C – 2012 – 2304167</b> |
|                                    | : |                                      |
| <b>Philadelphia Gas Works</b>      | : |                                      |

**Philadelphia Gas Works  
Preliminary Objections and Motion to Strike**

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works (“PGW”) hereby files its Preliminary Objection to the Complaint filed in the above captioned matter on the grounds that the Commission is without jurisdiction to the subject matter of the complaint to the extent that complaint concerns acts performed under the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207 53 P.S. §7101, et seq., and the Complainant lacks standing to bring billing disputes on behalf of the customers of record (presumably the Complainant’s tenant), and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant’s request.

In support of its preliminary objection and motion to strike, PGW hereby avers the following:

1. On or about May 11, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding liens filed against 3608 – 3610 Spring Garden and 4012 – 4028 Baring Streets, Philadelphia, PA (Service Addresses). (See Complaint, page 3 and Exhibit “A,” herein).
2. Of the 59 accounts in dispute under the instant docket number, 14 accounts are under the Complainant’s name, but 45 accounts are under the names of other entities, (the Complainant’s tenants – See: Exhibit “A”)
3. The City of Philadelphia, as owner of PGW, has filed 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.

4. The Complainant requests relief in the form of a refund and or credit for all overpayments made to PGW.

5. 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.<sup>1</sup>

6. 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

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<sup>1</sup> 52 Pa. Code §5.101(a) (1)

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)

7. 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.

8. 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)

9. PGW has not transferred the amounts that are the subjects of the Municipal Liens from tenant accounts to any accounts for which the Complainant is the customer of record.

10. 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:

...

(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)<sup>2</sup>

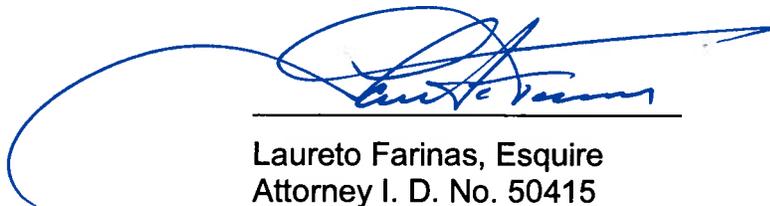
11. As the Complainant is not the customer or record on 45 of the accounts under this Complaint, to the extent that the Complainant seeks to dispute the accuracy of bills on behalf of former tenants, the Complainant lacks standing to bring the dispute on the accuracy of the PGW bills and billing practices for which the Service Address has been lien. To this extent, the dispute is merely a collateral attack on the authority to lien under the Municipal Lien Act. *Larry and Gail Newman v. Philadelphia Gas Works*, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)

12. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, and the Complainant lacks standing to bring a billing dispute on behalf of the customer of record (presumably the Complainant's tenant), 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.<sup>3</sup>

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint and strike off the requested relief as impertinent matter.

Respectfully submitted,

June 4, 2012



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

<sup>2</sup> 52 Pa. Code §5.101(a) (2) emphasis added.

<sup>3</sup> 52 Pa. Code §5.101(a) (2)

# Exhibit A

45-Other 14-SBG

|      | Account #      | Docket/Lien# | AMOUNT BILLED | COMPLAINT              |
|------|----------------|--------------|---------------|------------------------|
| ther | 0001-0023-0059 | 100230059    | \$783.29      | INCORRECTLY CHARGED US |
| ther | 0000-5349-7116 | 111130660    | \$897.86      | INCORRECTLY CHARGED US |
| ther | 0000-8517-0014 | 100230054    | \$1,642.39    | INCORRECTLY CHARGED US |
| SBG  | 0001-1011-1619 | 111230339    | \$74.97       | INCORRECTLY CHARGED US |
| ther | 0001-1213-1023 | 111230255    | \$70.35       | INCORRECTLY CHARGED US |
| ther | 0001-8048-9206 | 111230322    | \$385.34      | INCORRECTLY CHARGED US |
| ther | 0001-8910-3310 | 071235053    | \$4,751.58    | INCORRECTLY CHARGED US |
| ther | 0001-8910-3310 | 100230053    | \$3,947.94    | INCORRECTLY CHARGED US |
| ther | 0001-9003-3634 | 111230325    | \$115.76      | INCORRECTLY CHARGED US |
| SBG  | 0002-2264-7633 | 111230321    | \$201.09      | INCORRECTLY CHARGED US |
| SBG  | 0002-2774-5786 | 110331579    | \$2,794.33    | BILLING DISPUTE        |
| SBG  | 0002-2774-5786 | 111131108    | \$2,870.61    | BILLING DISPUTE        |
| ther | 0002-3116-3326 | 111130653    | \$302.01      | INCORRECTLY CHARGED US |
| ther | 0003-2978-7556 | 100230048    | \$1,307.13    | INCORRECTLY CHARGED US |
| ther | 0003-3030-7047 | 100230079    | \$955.73      | BILLING DISPUTE        |
| ther | 0003-9212-3557 | 111230333    | \$169.05      | INCORRECTLY CHARGED US |
| ther | 0004-0346-3417 | 111130647    | \$1,645.12    | INCORRECTLY CHARGED US |
| SBG  | 0004-0578-1694 | 100830052    | \$5,288.34    | BILLING DISPUTE        |
| ther | 0004-0685-3659 | 110731615    | \$550.18      | INCORRECTLY CHARGED US |
| ther | 0004-2569-7418 | 111230320    | \$316.40      | INCORRECTLY CHARGED US |
| ther | 0004-3023-6960 | 100230068    | \$951.30      | INCORRECTLY CHARGED US |
| SBG  | 0004-6376-6371 | 111230336    | \$1,266.91    | INCORRECTLY CHARGED US |
| ther | 0004-8633-3429 | 111230258    | \$367.49      | INCORRECTLY CHARGED US |
| ther | 0004-9052-5027 | 100230061    | \$848.48      | INCORRECTLY CHARGED US |
| ther | 0005-0082-5048 | 111130654    | \$180.03      | INCORRECTLY CHARGED US |
| SBG  | 0005-1489-6962 | 111230257    | \$74.78       | INCORRECTLY CHARGED US |
| SBG  | 0005-2537-0204 | 111230310    | \$60.57       | INCORRECTLY CHARGED US |
| SBG  | 0005-2537-0204 | 111130720    | \$2,651.83    | INCORRECTLY CHARGED US |
| ther | 0005-4009-3334 | 110330830    | \$74.94       | BILLING DISPUTE        |
| ther | 0005-4009-3334 | 110731913    | \$638.60      | BILLING DISPUTE        |
| ther | 0005-4009-3334 | 111130648    | \$288.78      | BILLING DISPUTE        |
| ther | 0005-5287-6975 | 111230324    | \$79.96       | INCORRECTLY CHARGED US |
| SBG  | 0005-6983-6415 | 111230259    | \$554.92      | INCORRECTLY CHARGED US |
| SBG  | 0005-6996-2215 | 111230334    | \$89.22       | INCORRECTLY CHARGED US |
| SBG  | 0006-0836-7105 | 111230340    | \$9,742.75    | BILLING DISPUTE        |
| SBG  | 0006-0836-7105 | 111230341    | \$5,338.82    | BILLING DISPUTE        |
| SBG  | 0006-0836-7105 | 100531704    | \$1,648.47    | BILLING DISPUTE        |
| SBG  | 0006-0836-7105 | 100130806    | \$21,580.52   | BILLING DISPUTE        |
| SBG  | 0006-0836-7105 | 100130807    | \$20,984.69   | BILLING DISPUTE        |
| SBG  | 0006-0836-7105 | 100130808    | \$754.81      | BILLING DISPUTE        |
| ther | 0006-2074-3089 | 111130659    | \$2,614.04    | INCORRECTLY CHARGED US |
| ther | 0006-3159-9517 | 100830693    | \$1,896.27    | INCORRECTLY CHARGED US |
| ther | 0006-7256-2596 | 100830050    | \$14,369.31   | INCORRECTLY CHARGED US |
| ther | 0006-7256-2596 | 100230050    | \$2,464.51    | INCORRECTLY CHARGED US |
| ther | 0006-9257-0139 | 111230338    | \$204.36      | INCORRECTLY CHARGED US |
| SBG  | 0007-3662-7342 | 111230323    | \$43.07       | INCORRECTLY CHARGED US |

|       | Account #      | Docket/Lien# | AMOUNT BILLED | COMPLAINT              |
|-------|----------------|--------------|---------------|------------------------|
| ther  | 0007-3726-7069 | 101130408    | \$243.99      | INCORRECTLY CHARGED US |
|       | 0007-3726-7069 | 110330829    | \$34.45       | INCORRECTLY CHARGED US |
|       | 0007-3726-7069 | 110731912    | \$172.75      | INCORRECTLY CHARGED US |
| other | 0008-0139-7495 | 111230311    | \$77.35       | INCORRECTLY CHARGED US |
| Other | 0008-0985-4163 | 100830051    | \$5,827.09    | INCORRECTLY CHARGED US |
| Other | 0008-0985-4163 | 100230051    | \$422.68      | INCORRECTLY CHARGED US |
| Other | 0008-1882-2136 | 100130824    | \$427.70      | INCORRECTLY CHARGED US |
| SBG   | 0008-3346-0196 | 111230256    | \$227.02      | INCORRECTLY CHARGED US |
| SBG   | 0009-2320-5408 | 111230337    | \$40.20       | INCORRECTLY CHARGED US |
| Other | 0009-3187-0478 | 111130661    | \$439.04      | INCORRECTLY CHARGED US |
| Other | 0009-4621-4453 | 111230335    | \$638.14      | INCORRECTLY CHARGED US |
| Other | 0031-1176-5711 | 100230047    | \$4,794.26    | INCORRECTLY CHARGED US |
| Other | 0041-1176-5818 | 100230058    | \$3,202.31    | INCORRECTLY CHARGED US |
| Other | 0091-1234-0511 | 100230057    | \$6,022.12    | INCORRECTLY CHARGED US |
|       | unknown        | 100230799    | \$587.55      | INCORRECTLY CHARGED US |
|       | unknown        | 100230071    | \$2,182.23    | INCORRECTLY CHARGED US |
|       | unknown        | 100230075    | \$1,993.43    | INCORRECTLY CHARGED US |
| Other | 0051-1176-6095 | 100230076    | \$814.67      | INCORRECTLY CHARGED US |
| Other | 0000-3318-5286 | 100230077    | \$271.85      | INCORRECTLY CHARGED US |
| Other | 0000-3006-3733 | 100230800    | \$207.05      | INCORRECTLY CHARGED US |
| Other | 0311-2107-7538 | 100230797    | \$2,136.41    | INCORRECTLY CHARGED US |
| Other | 0007-1985-6457 | 100230789    | \$226.11      | INCORRECTLY CHARGED US |
| Other | 0011-1145-0152 | 100230801    | \$97.01       | INCORRECTLY CHARGED US |
| Other | 0006-3919-6238 | 100130811    | \$3,141.63    | INCORRECTLY CHARGED US |
| Other | 0811-1176-5761 | 100230056    | \$2,763.32    | INCORRECTLY CHARGED US |
| Other | 0091-1176-5957 | 100230065    | \$1,390.80    | INCORRECTLY CHARGED US |
|       | unknown        | 100230066    | \$2,559.09    | INCORRECTLY CHARGED US |
| SBG   | 0003-5513-9832 | 120332877    | 697.88        | BILLING DISPUTE        |
| Other | 0007-3726-7069 | 110131018    | 197.03        | BILLING DISPUTE        |
| Other | 0007-3726-7069 | 100632660    | 182.82        | BILLING DISPUTE        |
| Other | 0004-5766-2500 | 111230309    | 105.26        | BILLING DISPUTE        |

**GRAND TOTAL**

**160,962.14**

## 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.

June 4, 2012



Laureto Farinas, Esquire

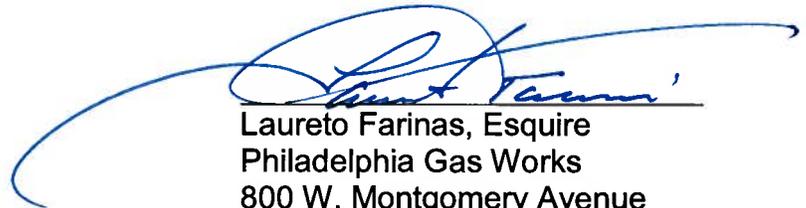
**CERTIFICATE OF SERVICE**

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:

SBG Management Services, Inc.  
P.O. Box 549  
Abington, PA 19001

June 4, 2012



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