



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

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 – 2304215

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,

A handwritten signature in blue ink, appearing to read "Danielle Ross", is written over a large, faint, light blue flame graphic that serves as a background for the signature area.

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**

SBG Management Services Inc.

v.

Philadelphia Gas Works

:
:
:
:
:

Docket No. C – 2012 – 2304215

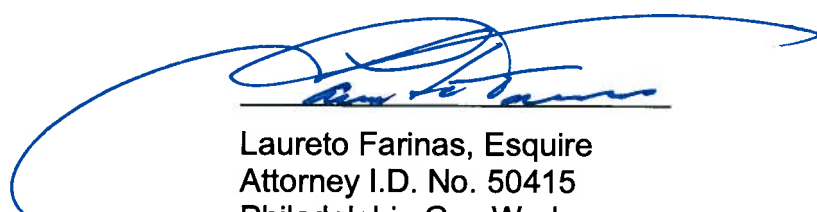
NOTICE TO PLEAD

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**

SBG Management Services Inc	:	
	:	
v.	:	Docket No. C – 2012 – 2304215
	:	
Philadelphia Gas Works	:	

**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 several properties for various accounts for gas service to 850 Fairmount Avenue, 700 N. Marshall and 600 N. Marshall Streets, Philadelphia, PA (Service Addresses) (See Complaint, page 3, 4 and 5 and Exhibit "A," herein).

2. Of the accounts in dispute under the instant docket number, several are under the Complainant's name, but many 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.¹

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*

¹ 52 Pa. Code §5.101(a) (1)

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)

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)²

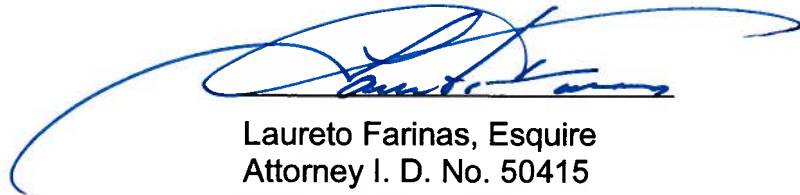
11. As the Complainant is not the customer or record on many of the accounts under this Complaint, to the extent that the Complainant seeks to dispute the accuracy of bills of former tenants, the Complainant lacks standing to bring the dispute on the accuracy of the PGW bills and billing practices for 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.³

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

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

³ 52 Pa. Code §5.101(a) (2)

Philadelphia, PA 19122
(215) 684-6982

Exhibit A

Account #	Docket/Lien#	AMOUNT BILLED	COMPLAINT
0000-1069-7864	120130200	\$222.55	INCORRECTLY CHARGED US
0000-1069-7864	120130201	\$352.22	INCORRECTLY CHARGED US
0000-1069-7864	120130202	\$706.39	INCORRECTLY CHARGED US
0000-2508-8422	100130299	\$25,140.32	BILLING DISPUTE
0000-2508-8422	111231597	\$11,479.95	BILLING DISPUTE
0000-7571-0860	100130262	\$23,536.31	BILLING DISPUTE
0000-7571-0860	120130172	\$1,174.67	BILLING DISPUTE
0000-8953-3358	100130296	\$30,113.35	BILLING DISPUTE
0000-8953-3358	111230985	\$12,538.01	BILLING DISPUTE
0000-8953-3358	111231337	\$5,298.08	BILLING DISPUTE
0001-0236-8402	120130174	\$94.99	INCORRECTLY CHARGED US
0001-3638-8914	120130163	\$59.85	INCORRECTLY CHARGED US
0001-5603-0558	111231346	\$9,721.35	BILLING DISPUTE
0001-6601-6680	120130143	\$198.64	INCORRECTLY CHARGED US
0002-1565-9749	111231345	\$429.63	BILLING DISPUTE
0002-8494-4651	120130151	\$58.96	INCORRECTLY CHARGED US
0003-0205-9064	120130150	\$47.67	INCORRECTLY CHARGED US
0003-3387-0431	100130297	\$3,271.01	BILLING DISPUTE
0003-3387-0431	100130298	\$11,326.43	BILLING DISPUTE
0003-3387-0431	111231600	\$8,991.65	BILLING DISPUTE
0003-5513-9832	100130264	\$26,154.21	BILLING DISPUTE
0003-5513-9832	111231587	\$15,562.98	BILLING DISPUTE
0003-6067-0793	120130160	\$183.39	INCORRECTLY CHARGED US
0003-7113-5833	120130180	\$68.61	INCORRECTLY CHARGED US
0003-7765-2414	120130194	\$61.65	INCORRECTLY CHARGED US
0004-3697-3205	111231341	\$1,874.05	INCORRECTLY CHARGED US
0004-3697-3205	111231340	\$88.48	INCORRECTLY CHARGED US
0004-4059-1799	120130166	\$184.53	INCORRECTLY CHARGED US
0004-6738-9137	120130162	\$876.93	INCORRECTLY CHARGED US
0004-9883-7292	120130196	\$419.88	INCORRECTLY CHARGED US
0005-6071-6053	120130216	\$295.55	INCORRECTLY CHARGED US
0005-6071-6053	120130215	\$823.51	INCORRECTLY CHARGED US
0005-6182-4675	120130148	\$328.18	INCORRECTLY CHARGED US
0005-9330-3927	120130175	\$845.63	INCORRECTLY CHARGED US
0005-9330-3927	120130161	\$302.26	INCORRECTLY CHARGED US
0005-9330-3927	120130173	\$373.06	INCORRECTLY CHARGED US
0006-1216-7092	100130300	\$53,548.41	BILLING DISPUTE
0006-2729-7262	120130208	\$382.05	INCORRECTLY CHARGED US
0006-5654-1265	120130209	\$181.68	INCORRECTLY CHARGED US
0006-6471-9425	111231575	\$3,188.25	BILLING DISPUTE
0006-7354-6755	111231349	\$649.02	BILLING DISPUTE
0006-7718-0766	100130263	\$29,173.30	BILLING DISPUTE
0006-7718-0766	111231338	\$14,342.58	BILLING DISPUTE
0006-8054-5751	111230807	\$1,200.70	BILLING DISPUTE
0007-0408-2623	120130218	\$258.03	INCORRECTLY CHARGED US
0007-1092-3687	120130171	\$526.14	INCORRECTLY CHARGED US

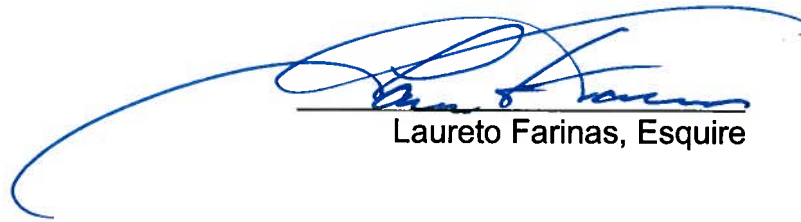
Account #	Docket/Lien#	AMOUNT BILLED	COMPLAINT
0007-2657-0180	120130170	\$800.59	INCORRECTLY CHARGED US
0007-3553-5372	120130193	\$216.42	INCORRECTLY CHARGED US
0007-3658-6029	100130266	\$28,990.64	BILLING DISPUTE
0007-3658-6029	100130267	\$328.52	BILLING DISPUTE
0007-3658-6029	100130268	\$1,413.69	BILLING DISPUTE
0007-3658-6029	100130269	\$376.18	BILLING DISPUTE
0007-3658-6029	100130270	\$268.39	BILLING DISPUTE
0007-3658-6029	100130271	\$131.01	BILLING DISPUTE
0007-3658-6029	100130272	\$188.63	BILLING DISPUTE
0007-3658-6029	100130273	\$2.29	BILLING DISPUTE
0007-3658-6029	100130274	\$46.83	BILLING DISPUTE
0007-3658-6029	100130275	\$3.88	BILLING DISPUTE
0007-3658-6029	100130276	\$3.88	BILLING DISPUTE
0007-3658-6029	100130277	\$22.58	BILLING DISPUTE
0007-3658-6029	100130278	\$628.98	BILLING DISPUTE
0007-3658-6029	100130279	\$176.15	BILLING DISPUTE
0007-3658-6029	100130280	\$82.60	BILLING DISPUTE
0007-3658-6029	100130281	\$126.39	BILLING DISPUTE
0007-3658-6029	100130282	\$102.70	BILLING DISPUTE
0007-3658-6029	100130283	\$784.91	BILLING DISPUTE
0007-3658-6029	100130284	\$72.74	BILLING DISPUTE
0007-3658-6029	100130285	\$762.02	BILLING DISPUTE
0007-3658-6029	100130286	\$51.36	BILLING DISPUTE
0007-3658-6029	100130287	\$902.31	BILLING DISPUTE
0007-3658-6029	100130288	\$178.62	BILLING DISPUTE
0007-3658-6029	100130289	\$58.50	BILLING DISPUTE
0007-3658-6029	100130290	\$199.80	BILLING DISPUTE
0007-3658-6029	100130291	\$713.22	BILLING DISPUTE
0007-3658-6029	100130292	\$264.74	BILLING DISPUTE
0007-3658-6029	100130293	\$102.70	BILLING DISPUTE
0007-3658-6029	100130857	\$129.31	BILLING DISPUTE
0007-3658-6029	100130858	\$17.92	BILLING DISPUTE
0007-3658-6029	100130860	\$15.61	BILLING DISPUTE
0007-3658-6029	111231301	\$336.01	BILLING DISPUTE
0007-3658-6029	111231342	\$313.77	BILLING DISPUTE
0007-3658-6029	111231302	\$449.26	BILLING DISPUTE
0007-3658-6029	111231299	\$1,627.77	BILLING DISPUTE
0007-3658-6029	120130182	\$16,154.03	BILLING DISPUTE
0007-3658-6029	120130153	\$232.75	BILLING DISPUTE
0007-3658-6029	120130149	\$255.75	BILLING DISPUTE
0007-4064-7420	120130144	\$609.08	INCORRECTLY CHARGED US
0007-4716-3884	111230877	\$1,517.01	INCORRECTLY CHARGED US
0007-8710-3954	120130183	\$237.49	INCORRECTLY CHARGED US
0007-9492-6376	111231339	\$203.28	INCORRECTLY CHARGED US
0008-4240-5523	120130159	\$46.36	INCORRECTLY CHARGED US
0008-9519-6409	120130217	\$433.47	INCORRECTLY CHARGED US
0009-1981-5863	111231340	\$88.48	BILLING DISPUTE
0009-3884-8436	120130154	\$571.66	INCORRECTLY CHARGED US

Account #	Docket/Lien#	AMOUNT BILLED	COMPLAINT
0009-5414-1080	120130198	\$1,416.47	INCORRECTLY CHARGED US
0009-5414-1080	120130197	\$878.98	INCORRECTLY CHARGED US
0009-5414-1080	120130199	\$417.02	INCORRECTLY CHARGED US
0009-7312-2001	100130301	\$20,554.12	BILLING DISPUTE
0009-7312-2001	111230992	\$10,416.37	BILLING DISPUTE
unknown	100830694	\$102.49	BILLING DISPUTE
0006-6471-9425	100130295	\$27,295.35	BILLING DISPUTE
unknown	110630494	\$2,743.96	BILLING DISPUTE
0006-5654-1265	120332039	157.20	BILLING DISPUTE
0003-3387-0431	120332035	9,383.68	BILLING DISPUTE
0006-1216-7092	120332037	22,792.87	BILLING DISPUTE
0002-1565-9749	120332041	245.92	BILLING DISPUTE
0006-6471-9425	120332033	606.96	BILLING DISPUTE
0000-2508-8422	120332036	12,026.33	BILLING DISPUTE
0006-7718-0766	120332032	660.03	BILLING DISPUTE
0000-8953-3358	120332034	800.45	BILLING DISPUTE
0000-8953-3358	120332038	1,013.43	BILLING DISPUTE
unknown	071235052	1,417.89	BILLING DISPUTE
unknown	111230808	345.33	BILLING DISPUTE
unknown	111230809	440.59	BILLING DISPUTE
unknown	111230983	12,538.01	BILLING DISPUTE
unknown	111231346	9,271.35	BILLING DISPUTE
unknown	111231305	79.68	BILLING DISPUTE
unknown	111231306	650.68	BILLING DISPUTE
unknown	111231307	437.18	BILLING DISPUTE
unknown	111231308	62.90	BILLING DISPUTE
unknown	111231309	344.49	BILLING DISPUTE
unknown	111231353	1,903.95	BILLING DISPUTE
unknown	unknown	11,408.93	BILLING DISPUTE
GRAND TOTAL		508,307.98	

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



Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982