



PHILADELPHIA GAS WORKS

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June 12, 2012

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

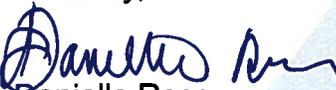
Re: Zhong Gong Bakery v. PGW, Docket No. C – 2012 – 2305795

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: Zhong Gong Bakery. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Zhong Gong Bakery

v.

Philadelphia Gas Works

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Docket No. C – 2012 – 2305795

NOTICE TO PLEAD

To: Zhong Gong Bakery, 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 12, 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**

Zhong Gong Bakery

v.

Philadelphia Gas Works

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Docket No. C – 2012 – 2305795

**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 authorization to grant the Complainant’s request from compensation for damages as the sole form of relief, and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant’s request for compensation.

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

1. On or about October 24, 2011, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service at 127 N. 10th Street, 1st Floor, Philadelphia, Pennsylvania (Service Address).
2. The Complainant avers that PGW erroneously terminated the service at the Service Address.
3. PGW terminated the service at the Service Address on March 5, 2011 after issuing a termination notice to the Service Address.
4. For the following period from October 2011 through March 2011, the Complainant’s tenant owed \$2,927.05 for unpaid gas service to the Service Address under an account where the Complainant’s tenant was the Customer of Record. PGW restored gas service after the payment of the erroneously billed new customer of record within one day after the termination.

5. The Complainant requests relief in the form of a reimbursement to the Complainant to cover the loss incurred by the Complainant when PGW terminated the gas service.

6. Pursuant to 52 Pa. Code §5.101, PGW objects to the Complaint on the grounds that the Commission is without authorization to grant the Complainant's request from compensation for damages, which is the sole form of relief requested. PGW therefore moves to strike the Complainant's request for compensation as "impertinent matter" pursuant to 52 Pa. Code §§5.101(a) (1) and (2).

7. 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)¹

8. In this case, as the Complainant states that it believes PGW terminated the service at the Service Address in error.

9. In the instant matter, the Complainant simply wishes the Commission to order PGW to cover the losses he incurred while the service was off.

10. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant.

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

Feingold v. Bell of Pennsylvania, 383 A.2d 791 (1977); *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984)

11. A prayer for relief in the form of monetary compensation for damages is not recoverable in the cause of action before this Commission as the Commission is without authorization to award compensation for damages. The request for relief is irrelevant to the instant cause of action and therefore “impertinent matter” within the use and meaning of 52 Pa. Code §5.101(a) (2).

12. The Complainant’s request for compensation for damages as the sole form of relief should be stricken from the Complaint pursuant to Pa. Code §5.101(a) (2).

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

Respectfully submitted,

June 12, 2012

Handwritten signature of Laureto Farinas in blue ink, with the initials "/DRJ" written to the right of the signature.

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.

June 12, 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:

Zhong Gong Bakery
127 N. 10th Street
Philadelphia, PA 19107

June 12, 2012

Laureto Farinas DRJ
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