



PHILADELPHIA GAS WORKS

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June 18, 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 Supplemental Information Regarding Preliminary Objections and Motion to Strike 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)
Daniel D. McCaffery, Esq. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SBG Management Services Inc.	:	
	:	
v.	:	Docket No. C – 2012 – 2304167
	:	
Philadelphia Gas Works	:	

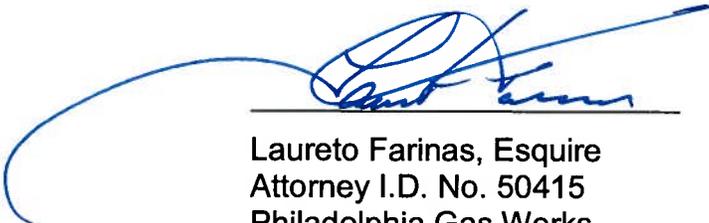
NOTICE TO PLEAD

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 Supplemental Information regarding PGW's 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 18, 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 – 2304167
	:	
Philadelphia Gas Works	:	

**Supplemental Information Regarding
Philadelphia Gas Works
Preliminary Objections and Motion to Strike**

On June 4, 2012, pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works ("PGW") filed 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 that the Complainant lacks standing to dispute the bills of its tenants and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant's request for relief.

In further support of its preliminary objections 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, Pennsylvania (Subject Properties).

2. The Complaint disputed billed amounts associated with 72 docketed liens filed with the Court of Common Pleas, Philadelphia County. These involved unpaid bills for gas services associated with 63 PGW Accounts, as shown on the listing of accounts/liens, which are the subject of this Complaint under the above captioned matter, which is attached hereto as Appendix 1.

3. The City of Philadelphia, as owner of PGW, has filed municipal liens upon the Subject Properties 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).

4. 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.

5. The Complainant requests relief in the form of a refund and or credit for all overpayments made to PGW and adjustments for excessive penalties and interest erroneously assessed on the disputed accounts.

6. Of the 65 PGW Accounts disputed in the Complainant, the Complainant is the customer of record on only 14 accounts. These 14 SBG, Inc. accounts represent 22 of the liens contained in this Complaint, as shown on Appendix 1, appearing as accounts with yellow highlighting. The remaining 51 accounts, which are the subject of this dispute are PGW Accounts where the Complainant's tenants, were customers of records at the Subject Properties.

7. The Complaint seeks to dispute the accuracy of bills and account balances associated with the remaining 51 PGW Accounts (64 liens), where the Complainant was not the customer of record on those accounts.

8. PGW has not transferred the amounts that are associated with the accounts of tenants to any accounts for which the Complainant is the customer of record.

9. 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

¹ 52 Pa. Code §5.101(a)

10. 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 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) *Faye Payne v. Philadelphia Gas Works*, Docket No. C-2011-2247124 (Order entered February 16, 2012) *Larry and Gail Newman v. Philadelphia Gas Works*, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)

11. 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.

12. 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)

13. 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.

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....
 - (5) Lack of capacity to sue...
- 52 Pa. Code §5.101(a)²

14. The Complainant lacks the ability to prosecute disputes of the accuracy of bills under the accounts of its tenants, as it has no knowledge of the trends of gas use for that tenant, the amount and timeliness of payments made on the account, and the assessment of late payment charges for unpaid balances. To the extent that the Complainant was not (and is not) the customer or record for the accounts which underlie the municipal liens that are the subject of this Complaint, the Complainant lacks standing to bring the dispute on the accuracy of the PGW bills and billing practices for which the Service. *Faye Payne v. Philadelphia Gas Works*, Docket No. C-2011-2247124 (Order entered February 16, 2012); *Larry and Gail Newman v. Philadelphia Gas Works*, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)

² 52 Pa. Code §5.101(a).

15. In February 2012, in the context of a refinance of the Subject Properties in order to satisfy outstanding real estate tax debt with the City of Philadelphia, PGW was paid to satisfy most of the outstanding liens for unpaid gas service on the Subject Properties. This included the large unpaid balance for gas services for the SBG accounts as well as other accounts associated with gas service at the Subject Properties. Although delinquent in payments on much of its accounts, the Complainant had not filed a complaint disputing accuracy of bills until payment was made in the satisfaction of municipal liens.

16. Every account, which is the subject of this complaint, is associated with a municipal lien. To the extent that the Complainant seeks to fight the satisfaction of the municipal lines, the disputes of all accounts of this matter are merely collateral attacks on the authority to lien under the Municipal Lien Act. *Faye Payne v. Philadelphia Gas Works, Docket No. C-2011-2247124 (Order entered February 16, 2012) and Larry and Gail Newman v. Philadelphia Gas Works, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)*

17. 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 (the Complainant's tenants) and that the Complaint is merely a collateral attack on the authority of the City of Philadelphia to collect unpaid gas bills by filing liens, 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

³ 52 Pa. Code §5.101(a) (2)

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

Respectfully submitted,

June 18, 2012



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

Appendix 1

**SBG - Elrae Garden Realty Co
C-2012-2304167**

PGW ACCOUNT #	CCP. DOCKET #	Customer of Record NAME	Disputed Lien Amount	DATES OF SERVICE	Bills Based Upon Actual Meter Read Yes/No	Disputed period more than 4 years	Lien Status
1 07-5761-1756	100230059	Camille Watkins	\$783.29	thru 7/9/08	yes		S
2 00-5349-7116	111130660	Derrick Wilson	\$897.86	1/1/11 thru 10/3/11	yes		S
3 00-8517-0014	100230054	Nyima Gallishaw	\$1,642.39	8/30/04 thru 2/20/06	yes		S
4 01-1011-1619	111230339	SBG	\$74.97	5/11/09 thru 9/18/09	yes	no	S
5 01-1213-1023	111230255	Bryant Deinhardt	\$70.35	4/1/10 thru 1/10/11	yes		S
6 01-8048-9206	111230322	Amber Starling	\$385.34	thru 10/31/11	yes		S
7 06-0836-7105	71235053	SBG Management	\$4,751.58	thru 10/3/07	yes	yes	U
8 01-8910-3310	100230053	Tiffany Miller Wells	\$3,947.94	thru 1/14/09	yes		S
9 01-9003-3634	111230325	Michael Bennt	\$115.76	6/4/09 thru 6/24/10	yes		S
10 02-2264-7633	111230321	SBG	\$201.09	5/5/09 thru 6/11/09	yes	no	S
11 02-2774-5786	110331579	SBG	\$2,794.33	6/30/10 thru 3/3/11	yes	no	S
12 02-2774-5786	111131108	SBG	\$2,870.61	3/3/11 thru 10/31/11	yes	no	S
**02-2774-5786 associated with docket #100830050 in the amount of \$14369.31 on another listing (satisfied)							
13 02-3116-3326	111130653	Shonderia Regan	\$302.01	thru 11/2/11	yes		S
14 03-2978-7556	100230048	Sharon Russell	\$1,307.13	11/28/06 thru 8/1/07	yes		S
15 03-3030-7047	100230079	Angela Benton	\$955.73	thru 10/31/05	yes		U
16 03-9212-3557	111230333	Hakeem Johnson	\$169.05	2/16/10 thru 2/8/11	yes		S
17 04-0346-3417	111130647	Tiara Bell	\$1,645.12	7/16/10 thru 9/30/11	yes		S
18 04-0578-1694	100830052	SBG	\$5,288.34	thru 2/19/09	yes	no	S
19 04-0685-3659	110731615	Sharee Downing	\$550.18	10/16/08 thru 5/26/11	yes		S
20 04-2569-7418	111230320	Beverly Weinblatt	\$316.40	6/2/09 thru 3/27/11	yes		S
21 04-3023-6960	100230068	F AIMS	\$951.30	2/28/06 thru 10/3/06	yes		S
22 04-6376-6371	111230336	SBG	\$1,266.91	5/11/09 thru 11/24/10	yes	no	S
23 04-8633-3429	111230258	Paa Amanhya	\$367.94	9/1/09 thru 9/28/10	yes		V
24 04-9052-5027	100230061	FAIMS	\$848.48	1/9/05 thru 8/10/06	yes		S
25 05-0082-5048	111130654	Coral Easterling	\$180.03	8/10/10 thru 9/15/10	yes		S
26 05-1489-6962	111230257	SBG	\$74.78	6/17/09 thru 10/4/09	yes	no	S
27 05-2537-0204	111230310	SBG	\$60.57	10/3/11 thru 11/1/11	yes	no	S
28 05-2537-0204	111130720	SBG	\$2,651.83	5/9/09 thru 10/3/11	yes	no	S
29 05-4009-3334	110330830	Jawanda Carter	\$74.94	thru 3/4/11	yes		S
30 05-4009-3334	110731913	Jawanda Carter	\$638.60	3/4/11 thru 7/5/11	yes		S
31 05-4009-3334	111130648	Jawanda Carter	\$288.78	7/5/11 thru 11/1/11	yes		S
32 05-5287-6975	111230324	Harry Tucker	\$79.96	6/2/11 thru 10/31/11	yes		S
33 05-6983-6415	111230259	S B G	\$554.92	2/19/09 thru 9/1/09	yes	no	S

CCP.- Common Pleas Court of Philadelphia County Docket Number for Lien filing

Lien Status- S- Satisfied, V- Vacted- U- Unsatisfied

**SBG - Elrae Garden Reality Co
C-2012-2304167**

PGW ACCOUNT #	CCP. DOCKET #	Customer of Record NAME	Disputed Lien Amount	DATES OF SERVICE	Bills Based Upon Actual Meter Read		Disputed period more than 4 years	Lien Status
					Yes/No	Yes/No		
34	05-6996-2215	S B G	\$89.22	5/11/09 thru 9/1/09	yes	no	S	
35	06-0836-7105	S B G	\$9,742.75	3/4/10 thru 12/1/11	yes	no	S	
36	06-0836-7105	S B G	\$5,338.82	12/09 thru 9/1/11	yes	no	S	
37	06-0836-7105	S B G	\$1,648.47	12/3/09 thru 3/4/10	yes	no	S	
38	06-0836-7105	S B G	\$21,580.52	5/4/07 thru 12/3/09	yes	no	S	
39	06-0836-7105	S B G	\$20,984.69	5/4/07 thru 12/3/09	yes	no	S	
40	06-0836-7105	S B G	\$754.81	9/1/11 thru 12/1/11	yes	no	S	
41	06-2074-3089	Tracie Dill	\$2,614.04	thru 10/16/08	yes		S	
42	06-3159-9517	Sharon Russell	\$1,896.27	12/17/07 thru 7/8/08	yes		S	
43	02-2774-5786	SBG	\$14,369.31	5/4/07 thru 6/30/10	yes	no	S	
44	06-7256-2596	Taria Bennett	\$2,464.51	11/16/05 thru 11/28/07	yes		S	
45	06-9257-0139	Kobina Yamoah	\$204.36	8/30/10 thru 7/12/11	yes		S	
46	07-3662-4342	SBG	\$43.07	5/11/09 thru 7/1/09	yes	no	S	
47	07-3726-7069	Jimmie Barnes	\$243.99	5/4/10 thru 7/28/10	yes		S	
48	07-3726-7069	Jimmie Barnes	\$34.45	12/7/10 thru 2/3/11	yes		S	
49	07-3726-7069	Jimmie Barnes	\$172.75	2/3/11 thru 7/5/11	yes		S	
50	08-0139-7495	Kelli Moore	\$77.35	5/5/09 thru 9/15/10	yes		S	
51	02-9473-1407	SBG	\$5,827.09	4/16/07 thru 2/19/09	yes	no	S	
52	08-0985-4163	Yadillah Mitchell	\$422.68	12/5/06 thru 8/17/07	yes		S	
53	08-1882-2136	Joseph Akers	\$427.70	7/22/07 thru 7/23/08	yes		S	
54	08-3346-0196	SBG	\$227.02	2/1909 thru 7/1/09	yes	no	S	
55	09-2320-5408	SBG	\$40.20	5/5/09 thru 6/10/09	yes	no	S	
56	09-3187-0478	William Kennedy	\$439.04	7/23/10 thru 1/1/11	yes		S	
57	09-4621-4453	Charles Collins	\$638.14	11/24/10 thru 7/12/11	yes		S	
58	31-1176-5711	Sharon Russell	\$4,794.26	12/3/04 thru 7/11/06	yes		S	
59	41-1176-5818	Danielle Westfield	\$3,202.31	12/4/02 thru 6/13/05	yes		S	
60	91-1234-0511	Lolita Tucker	\$6,179.57	3/28/00 thru 6/13/05	yes		U	
61	02-4724-9008	Machea Ellis	\$587.55	9/9/04 thru 6/6/05	yes		U	
62	04-2681-7956	Leroy Wilson	\$2,182.23	2/12/03 thru 5/11/04	yes		V	
63	03-9348-3871	Dianne Whitman	\$1,993.43	6/13/02 thru 8/23/04	yes		V	
64	51-1176-6095	Tanya Crawley	\$814.67	9/27/00 thru 6/11/02	yes		V	
65	00-3318-5286	Dana L. Wilson	\$1,760.69	5/22/00 thru 6/10/10	yes		S	
				**on list provided shows \$271.85 lien shows \$1760.69 customer on CRP				
66	00-3006-3733	Beverly Johnson	\$207.05	4/1/02 thru 10/24/02	yes		U	
67	31-1210-7538	Trina Gillard	\$2,136.41	8/22/07 thru 8/8/08	yes		U	
				***customer currently on CRP at current address				

**SBG - Elrae Garden Reality Co
C-2012-2304167**

PGW ACCOUNT #	CCP. DOCKET #	Customer of Record NAME	Disputed Lien Amount	DATES OF SERVICE	Bills Based Upon Actual Meter Read		Disputed period more than 4 years	Lien Status
					Yes/No	Yes/No		
68 07-1985-6457	100230789	Hopewell-PGW	\$226.11	10/29/03 thru 10/20/04	yes			U
69 11-1145-0152	100230801	Kimberly Kinnard	\$97.01	7/2/03 thru 9/19/03	yes			U
70 06-3191-6238	100130811	Richard Dunham	\$3,141.63	5/10/02 thru 4/26/06	yes			U
	DOCKET #	NAME	LIEN	DATES OF SERVICE	Yes/No			Lien Status
71 81-1176-5761	100230056	Chevelle Kitcart	\$2,763.32	thru 4/1/02	yes			V
72 91-1176-5957	100230065	Akasha Dasher	\$1,390.80	2/3/04 thru 6/13/05	yes			S
73 91-1176-5957	100230066	Akasha Dasher	\$2,559.09	11/13/02 thru 8/23/04	yes			V
74 03-5513-9832	120332877	SBG/Fairmt Ct Re	\$697.88	12/1/11 thru 1/4/12	yes	no		S
75 07-3726-7069	110131018	Jimmie Barnes	\$197.03	thru 1/5/11	yes			S
76 07-3726-7069	100632660	Jimmie Barnes	\$182.82	Thru 6/21/10*	yes			S
				Lien originally filed for \$1172.85				
77 04-5766-2500	111230309	Omanjuw Wyse	\$105.26	6/2/11 thru 11/1/11	yes			S

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 18, 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

Daniel D. McCaffery, Esq.
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046

June 18, 2012



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