



**PHILADELPHIA GAS WORKS**

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June 25, 2012

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

**Re: SBG Management Services v. PGW, Docket No. C – 2012 – 2304324**

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 (Regular Mail)  
Daniel D. McCaffery, Esq. (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>SBG Management Services Inc.</b>	:	
	:	
v.	:	<b>Docket No. C – 2012 – 2304324</b>
	:	
<b>Philadelphia Gas Works</b>	:	

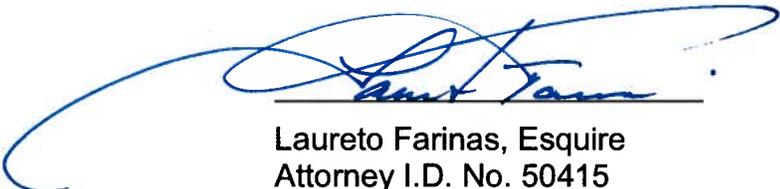
**NOTICE TO PLEAD**

**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 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 25, 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 – 2304324</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**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 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 14, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding liens filed associated with properties managed by Simon Garden Realty Co., LP), for gas usage at 6731 Musgrave Street, A & B and 6732 Chew Avenue, M2, Philadelphia, Pennsylvania (Subject Properties).

2. The Complaint disputed billed amounts associated with several docketed liens (19) filed with the Court of Common Pleas, Philadelphia County. These involved unpaid bills for gas services associated with 19 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. The Complainant is not the customer of record on any of those PGW Accounts disputed in the Complaint. The customer of record is Simon Garden Realty Co., LP. (See Appendix 1)

7. PGW is uncertain about the relationship of Simon Garden Realty Co., LP to the Complainant. To this extent, it appears that the Complainant seeks to dispute the accuracy of bills and account balances where the Complainant was not the customer of record on those accounts.

8. PGW has not transferred the amounts that are associated with the disputed accounts 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.<sup>1</sup>

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

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<sup>1</sup> 52 Pa. Code §5.101(a)

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. 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)<sup>2</sup>

13. In February 2012, in the context of a refinance of the Complainant's 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. Although delinquent in payments on many of its accounts, the Complainant had not filed a complaint disputing accuracy of bills until payment was made in the satisfaction of municipal liens.

14. 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)*

15. The Complainant lacks the ability to prosecute disputes of the accuracy of bills under the accounts of another entity, 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

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<sup>2</sup> 52 Pa. Code §5.101(a).

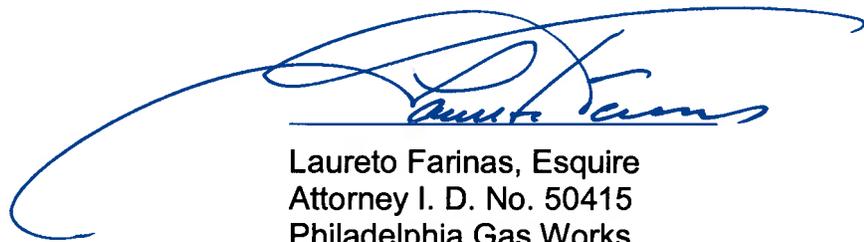
or record for the accounts which underlie the municipal liens that are the subject of this Complaint, the Complainant lacks standing to bring the dispute on the accuracy of the PGW bills and billing practices for which the Service. *Faye Payne v. Philadelphia Gas Works, Docket No. C-2011-2247124 (Order entered February 16, 2012); Larry and Gail Newman v. Philadelphia Gas Works, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)*

16. As the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, 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.<sup>3</sup>

**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 25, 2012



Laureto Farinas, Esquire  
Attorney I. D. No. 50415  
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(215) 684-6982

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

# Appendix 1

**SBG - Simon Garden Realty, LP  
C-2012-2304324**

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			
1	05-3954-7187	111231526 SIMON GARDEN	\$6,231.17	8/29/00 thru 12/30/11	yes			U
2	05-3954-7188	111231527 SIMON GARDEN	\$11,687.21	8/29/00 thru 12/30/12	yes			U
3	05-3954-7189	111231528 SIMON GARDEN	\$5,971.24	8/29/00 thru 12/30/13	yes			U
4	05-3954-7190	111231523 SIMON GARDEN	\$599.10	8/29/00 thru 12/30/14	yes			U
5	05-3954-7191	111030830 SIMON GARDEN	\$43,254.05	8/29/00 thru 10/12/11	yes			U
6	05-3954-7192	111030829 SIMON GARDEN	\$7,488.02	8/29/00 thru 10/12/11	yes			U
7	05-3954-7193	110830058 SIMON GARDEN	\$12,457.30	8/29/00 thru 8/10/11	yes			U
8	05-3954-7194	110831157 SIMON GARDEN	\$2,795.44	8/29/00 thru 8/10/11	yes			U
9	05-3954-7195	110731730 SIMON GARDEN	\$5,458.51	8/29/00 thru 7/20/11	yes			U
10	05-3954-7196	100531542 SIMON GARDEN	\$82,896.78	8/29/00 thru 5/14/10	yes			U
11	05-3954-7197	111030879 SIMON GARDEN	\$105,336.21	8/29/00 thru 10/12/11	yes			U
12	05-3954-7198	110831159 SIMON GARDEN	\$2,569.08	8/29/00 thru 8/10/11	yes			U
13	05-3954-7199	110731731 SIMON GARDEN	\$5,792.48	8/29/00 thru 7/20/11	yes			U
14	05-3954-7200	110630243 SIMON GARDEN	\$40,714.25	8/29/11 thru 6/2/11	yes			U
15	05-3954-7201	110630244 SIMON GARDEN	\$45,849.98	8/29/11 thru 6/2/11	yes			U
16	05-3954-7202	110532638 SIMON GARDEN	\$140,489.15	8/29/00 thru 5/27/11	yes			U
17	05-3954-7203	100632426 SIMON GARDEN	147,576.01	8/29/00 thru 6/22/10	yes			U
18	05-3954-7204	100632366 SIMON GARDEN	\$75,968.05	8/29/00 thru 6/19/00	yes			U
19	05-3954-7205	100632367 SIMON GARDEN	\$202,746.97	8/29/00 thru 6/19/00	yes			U

CCP - Common Pleas Court of Philadelphia County Docket Number for Lien filing  
Lien Status- S- Satisfied, V- Vacated, U- Unsatisfied

**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 25, 2012

  
Laureto Farinas, Esquire

**CERTIFICATE OF SERVICE**

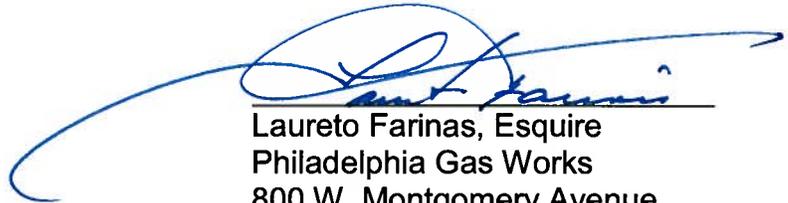
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

For Complainant:

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

Daniel D. McCaffery, Esq.  
101 Greenwood Avenue, 5<sup>th</sup> Floor  
Jenkintown, PA 19046

June 25, 2012



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