



**PHILADELPHIA GAS WORKS**

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June 27, 2012

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

**Re: Michael and Philip Giangjordano v. PGW, Docket No. C – 2012 – 2308389**

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: Michael and Philip Giangjordano (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Michael and Philip Giangiardano</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2012 – 2308389</b>
	:	
<b>Philadelphia Gas Works</b>	:	

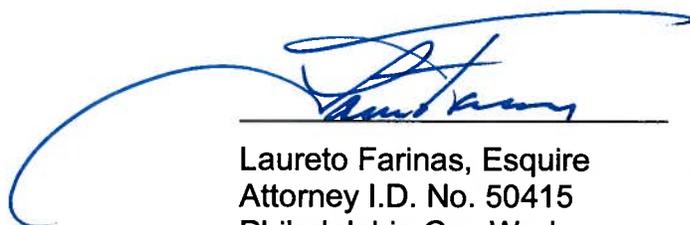
**NOTICE TO PLEAD**

**To: Michael and Philip Giangiardano, Complainants**

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 27, 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>Michael and Philip Giangiordano</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C – 2012 – 2308389</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 Objections to the Complaint filed in the above captioned matter on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief to remove (or forbear collection of) the lien, and moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a)(1) and (2).

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

1. On or about May 31, 2012, the Complainants filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service at 1356 E. Passyunk Avenue, Philadelphia, Pennsylvania (Subject Property).

2. The Complaint avers that the unpaid gas service to the Subject Property is under an account of the Complainants tenant, Perry and Cede Ice Inc.

3. The Complainants aver that PGW filed a lien against the Subject Property without prior notice of the delinquency on the tenant’s account. PGW is not permitted to do so.

4. The Complainants aver that they registered in the Landlord Cooperation Program. PGW records show that the Complainants registered on January 17, 2012 after the lien was filed against the Subject Property on September 30, 2011.

5. For the following period from August through May 2012, the Complainants' tenant owed \$1,713.35 for unpaid gas service to the Service Address under an account where the complainants' tenant was the Customer of Record.

6. 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.

7. The Complainants requests relief in the form of a Commission order to PGW to remove the lien.

8. 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:

(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.

52 Pa. Code §5.101(a) (2)<sup>1</sup>

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,

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<sup>1</sup> 52 Pa. Code §5.101(a) (2) emphasis added.

“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>2</sup>

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), *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), *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*, 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)

10. 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

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<sup>2</sup> 52 Pa. Code §5.101(a) (1)

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.

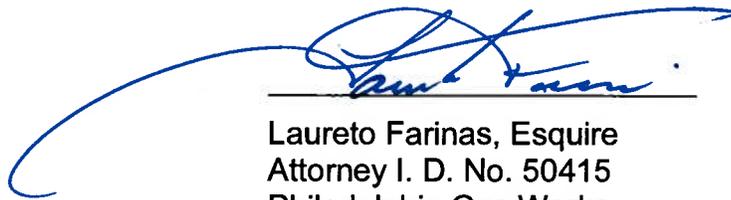
12. The nature of a lien is such that it encumbers the real estate, regardless who caused the event, which results in the imposition of a municipal claim. PGW may collect as a municipal claim, unpaid debt for gas service rendered, even when the gas service was not rendered to the owner of the property. *Newberry Township v. Ray Stambaugh*, 848 A.2d 173; (Pa. Cmwlth. 2000)

13. PGW has not transferred the outstanding balance of the Selby account to an account in the Complainant’s name. Thus, PGW does not hold the Complainant responsible for the unpaid debt. The final bill, although mailed to the Complainants in care of a real estate company is for the account where the Complainant’s tenant Perry and Ceded Ice Inc was the Customer of Record.

**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



Laureto Farinas, Esquire  
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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 27, 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:

Michael Giangjordano  
Philip Giangjordano  
1542 S. 13<sup>th</sup> Street  
Philadelphia, PA 19147

June 27, 2012



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