



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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June 29, 2012

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

**Re: Theodore Pride v. PGW, Docket No. F – 2012 – 2308378**

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. This was due June 27, 2012 but was erroneously misplaced. We apologize for the error.

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 that reads 'Danielle Ross'.

Danielle Ross

Enclosure

cc: Theodore Pride (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Theodore Pride**

**v.**

**Philadelphia Gas Works**

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**Docket No. C – 2012 – 2308378**

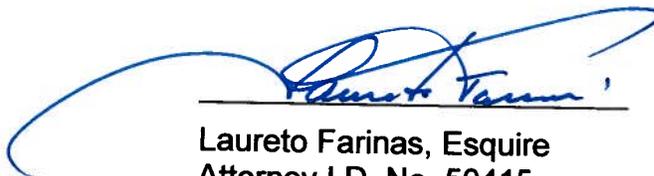
**NOTICE TO PLEAD**

**To: Theodore Pride, 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 29, 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**

**Theodore Pride**

**v.**

**Philadelphia Gas Works**

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**Docket No. F – 2012 – 2308378**

**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 Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service at 1014 N. 63<sup>rd</sup> Street, Philadelphia, Pennsylvania (Subject Property).
2. The Complaint avers that he never called to initiate service at the Subject Property.
3. The Complainant avers that he does not know a John Wilson who was the Customer of Record at 1014 N. 63<sup>rd</sup> Street, 1f from November 20, 2008. through June 17, 2009. The final account balance for usage at 1014 N. 63<sup>rd</sup> Street 1f, was \$2,779.81.
4. The Complainant did not register with the Landlord Cooperation program (LCP).

5. For the following periods the Complainant owed the following amounts to PGW:

Account No.	Service Address	Service Dates	Balance
61-1427-0596	1014 N. 63 <sup>rd</sup> St, 1f	10/22/96 – 7/21/03	\$200.36
09-6197-0713	1014 N. 63 <sup>rd</sup> St, 1	1/22/04 – 8/29/05	\$4,738.65
71-1427-0602	1014 N. 63 <sup>rd</sup> St, 2f	3/2/92 – 11/20/08	\$556.89
91-1427-0628	1014 N. 63 <sup>rd</sup> St, 3f	4/20/93 – 11/20/08	\$508.36
81-1427-0610	1014 N. 63 <sup>rd</sup> St, 3 rear	3/2/92 – 11/20/08	\$1,309.87

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 refund the monies collected from the Sheriff Sale of the Subject Property.

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. PGW has not transferred the outstanding balance of the John Wilson account to an account in the Complainant's name. Thus, PGW does not hold the Complainant responsible for the unpaid debt.

10. 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>2</sup>

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

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

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

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)

12. 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.

13. 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)

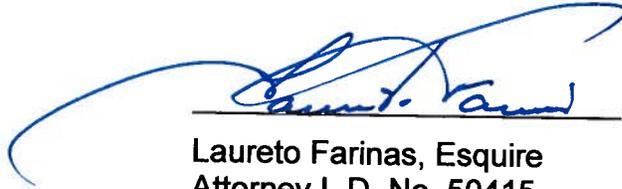
14. On March 12, 2012, PGW received a total payment of \$3,898.89 from the Sherrif sale of the property. The payment was applied as follows:

Account No.	Service Address	Service Dates	Payment Applied	Balance
71-1427-0602	1014 N. 63 <sup>rd</sup> St., 2 <sup>nd</sup> Floor	3/2/92 to 11/20/08	\$610.72	\$556.89
91-1427-0628	1014 N. 63 <sup>rd</sup> St., 3 <sup>rd</sup> Floor	4/20/93 to 11/20/08	\$508.36	\$0
06-2269-3478	1014 N. 63 <sup>rd</sup> St., 1 <sup>st</sup> Floor	11/20/08 to 6/17/09	\$2,779.81	\$0

**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 29, 2012



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 29, 2012

  
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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:

Mr. Theodore Pride  
5979 Woodbine Avenue  
Philadelphia, PA 19131

June 29, 2012



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