



PHILADELPHIA GAS WORKS

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December 11, 2012

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

Re: Leslie Marant v. PGW, Docket No. C – 2012 – 2335264

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 Leva

Enclosure

cc: Leslie Marant
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Leslie Marant

v.

Philadelphia Gas Works

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:
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Docket No. C – 2012 – 2335264

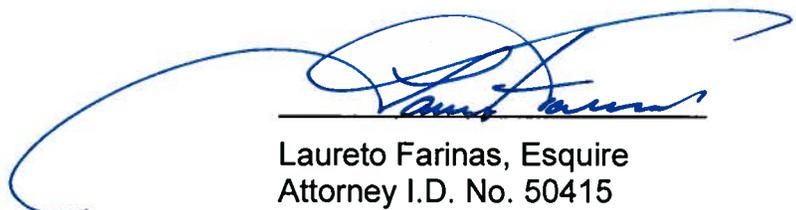
NOTICE TO PLEAD

To: Leslie Marant,

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,

December 11, 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**

Leslie Marant	:	
	:	
v.	:	Docket No. C – 2012 – 2335264
	:	
Philadelphia Gas Works	:	

**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 November 9, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding damage at 625 Wynnewood Road, Philadelphia, Pennsylvania (Subject Property).
2. The Complainant avers that PGW cut several tree roots to a tree on the Complainant’s property while PGW was digging in the street to fix a gas leak in October 2009.
3. The Complainant avers that a large branch fell onto the street and the Complainant had a landscaper remove the tree and stump in 2012. The landscaper told her that the tree was dead or dying.
4. The Complainant avers that another branch fell from the tree in October 2012 and that a landscaper confirmed again that the tree was dead or dying.

5. The Complainant requests relief in the form of an order to PGW to remove and replace the tree or to compensate her for the value of the tree and related expenses.

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. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (1977); *West Penn Power Co. v. Pa. Public Utility Commission*, 479 A.2d 548 (1984)

9. 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

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

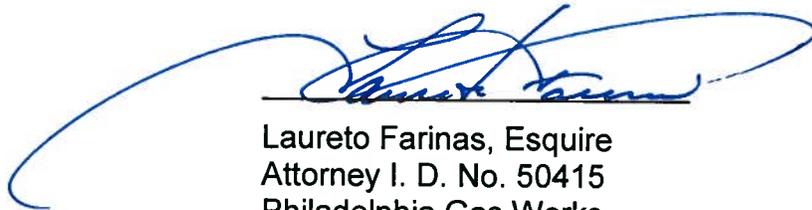
request for relief is irrelevant to the instant cause of action and therefore “impertinent matter” within the use and meaning of 52 Pa. Code §5.101(a) (2).

10. 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,

December 11, 2012



Laureto Farinas, Esquire
Attorney I. D. No. 50415
Philadelphia Gas Works
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(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.

December 11, 2012


Laureto Farinas
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:

Ms. Leslie Marant
625 Wynnewood Road
Philadelphia, PA 19151

December 11, 2012



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