



PHILADELPHIA GAS WORKS

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December 18, 2012

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

Re: Shunny Han v. PGW, Docket No. C – 2012 – 2336145

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: Shunny Han (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Shunny Han

v.

Philadelphia Gas Works

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Docket No. C – 2012 – 2336145

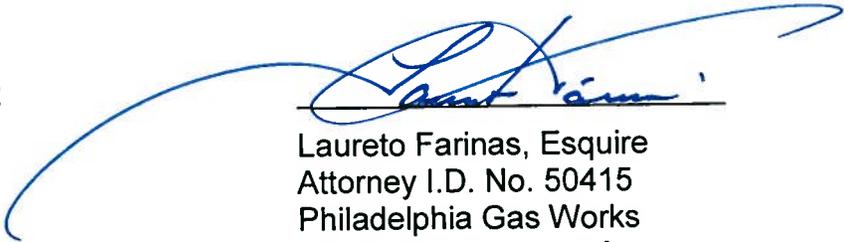
NOTICE TO PLEAD

To: Shunny Han, 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,

December 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**

Shunny Han

v.

Philadelphia Gas Works

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:
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Docket No. C – 2012 – 2336145

**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 19, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding damage at 3401 N. Front Street, Philadelphia, Pennsylvania (Service Address).

2. The Complainant avers that while digging, PGW broke the metal sewer cap which blocked the sewer and flooded the basement at the Service Address.

3. The Complainant requests relief in the form of a payment to the Complainant to cover the expenses and loss incurred by the Complainant when the Complainant’s basement flooded.

4. 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).

5. 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

6. In this case, as the Complainant states that it believes PGW damaged the sewer cap and therefore, caused the basement to flood.

7. In the instant matter, the Complainant simply wishes the Commission to order PGW to cover the expenses and losses he incurred.

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 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).

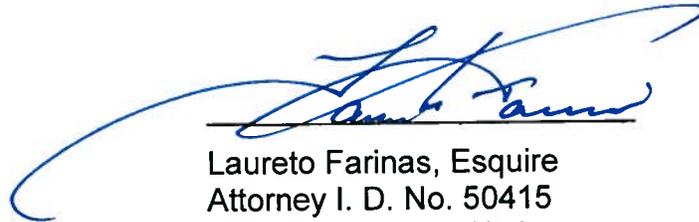
¹ 52 Pa. Code §5.101(a) (2) emphasis added.

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 18, 2012



Laureto Farinas, Esquire
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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 18, 2012



Laureto Farinas
Laureto Farinas, Esquire

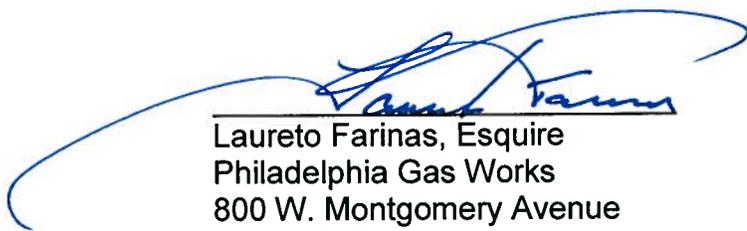
CERTIFICATE OF SERVICE

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. Shunny Han
115 Matthew Drive
Northwales, PA 19454

December 18, 2012



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