



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.leva@pgworks.com

March 7, 2013

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

Re: Berger Development, LP v. PGW, Docket No. C - 2012 - 2340584

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its reply to the Complainant's exceptions to the February 5, 2013, Initial Decision 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
Danielle Leva

Enclosure

cc: Berger Development, LP (Regular Mail)
Edgar Einhorn, Esq. (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Berger Development, LP

v.

Philadelphia Gas Works

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Docket No. C – 2012 – 2340584

**PHILADELPHIA GAS WORKS’
REPLY TO COMPLAINANT’S EXCEPTIONS**

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated February 5, 2013 covering the Initial Decision in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files its reply to the Complainant’s exceptions to the Initial Decision dated January 30, 2013, issued February 5, 2013, in the above captioned matter (Initial Decision).

I. INTRODUCTION

On or about December 20, 2012, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding unpaid debt for gas service to 229 Arch Street, Philadelphia, Pennsylvania (Subject Property). The Complainant, Berger Development LP, avers that the unpaid gas service to the Subject Property is for usage past the shut off date.

The Complainant avers that Subject Property has been vacant from the time of acquisition until December 2011. The Complainant avers that they requested a shut off on September 10, 2009. PGW records indicate that the Complainant’s name was removed from the gas service account on September 10, 2009 with an effective date of September 25, 2008 but the gas service was not physically shut off. For the period from September 25, 2008 through February 29, 2012, the service was active and usage was recording with no Customer of Record. The total balance owed is \$67,483.03 for unpaid gas service to the Subject Property.

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. The Complainant states that the amount of the lien is incorrect. The Complainant requests relief in the form of a Commission order to PGW to remove all liens and gas charges against the property removed.

On January 16, 2013, PGW filed and Preliminary Objections with the requisite notice to file a written response to the Preliminary Objections within ten (10) days. PGW served copies of the Answer and Preliminary Objections upon the Complainant and its counsel, Edgar R. Einhorn, Esq. at the addresses designated in the Complaint. In its Answer, PGW acknowledged that a lien was filed against the Subject Property. PGW denied that it shut off utility service to the Subject Property but rather it removed the Complainant's name as customer of record in September 2009 at the Complainant's request. Thereafter, PGW discovered that gas was being consumed at the Subject Property. PGW billed the Complainant for \$67,483.03 for previously unbilled usage.

In its Preliminary Objections PGW argued that the Commission is without jurisdiction to decide on matters involving the imposition of the municipal lien, 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.¹

Even though PGW served copies of the Answer and Preliminary Objections upon the Complainant and his counsel, Edgar R. Einhorn, Esq. at the addresses designated on the Complaint, neither the Complainant nor its counsel filed an Answer to the Preliminary Objections.

On February 5, 2013, the Commission issued the Initial Decision, which dismissed the Complaint, finding that the Complainant had failed to meet her burden

On February 18, 2013, the Complainant, through its counsel, filed exceptions to the Initial Decision. Pursuant to 52 Pa. Code §5.535, this timely reply follows.

¹ 52 Pa. Code §5.101(a) (2)

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to address any error in fact or law contained in the Initial Decision refuting the conclusion that the Commission is lacks jurisdiction over the subject matter involving the lien for the amount billed for previously unbilled service at the Subject Property.

Exceptions

(Referring to the Exceptions Paragraphs 1, 2 and 3)

Paragraphs 1, 2, and 3 of the Exceptions state that the Complaint was filed without the knowledge or authorization of the Complainant's counsel and therefore any averments made in the Complaint were not made with the benefit of counsel.

PGW's Reply

The Exceptions in this regard seeks to reverse the Initial Decision, implying that the Complainant's counsel was not aware of the issues raised in the Complaint. The exceptions do not state that counsel was not retained until after the issuance of the Initial Decision. The Complainant's counsel was served with the Answer and Preliminary Objections and had notice of the issues raised and the manner in which the Complainant plead. The Complainant and its counsel, having notice of the jurisdictional issues involved in with the matter, still did not file an Answer to PGW's Preliminary Objections were filed. As PGW's Preliminary Objections went unanswered, the Initial Decision dismissed the Complaint.

Exceptions

(Referring to the Exceptions Paragraphs 4 through 14)

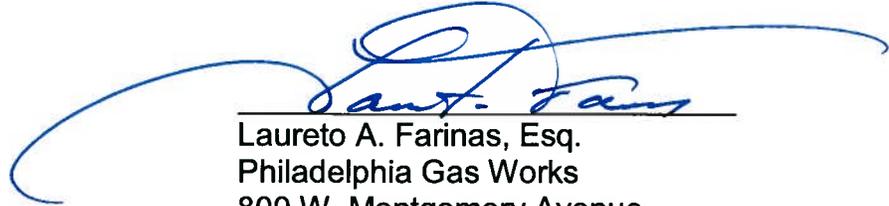
The Exceptions in this regard seeks to introduce matters that might have been the subject of an answer to Preliminary Objections had one been filed. Paragraphs 4 through 14 of the Exceptions seeks to argue the merits of the case that has been dismissed due to the Complainant's failure to file an Answer to Preliminary Objections after have the requisite Notice to Plead and service upon counsel.

III. CONCLUSION

For the reasons stated above, the PGW requests that the Commission deny the Complainant's exceptions to the Initial Decision and adopt the Initial Decision issued February 5, 2013 in this matter.

Respectfully submitted,

March 7, 2013



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

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).

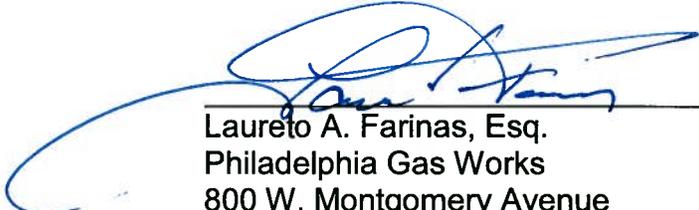
Service List:

For Complainant:

Berger Development, LP
901 North Penn Street
Unit FC – 1
Philadelphia, PA 19123

Edgar Einhorn, Esq.
255 S. 17th Street
Philadelphia, PA 19103

March 7, 2013


Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122