



PHILADELPHIA GAS WORKS

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July 2, 2013

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

Re: Bryan O'Neil v. PGW, Docket No. C – 2013 – 2368325

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,

A handwritten signature in blue ink, appearing to read "Danielle Leva", is written over the typed name.

Danielle Leva

Enclosure

cc: Bryan O'Neil (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bryan O'Neil

v.

Philadelphia Gas Works

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Docket No. C – 2013 – 2368325

NOTICE TO PLEAD

To: Bryan O'Neil, 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,

July 2, 2013



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**

Bryan O’Neil

v.

Philadelphia Gas Works

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Docket No. C – 2013 – 2368325

**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 a form of relief, and that the Complaint includes impertinent matter in its requested relief and therefore moves to strike the Complainant’s requests for compensation.

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

1. On or about June 3, 2013, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding a security deposit for service at 63 Pemberton Street, Philadelphia, Pennsylvania. By way of further answer, the Complaint included PGW Account No. 07-4139-4067 which is the Complainant’s former account for service to 624 Pemberton Street, 2F, Philadelphia, Pennsylvania (Service Address).

2. The Complainant avers that has withheld the security deposit refund of \$131.84 due to the Complainant since January 2013.

3. The Complainant requests relief in the form of an order to PGW to refund the security deposit, compound interest since January 20, 2013 on the refund, and monetary compensation for the hours the Complainant spent on the phone with PGW and the PUC.

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 requests for compensation for damages. PGW therefore moves

to strike the Complainant's requests 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 the instant matter, the Complainant simply wishes the Commission to order PGW refund the security deposit.

7. 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)

8. 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).

9. The Complainant's requests for compensation for damages as a form of relief should be stricken from the Complaint pursuant to Pa. Code §5.101(a) (2).

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

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,

July 2, 2013

A handwritten signature in blue ink that reads "Laureto Farinas" followed by a stylized monogram or initials.

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.

July 2, 2013


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. Bryan O'Neil
520 Collegeville Road
Philadelphia, PA 19426

July 2, 2013


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Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
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