

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrea Genrette	:	
	:	
v.	:	C-2018-3005255
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision dismisses the Complainant’s Complaint against the Respondent, Philadelphia Gas Works, because the Complainant has not established that the Respondent violated any Commission statute, regulation or order. The Commission does not have jurisdiction over municipal liens and the complainant does not have standing to challenge the balance accrued by the prior owner of the service address.

**HISTORY OF THE PROCEEDINGS**

On September 24, 2018, Andrea Genrette (Complainant or Ms. Genrette) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, the Company, or Respondent). In her Complaint, Ms. Genrette alleges that there are incorrect charges on her bills and she requests that PGW remove the erroneous charges.

On October 30, 2018, PGW filed an Answer to the Complaint, which denied the material allegations.

A Hearing Notice was issued on November 7, 2018, informing the parties of an initial hearing on Thursday, December 13, 2018, at 10:00 a.m. and assigning the matter to me.

I issued a Prehearing Order on November 21, 2018, indicating the procedures the parties were to follow for the hearing.

The hearing proceeded as scheduled on December 13, 2018. The Complainant was present and appeared *pro se*. The Complainant testified on her own behalf and also presented the testimony of one witness, Michael Alston. The Complainant offered three exhibits at the time of the hearing, which were entered into the record. The Respondent was present and represented by Laureto Farinas, Esquire. PGW presented the testimony of Ms. Tiffany Jones and submitted two exhibits which were entered into the record.

The hearing resulted in a transcript of 89 pages. The record in this matter closed on January 14, 2019, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant is Andrea Genrette, who owns 3143 West Dakota Street, Philadelphia, Pennsylvania 19132 (Service Address). Tr. 10.
2. The Respondent is Philadelphia Gas Works, which is owned by the City of Philadelphia. Tr. 63.
3. The Complainant purchased the Service Address on October 25, 2017. Tr. 10, 65; PGW Exh. 2.

4. There were nine municipal liens on the property related to PGW service at the Service Address. Tr. 60-61.

5. The liens were related to two customers' accounts with PGW. Tr. 61.

6. The customers associated with the accounts were Stephen and Eugene McFadden. Tr. 61, 67-68.

7. The total amount of the liens is \$7,118.87. Tr. 59.

8. Gas service was off at the Service Address. Tr. 64.

9. There have not been any applicants for service at the Service Address since the Complainant purchased the premises in October 2017. Tr. 64.

10. The Complainant was informed by the title company that there were PGW liens on the Service Address when she was in the process of purchasing the property. Tr. 26.

11. There were discussions between the Complainant and the previous owner of the Service Address regarding who would remedy the liens. Tr. 21.

12. The accounts related to the liens accumulated before the Complainant purchased the Service Address. Tr. 78.

### DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the “burden of proof.” “Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*,

364 Pa. 54, 70 A.2d 854 (1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) *cert. denied*, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than not” inquiry. *Commonwealth v. \$6,425 Seized From Esquilin*, 583 Pa. 544, 555, 580 A.2d 523, 529 (2005).

Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa.Cmwlt. 2001).

### Title Encumbrance

Complainant asserts that there are liens on the property that she purchased in October of 2017. She asserts that the liens are based on fraudulent charges at the Service Address. While PGW acknowledges that there are liens on the property, PGW indicates that the balances accumulated prior to the Complainant’s ownership of the property and that the Commission does not have jurisdiction over this dispute.

The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 157 Pa.Super. 595, 45 A.2d 348 (1945). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Cf., *Hughes v. Pa. State Police*, 152 Pa.Cmwlt. 409, 619 A.2d 390 (1992), *app. denied*, 536 Pa. 633, 637 A.2d

293 (1993). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

Acting under the authority and power granted in the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 *et seq.*, the City files a lien to enforce municipal claims against property for unpaid natural gas service rendered by Respondent at the property.

Only the City, being a municipality, can file a municipal lien. Respondent is a municipal utility that is wholly owned by the City. Respondent consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders. *Public Advocate v. Philadelphia Gas Comm'n*, 544 Pa. 129, 674 A.2d 1056 (1996).

Respondent does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. § 7101. Consequently, when Respondent provides natural gas service to an entity within the borders of the City and is not paid, it is the City that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service.

The procedure which the City must follow to establish a lien on a specific property, such as the Premises, is set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. §§ 7106(b), (c), 7143. The lien is docketed with the Prothonotary (a clerk of the court) and maintained in an *in rem*<sup>1</sup> index (an index maintained by property identification rather than by party name). See, 53 P.S. § 7106(b). Enforcement of the lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties. See, *Newberry Twp. v. Stambaugh*, 848 A.2d 173 (Pa.Cmwlt. 2004), *app. denied*, 580 Pa. 708, 860 A.2d 491 (2004), 53 P.S. §§ 7106(c), 7283. Ultimate recovery of the

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<sup>1</sup> “A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*. An ‘action in rem’ is a proceeding that takes no cognizance of owner but determines right in specific property against all the world, equally binding on everyone.” Black’s Law Dictionary 713 (5<sup>th</sup> ed. 1979).

amount of the municipal claims resulting in the lien is effectuated by a court ordered sheriff's sale. 53 P.S. § 7283.

The proceeding to obtain and enforce the City's municipal claim lien is an *in rem* proceeding. "Accordingly, the lien is either valid or invalid as to the property in question rather than as to the respective property interests involved." *Borough of Towanda v. Brannaka*, 61 Pa.Cmwlth. 622, 625-626, 434 A.2d 889, 891 (1981). What this means is that the Premises, not Complainant, is responsible for satisfying the claim secured by the municipal lien. No personal responsibility is asserted against the Complainant by the filing of the lien on the Premises. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). See, also, *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir. 1988).

The difference between an *in personam* judgment and an *in rem* municipal lien is best explained by an example. If A obtains a personal judgment against B in the amount of \$100,000 and enters the judgment in County X, where B owns three pieces of real property worth \$25,000 each, A can have all three properties sold by the Sheriff of County X to satisfy the judgment. However, if City A enters a municipal lien in the amount of \$30,000 against Property 1 of three separate pieces of real property worth \$25,000 each that B owns in County X, only Property 1 can be sold to satisfy the lien. The debt can only be recovered from the specific property upon which the *in rem* municipal lien has been placed. If the specific property was being rented by a landlord to a tenant, neither is personally liable for payment of the municipal claim amount. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). Only the *thing*, the specific property subject to the municipal lien, is liable for the amount owed.

The entire proceeding for the effectuation of and defense to the statutory lien of the City is within the jurisdiction of the Court of Common Pleas of Philadelphia County<sup>2</sup>, not the Commission. Municipal lien proceedings are exclusively matters of judicial, not administrative, jurisdiction.

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<sup>2</sup> Or the Municipal Court of Philadelphia if the amount is within its jurisdiction. 53 P.S. § 7101 *et seq.*

Additionally, keeping in mind that the lien is that of the City, not Respondent, as to the lien proceeding there is no public utility involved. In obtaining a municipal lien upon the Premises, the City is acting in its capacity as a municipality only. The Commission is given jurisdiction over public utilities by the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, not over municipalities acting in their municipal capacity.<sup>3</sup>

Section 1414 (relating to Liens by city natural gas distribution operations) of the Public Utility Code, 66 Pa.C.S. § 1414, provides:

**(a) General rule.** – 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, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, and chapter 22 (relating to natural gas competition).

66 Pa.C.S. § 1414(a) (footnotes omitted). Code Section 1414(a) reiterates the General Assembly’s determination that the previously existing right of the City to enforce payment for natural gas service rendered by the Respondent through the municipal claim and lien procedure of the Municipal Claim and Tax Lien Law remains unabated. The reference to “chapter 22” (of the Code) in Section 1414(a) is especially revealing as to the legislature’s intent. 66 Pa.C.S. § 2212(n) states:

**(n) Collections.**--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.

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<sup>3</sup> The Commission has jurisdiction over municipalities providing public utility service outside of their municipal boundaries, but only as to the public utility service being rendered. *Petition of Borough of Boyertown*, 77 Pa.Cmwth. 357, 466 A.2d 239 (1983). The instant case does not involve municipal extra-territorial service, nor is the lien proceeding public utility service.

66 Pa.C.S. § 2212(n) (footnote omitted). Code Section 2212(n) specifically states that “[n]othing contained in this title”, that is; Title 66, the entire Code, shall abrogate the right of the City to collect unpaid bills for natural gas service through the mechanisms provided by the Municipal Claim and Tax Lien Law. As explained above, those mechanisms are not within the jurisdiction of the Commission. The language of this section strengthens the legal conclusion that claims of municipal liens are not properly within the jurisdiction of the Commission.

The Commission has consistently recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. In *Strowder v. Philadelphia Gas Works*, Docket No. C-20028036 (Order entered December 30, 2002), the Commission determined that it had no jurisdiction to rule on the validity of a lien. In *Lawrence v. Philadelphia Gas Works*, Docket No. C-20066672 (Order entered January 22, 2007), the Commission adopted an initial decision citing the Municipal Claim and Tax Lien Law and 66 Pa.C.S. § 2122(n) and holding that the Commission lacked jurisdiction and authority to contravene the statute or take action contrary to its mandate. In *Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672 (Order entered February 23, 2009), the Commission adopted an initial decision citing 66 Pa.C.S. § 1414(a) and concluding that the Commission lacked jurisdiction over a lien imposed by the Respondent. These decisions affirm that the Commission lacks jurisdiction over a municipal lien. See also, *Vata v. Philadelphia Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010); *Jackson v. Philadelphia Gas Works*, (Order entered June 29, 2011); and *Newman v. Philadelphia Gas Works*, Docket No. C-2011-2273565 (Order entered March 29, 2012).

The Complainant purchased the Service Address in October 25, 2017. Tr. 10, 65; PGW Exh. 2. At the time of purchase, there were nine municipal liens on the property related to PGW service at the Service Address. Tr. 60-61. The liens were related to two customers’ accounts with PGW. Tr. 61. The customers associated with the accounts were Stephen and Eugene McFadden. Tr. 61, 67-68. The total amount of the liens is \$7,118.87. Tr. 59. Gas service was off at the Service Address. Tr. 64. There have not been any applicants for service at the Service Address since the Complainant purchased the premises in October of 2017. Tr. 64.

The Complainant was informed that there were PGW liens on the Service Address when she was in the process of purchasing the property by the title company. Tr. 26. There were discussions between the Complainant and previous owner of the Service Address regarding who would remedy the liens. Tr. 21. The accounts related to the liens accumulated before the Complainant purchased the Service Address. Tr. 78.

As was noted above, the Commission has no jurisdiction over municipal liens. See, *Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672 (Order entered February 23, 2009). This appears to be an issue between the Complainant and the previous owner as to who would assume responsibility for the liens, since the Complainant was aware the liens existed through the title company.<sup>4</sup> The Commission has indicated that it has no jurisdiction over issues involving a title insurance company related to PGW liens. *Matthews v. Philadelphia Gas Works*, Docket No. C-2008-2029557, 2009 Pa. PUC LEXIS 616 (Final Order entered April 17, 2009). Based on the above, the Complainant has not met her burden of proof in this matter and the Complaint must be dismissed in this regard.

#### Challenge of Outstanding Balance Amount

Although the Commission lacks jurisdiction over municipal liens, it still has jurisdiction to hear any underlying issues that may give rise to Commission jurisdiction. As such, Complainant is also trying to challenge the account balance on which the liens are based. However, the account balances accumulated before the Complainant was the owner of the Service Address and complainant lacks standing to challenge the balance accrued while someone else owned the property.

Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). Generally, a complainant who is not a customer of a utility does not have the

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<sup>4</sup> The Commission does not have jurisdiction over private contractual disputes. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631 (Pa.Cmwlth. 2003).

requisite substantial, direct, and immediate interest necessary to confer standing to bring the action regarding service of the utility. The Commission generally has held that a complainant must be the respondent's customer in order to have proper standing to file a complaint. *See In Re: Pennsylvania American Water Company*, 85 Pa. PUC 548 (1995); *Pa. Pub. Util. Comm'n v. Marietta Gravity Water Company*, 87 Pa. PUC 864 (1997).

Since the Complainant was not the customer of record for the Service Address in this matter, her interest in disputing the accuracy of the outstanding balance, generated by prior customers, is not direct or immediate. *See* Tr. 64. The Complainant has never been the customer of record for the Service Address. Tr. 22, 31, 57. There is nothing in the record to establish that she is entitled to bring a complaint on behalf of the prior customers of record. Further, there is nothing to indicate that the previous owner brought any complaint regarding the liens. Nor is there any evidence to demonstrate that the Complainant is entitled to bring a complaint on the previous owner's behalf. For this reason, the Complainant lacks standing to raise billing or quality of service disputes with regard to the accounts of the prior customers.

The Complainant has failed to meet her burden of proof in this matter to establish that there were any violations of a Commission statute, regulation or order related to this case. The Commission does not have jurisdiction to adjudicate complaints related to municipal liens. The Complainant does not have standing to challenge the amount of the outstanding balance owed by the prior customers of record as she was not the owner at the time or a customer of PGW. Any dispute between the Complainant and the prior owner of the Service Address is a private contractual dispute which is not within the purview of the Commission. Accordingly, the Complainant's Complaint must be denied and dismissed.

#### CONCLUSIONS OF LAW

1. The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 157 Pa. Super. 595, 43 A.2d 348 (1945).

2. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Matorano*, 427 Pa. 581, 235 A.2d 602 (1967).
3. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 152 Pa. Cmwlth. 409, 619 A.2d 390 (1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).
4. The Commission has repeatedly recognized its lack of subject matter jurisdiction in numerous cases involving municipal lien disputes. *Newman v. Philadelphia Gas Works*, Docket No. C-2011-2273565 (Final Order entered March 29, 2012); *Jackson v. Philadelphia Gas Works*, Docket No. C-2009-2119940 (Final Order entered July 1, 2011); and *Yamin v. Philadelphia Gas Works*, Docket No. C-2011-2221883 (Final Order entered June 29, 2011).
5. The Commission has no jurisdiction over issues involving a title insurance company related to liens. *Matthews v. Philadelphia Gas Works*, Docket No. C-2008-2029557, 2009 Pa. PUC LEXIS 616 (Final Order entered April 17, 2009).
6. Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975).
7. Issues involving responsibility for payment of utility services under leases are private contractual matters that do not involve a law, regulation or order that the Commission has jurisdiction to administer. See, 66 Pa.C.S. § 701.
8. The Commission does not have jurisdiction over private contractual disputes. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631 (Pa.Cmwlth. 2003).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Andrea Genrette v. Philadelphia Gas Works at Docket No. C-2018-3005255, is denied and dismissed.
2. That the docket at Docket No. C-2018-3005255 is marked closed.

Dated: April 3, 2019

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/s/  
Marta Guhl  
Administrative Law Judge