



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

October 15, 2019

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

Re: Stella Kuter v. PGW, Docket No. C – 2019 – 3013153

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §§ 5.61 and 5.101, the Philadelphia Gas Works ("PGW") hereby files the original 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: Stella Kuter
Wendy Vacca

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Stella Kuter

v.

Philadelphia Gas Works

:
:
:
:
:

Docket No. C – 2019 – 3013153

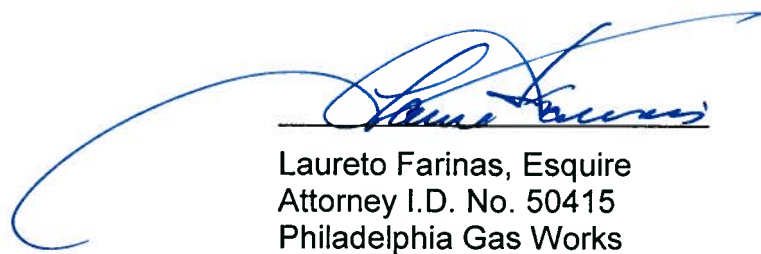
NOTICE TO PLEAD

To: Stella Kuter, 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,

October 15, 2019



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**

Stella Kuter

v.

Philadelphia Gas Works

:
:
:
:
:

Docket No. C – 2019 – 3013153

**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 Objections to the Complaint filed in the above captioned matter on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief to refund the amount collected in satisfaction of a municipal lien, and moves to strike the requested relief as “impertinent matter” pursuant to 52 Pa. Code §§5.101(a)(1) and (2).

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

1. On or about September 23, 2019, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding service shut off in error at 6111 Hawthorne Street, Philadelphia, Pennsylvania (Subject Property).
2. The Complainant’s daughter avers that PGW shut off the gas off in error on Friday, July 19, 2019 without warning.
3. The Complainant’s daughter avers that PGW restored the gas service on Monday, July 22, 2019.
4. The Complainant’s daughter requests relief in the form of PGW providing compensation in the amount of \$300.
5. 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. 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).

6. 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:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(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

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).

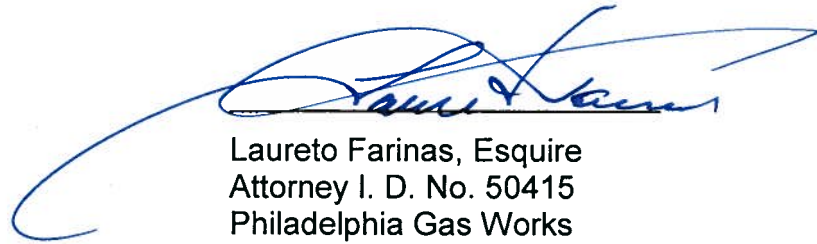
9. The Complainant's request for compensation for damages as a form of relief should be stricken from the Complaint pursuant to Pa. Code §5.101(a) (2).

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

Wherefore, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

October 15, 2019



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.

October 15, 2019



Laureto Farinas, Esquire

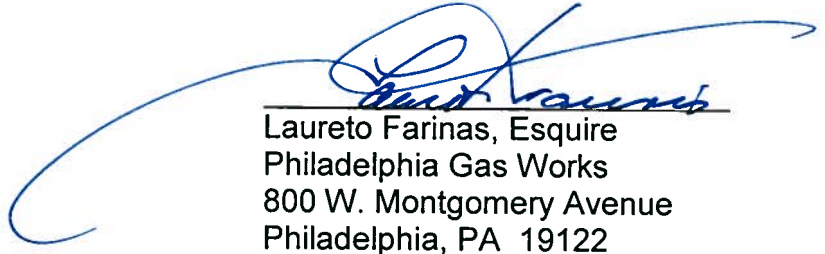
CERTIFICATE OF SERVICE

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. Stella Kuter
6111 Hawthorne Street
Philadelphia, PA 19135

October 15, 2019



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