**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacqueline Stevens :

 :

v. : C-2015-2472728

:

Philadelphia Gas Works :

**INITIAL DECISION GRANTING PRELIMINARY OBJECTIONS**

Before

Elizabeth H. Barnes

Administrative Law Judge

 The purpose of this Initial Decision is to dismiss a formal complaint where the complainant landlord seeks documentation confirming she is not responsible for paying the municipal lien filed by the City of Philadelphia at the Service Address.

history of the proceeding

On or about March 9, 2015, Jacqueline Stevens (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission), alleging that Respondent wrongfully placed her tenant’s gas bill in her name for the property she owns at 3805 Baring Street, 1st Floor Rear, Philadelphia, PA 19104 (Service Address).

Complainant claims she is a landlord enrolled in PGW’s Landlord Cooperation Program (LCP). Complainant states that PGW has held Complainant, as the property owner, responsible for the bill. Complainant believes the bill is the responsibility of her tenant, Eric Brown. The Commission’s Bureau of Consumer Services (BCS) previously issued a decision at BCS No. 3312603 in response to an informal complaint filed by Eric Brown, who is the Complainant’s tenant at the Service Address. The BCS decision, Complainant claims, instructed Eric Brown to pay his gas bill. A copy of the BCS decision is attached to the Complaint.

As relief, Complainant seeks the Commission to order the production of documentation stating that she is not responsible for the gas bill at the Service Address so that she can release funds currently being held in escrow pending the resolution of this matter.

 On April 8, 2015, PGW filed its Answer, which denies that there are incorrect charges on the Complainant’s account. PGW states that the Complainant has been the owner of the property at the Service Address since April 20, 2004, and that her tenant, Eric Brown, established gas service there on October 25, 2006, under PGW Account No. 71-1758-3260. PGW alleges that the Complainant enrolled in the LCP on May 29, 2007, but did not register the Service Address under LCP at that time.

 PGW further alleges that on April 30, 2008, the Complainant attempted to register the property at the Service Address with LCP but used a license number belonging to another property, located at 801 N. 17th Street, rather than the license number associated with the property at the Service Address. The Complainant allegedly never registered the property at the Service Address under the correct license number.

 PGW’s Answer also details the municipal liens that the City of Philadelphia filed against the property at the Service Address. On April 18, 2012, PGW terminated service at the Service Address for non-payment in the name of Eric Brown, and on July 30, 2012, the final account balance of $9,569.33 went into “write off” status. On August 28, 2014, PGW completed a “payoff request” form showing the balance of $9,569.33. On February 9, 2015, PGW completed a “payoff request” for Olde City Abstract showing a total of $13,143.98 owed.

 Also on April 8, 2015, PGW filed Preliminary Objection with Motion to Strike. PGW states that the lien was placed in full compliance with applicable law and that the Complainant has requested relief which the Commission is not authorized to grant. Therefore, PGW seeks dismissal of the Complaint for lack of jurisdiction.

By Motion Judge Assignment Notice, the matter was assigned to me on April 28, 2015. To date, no response has been filed by Complainant. The Preliminary Objections and Motion to Strike Impertinent Matter are ripe for a decision.

FINDINGS OF FACT

1. Complainant is Jacqueline Stevens, an individual owning the property at 3805 Baring Street, 1st Floor Rear, Philadelphia, PA 19104 (Service Address).

2. Respondent is Philadelphia Gas Works (PGW).

3. Complainant requests documentation that confirming she is not responsible for paying the municipal lien filed by the City of Philadelphia at the Service Address.

4. Complainant is the owner and landlord for the Service Address.

DISCUSSION

Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

 The Commission’s regulations provide, *inter alia*:

1. *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 be

accompanied by a notice to plead, 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)(1), (2).

 In Preliminary Objections, Respondent raised the issue of the Commission’s lack of jurisdiction to hear cases requiring adjudication of municipal liens. As stated above, preliminary objections can only be based on facts set forth in the Complaint. Any facts or issues raised in responsive pleadings cannot be considered in the disposition of preliminary objections.

 While lack of Commission jurisdiction is a legitimate ground for a preliminary objection, 52 Pa.Code § 5.101(a)(1), here the lack of jurisdiction is not evident on the face of the Complaint. In addition, Respondent chose to raise the issue of lack of jurisdiction in New Matter. As stated above, a preliminary objection can only be based on facts set forth in the Complaint. Any facts or issues raised in responsive pleadings cannot be considered in the disposition of a preliminary objection.

 Since the Commission’s lack of jurisdiction is an affirmative defense, which Respondent raised in a timely fashion, Respondent’s Preliminary Objections will be treated as a Motion for Judgment on the Pleadings (MJOP) filed pursuant to 52 Pa.Code § 5.102. There is no adverse effect on the Complainant’s rights since she had notice of the issue, and opportunity to be heard but has not responded. *Wroblewski v. Pennsylvania Electric Company*, Docket No. C-2008-2058385 (Order entered May 15, 2009).

 The regulation at 52 Pa.Code §1.2(a) provides that the presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Here, I may disregard the Respondent’s error in procedure if it does not affect the Complainant’s substantive rights. I will consider the issue of the Commission’s jurisdiction over municipal liens in order to secure a just, speedy and inexpensive determination of this proceeding pursuant to 52 Pa.Code §1.2(a).

 The Commission regulation at 52 Pa.Code §5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code §5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections, motions for summary judgment and motions for judgment on the pleadings to be filed in response to a complaint.

 The Commission’s Rules of Practice and Procedure at 52 Pa.Code §5.102 govern motions for judgment on the pleadings. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code §5.102(d)(1) Only in a case where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa.Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003) In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against it only those facts it specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O’Brien*, 496 A.2d 913 (Pa.Super 1985)

 I will view the factual averments in the Complaint in this case as true for purposes of disposing of the MJOP. The sole allegation in the Complaint is that PGW has wrongfully held the Complainant responsible for her tenant’s gas bill at the Service Address. The Complaint requests that the Commission order the production of documents stating that the Complainant is not responsible for the gas bill at the Service Address.

In the instant matter, PGW asserts that the Commission lacks subject matter jurisdiction over the municipal lien placed on the property at the Service Address and that the portion of the Complaint requesting the Complainant not be held personally liable for gas services rendered to the tenant be stricken as impertinent matter.

 With respect to subject matter jurisdiction, the Court in *Riedel v. The Human Relations Comm’n Of the City of Reading*, 559 Pa. 33; 39, 739 A.2d 121, 124 (1990), explained that jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. In *Hughes v. PA. State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390 (1992), app. Denied, 536 Pa. 633, 637 A.2d 293 (1993), it was held that subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.

Moreover, jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa.Super. 148, 449 A.2d 621 (1982); nor can jurisdiction be obtained by waiver or estoppel, *Scott v. Bristol Twp. Police Dep’t*, 669 A.2d 457 (Pa.Cmwlth. 1995). Therefore, 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).

The issue then, raised by PGW in its Preliminary Objections is whether or not the Commission has jurisdiction with respect to the municipal lien filed by the City of Philadelphia. This issue was considered in the case of *Josephine Pitt v. Philadelphia Gas Works*, C-2009-2140025 (I.D. March 24, 2010, Weismandel, ALJ), (Final Order April 29, 2010), wherein the City of Philadelphia’s Municipal Lien practice and authority with respect to PGW was thoroughly reviewed. There, it was held that 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 (or Municipal Court of Philadelphia, if the amount is within its

jurisdiction. 53 P.S. § 7101 et seq.)[[1]](#footnote-2) and not the Commission; and that municipal lien proceedings are exclusively matters of judicial, not administrative, jurisdiction. There, as in the instant matter, the lien is that of the City of Philadelphia, not Respondent PGW. Therefore, as to the municipal lien, there is no public utility involved. Thus, in placing a municipal lien upon the premises, the City was acting in its capacity as a municipality. Under existing law, the Public Utility Commission has jurisdiction over public utilities, 66 Pa.C.S. § 101 et seq., and not over municipalities acting in their municipal capacity[[2]](#footnote-3).

In *Pitt v. Philadelphia Gas Works*, *supra*, it is emphasized that the Commission has repeatedly recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. *See also, Debra Williams Lawrence v. Philadelphia Gas Works*, Docket Number C-20066672, Final Order entered January 22, 2007 (*Lawrence*); *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket Number C-2008-2029672, Final Order entered February 23, 2009 (*Young*), *Dung Phat, LLC v. Philadelphia Gas Works*, Docket Number C-2009-2135667, Final Order entered January 13, 2010 (*Dung Phat*); *David Golan v. Philadelphia Gas Works*, Docket Number C-2009-2138115, Final Order entered February 4, 2010 (*Golan*); *2020 West Passyunk Avenue Inc. v. Philadelphia Gas Works*, Docket Number C-2009-2138727, Final Order entered February 4, 2010 (*2020 West Passyunk*); *Jean Charles v. Philadelphia Gas Works*, Docket Number C-2009-2138638, Final Order entered February 5, 2010 (*Charles*).

 The foregoing decisions are consistent with the Public Utility Code, 66 Pa.C.S. §§ 1414(a) and 2212(n) which provide, as follows:

 66 Pa.C.S. § 1414(a):

1. **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 or 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).

\* \* \*

 66 Pa.C.S. § 2212(n):

 **(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, or otherwise.

66 Pa.C.S. § 2212(n)(footnote omitted).

 In the present case, the Complainant appears to believe that her tenant’s gas bill and the municipal lien filed at the Service Address are the same matter. This is incorrect. The tenant’s gas bill and the municipal lien are two separate matters, wherein the arrearages are owed to two separate entities, and likewise must be satisfied by two separate parties.

 Complainant also believes that the Commission has the authority to determine the party or parties responsible for satisfying the lien. This is likewise incorrect. The Commission does not have subject matter jurisdiction to adjudicate a dispute over the municipal lien placed upon the Premises. Any proceeding for defense to the statutory lien of the City is within the jurisdiction of the Court of Common Pleas of Philadelphia County, not the Commission. Municipal lien proceedings are exclusively matters of judicial, not administrative, jurisdiction. Therefore, it is just, reasonable and in the public interest that the Complaint be dismissed, in its entirety, without a hearing. See 66 Pa.C.S. § 703(b); also 52 Pa.Code § 5.21(d).

CONCLUSIONS OF LAW

1. The presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa.Code §1.2(a).

2. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1).

3. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against it only those facts it specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O’Brien*, 496 A.2d 913 (Pa. Super 1985)

4. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

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

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

 7. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

8. 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.

9. A lien is a charge on property, either real or personal, for the payment or discharge of a particular debt or duty in priority to the general debts or duties of the owner. It encumbers property to secure payment or performance of a debt, duty or other obligation.

10. It is only the municipality that can file a municipal lien to enforce municipal claims against property for unpaid natural gas service rendered by respondent.

11. Respondent is a municipal utility that is wholly owned by the City of Philadelphia. Respondent consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City of Philadelphia’s borders.

12. 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.

13. The lien obtained for the enforcement of the City’s municipal claim is an *in rem* proceeding. *Borough of Towanda v. Brannaka*, 61 Pa.Cmwlth. 622; 625-626, 434 A.2d 889; 891 (1981).

14. “*In rem*” is a term of art used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions, which are said to be *in personam.*

15. The City’s lien is either valid or invalid as to the property in question rather than as to the respective property interests involved.

16. No personal responsibility is asserted against Complainant by the City’s filing of a lien on the Premises.

17. Enforcement of the City of Philadelphia’s lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties.

18. Ultimate recovery of the amount of any municipal claims resulting in the City of Philadelphia’s lien is effectuated by sale of the property.

19. Lien proceedings are exclusively matters of judicial, not administrative, jurisdiction.

20. The Commission has recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property.

21. 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.

22. 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.

23. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2015-2472728 be dismissed.

ORDER

 THEREFORE,

 IT IS ORDERED:

 1. That the Preliminary Objections treated as a Motion for Judgment on the Pleadings of Philadelphia Gas Works are granted.

 2. That the Complaint filed by Jaqueline Stevens against Philadelphia Gas Works at Docket No. C-2015-2472728 is denied and dismissed.

 3. That the Secretary mark this matter closed.

Dated: June 3, 2015 /s/ Elizabeth H. Barnes

 Administrative Law Judge

1. 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 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.Cmwlth. 2004), app. denied, 580 Pa. 708, 860 A.2d 491 (2004), 53 P.S. §§ 7106(c), 7283. Ultimate recovery of the 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 nor her tenant, 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). [↑](#footnote-ref-2)
2. The Commission does have jurisdiction over municipalities providing utility service outside their municipal boundaries, but only as to the public utility service being rendered. *Petition of Borough of Boyertown*, 77 Pa.Cmwlth. 357, 466 A.2d 239 (1983). The case at bar does not involve municipality provided extra-territorial utility service. [↑](#footnote-ref-3)