

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-------------------------------|---|-----------------------|
| HENRY SANTANA | : | |
| Complainant | : | |
| | : | |
| | : | C-2015-2484785 |
| v. | : | |
| | : | |
| PHILADELPHIA GAS WORKS | : | |
| Respondent | : | |

**ANSWER TO PRELIMINARY OBJECTIONS OF
PHILADELPHIA GAS WORKS**

On May 21, 2015, Complainant filed a Formal Complaint *pro se* against Philadelphia Gas Works (PGW). On June 18, 2015, PGW filed an Answer to the Complaint. Also, on June 18, 2015, PGW filed Preliminary Objections to the Complaint. On July 7, 2015, the Complainant filed a letter with the Commission requesting an extension of time to file an answer to PGW's Preliminary Objections and informing the Commission that he was in the process of retaining legal counsel from Community Legal Services of Philadelphia. On July 16, 2015, Complainant's request for an extension was granted by Administrative Law Judge Steven K. Haas and Complainant was instructed to file an answer to PGW's Preliminary Objections on or before Monday, August 10, 2015.

Pursuant to 52 Pa Code § 5.101(f), Complainant Henry Santana through counsel Community Legal Services hereby files this answer to the Preliminary Objections and Motion to Strike of PGW. For the reasons stated herein Complainant respectfully requests that the Commission deny PGW's preliminary objections and motion to strike and schedule a hearing on the issues raised by the Complaint.

In response to each numbered paragraph in PGW's Preliminary Objections and Motion to Strike, Complainant avers as follows:

1. Admitted. By way of further answer, on May 21, 2015, the Complainant filed a Formal Complaint *pro se* against Philadelphia Gas Works (PGW). The Complaint alleges that: PGW repaired a gas main outside of Complainant's property; during the repair PGW damaged a water pipe in the area where the gas main repairs occurred; PGW left the site prior to completing cement work; and, shortly thereafter a water leak occurred at the site where PGW's repairs had taken place. The Complaint also contests PGW's policy regarding the determination of liability for the repairs. See Complaint at Page 2 (front and back of page) and Exhibit A of the Complaint.

2. Denied as stated. The Complaint states that "prior to [PGW's] repair work there were no existing issues with any water leaks. It occurred during their construction phase of the gas main repairs." See Exhibit A of the Complaint.

3. Admitted. By way of further answer, the Complaint requests that PGW, "return and finish fixing their job site in front of my home and repair all the damage that they have caused and return my home to the condition it was in prior to their repairs to the gas main."

4. To the extent this averment constitutes a conclusion of law, no response is required and it is, therefore, denied. By way of further response, PGW's objection (that the Commission is without authorization to grant the Complainant's request for damage repair) is incorrect as a matter of law. The Commission has previously held that a controversy concerning the reasonableness of a public utility's service to the public lies within the authority delegated to the Commission by the Legislature in the Public Utility Code. The reasonableness of PGW's service includes issues raised regarding the quality, timeliness and extent of repairs PGW performs. See

Jerry Prosser v. Columbia Gas of Pennsylvania, Inc., Docket No. C-20066376 (Final Opinion and Order entered October 30, 2006)(“Whether Columbia damaged the Complainant's driveway and sidewalk when it repaired or replaced a gas line in front of his residence, and whether Columbia repaired the alleged damage in a timely and satisfactory manner are issues properly before this Commission.”).

PGW’s objection and motion to strike are not supported by 52 Pa. Code §§ 5.101(a)(1) and (2). Section 5.101(a)(1) provides that a party may file a preliminary objection to a pleading on the grounds that there is a lack of Commission *jurisdiction*. The Commission does not lack the jurisdiction to hear this Complaint. 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. Kevin Maromonte v. Peoples Natural Gas Company LLC Equitable Division, Docket No. C-2015-2468911 (Final Order July 8, 2015).

The Commission has jurisdiction over service disputes between Pennsylvania public utilities and their customers. *Id.* at 5. The Commission has exclusive jurisdiction over matters involving the reasonableness, adequacy and sufficiency of services rendered by a public utility. *Id.* (Citing Behrend v. Bell Telephone Co. of Pennsylvania, 431 Pa. 63, 243 A.2d 346 (1968), Gasparro v. Pa. Pub. Util. Comm’n, 814 A.2d 1282 (Pa.Cmwlt. 2003), Bell Telephone Co. of Pennsylvania v. Sanner, 375 A.2d 93 (Pa.Super. 1977)). There is no question that the Commission has jurisdiction over this dispute. PGW erroneously relies on 52 Pa Code § 5.101(a)(1) in support of its objection and motion to strike.

PGW also erroneously relies on 52 Pa Code § 5.101(a)(2) in support of its objection and motion to strike. Section 5.101(a)(2) provides that a party may file a preliminary objection to a pleading on the grounds that a pleading includes impertinent matter. To assert that

Complainant's requested relief is "impertinent," PGW incorrectly characterizes it as a request for monetary damages. The Complaint does not request relief in the form of monetary compensation. The Complaint requests that PGW complete its unfinished work on Complainant's property and that PGW repair damage that occurred on Complainant's property as a result of PGW's repair of its gas main. The Commission has previously held that it has the authority to determine whether a public utility damaged a Complainant's property when it repaired or replaced a gas line and whether the utility repaired the alleged damage in a timely and satisfactory manner. Jerry Prosser v. Columbia Gas of Pennsylvania, Inc., Docket No. C-20066376 (Final Opinion and Order entered October 30, 2006).

5. This is a conclusion of law to which no response is required. By way of further response, the Complaint does not request relief in the form of monetary compensation.

6. This is a conclusion of law to which no response is required. By way of further response, the Complaint does not request relief in the form of monetary compensation.

7. Denied. Preliminary objections can only be granted if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objections, using only those facts specifically admitted. Kevin Maromonte v. Peoples Natural Gas Company LLC Equitable Division, Docket No. C-2015-2468911 (Final Order July 8, 2015). The facts alleged in the Complaint, if proven true, could constitute unreasonable service by PGW in violation of 66 Pa. Code § 1501 of the Public Utility Code. Section 1501 states, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, **and shall make all such repairs**, changes, alterations, substitutions, extensions, and improvements in and to such service and facilities as shall be necessary or proper for the

accommodation, convenience, and safety of its patrons, employees, and the public. . . .

66 Pa. C.S. §1501 (Emphasis added.) Section 102 of the Public Utility Code defines service broadly and states, in relevant part:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . in the performance of their duties under this part to their patrons, employees, other public utilities, and the public. . . .

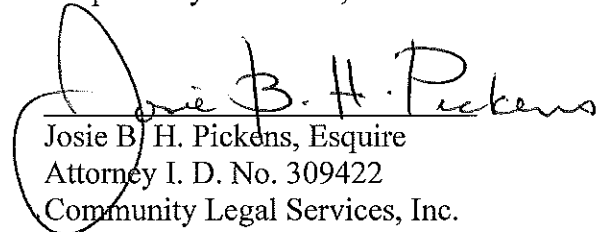
66 Pa. C.S. §102.

The Commission has the authority to impose civil penalties, or order such other relief as is contained in the Code, if it finds that PGW has violated the Code, Commission Regulations or Commission Orders. Larry and Gail Newman v. Philadelphia Gas Works, Docket No. C-2011-2273565, Opinion and Order (entered March 29, 2012) (Citing 66 Pa. C.S. § 3301 *et seq.*).

8. Denied. The Complaint does not request relief in the form of monetary compensation. The Complaint seeks a determination that PGW must complete repairs at the site of its gas main leak. To the extent that the Complaint raises issues of unreasonable service, the Complaint seeks all available forms of relief, which the Commission is authorized to order pursuant to the Public Utility Code.

WHEREFORE, Complainant respectfully requests that the Commission deny PGW's Preliminary Objections and Motion to Strike and schedule a hearing on the issues raised by the Complaint.

Respectfully submitted,

A handwritten signature in black ink that reads "Josie B. H. Pickens". The signature is written in a cursive style and is positioned above the typed name and contact information.

Josie B. H. Pickens, Esquire
Attorney I. D. No. 309422
Community Legal Services, Inc.
1410 West Erie Avenue
Philadelphia, PA 19140
(215) 227-4378 (p)
(215) 599-1711(f)
jpickens@clsphila.org

Lydia R. Gottesfeld, Esquire
Attorney I.D. No. 318974
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3700 (p)
(267) 765-6481 (f)
lgottesfeld@clsphila.org