



**PHILADELPHIA GAS WORKS**

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January 9, 2017

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

**Re: Slawek Jakubowski v. PGW, Docket No. C – 2016 – 2580573**

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: Slawek Jakubowski (Regular Mail)  
Wendy Vacca (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Slawek Jakubowski**

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v.

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**Docket No. C – 2016 – 2580573**

**Philadelphia Gas Works**

**NOTICE TO PLEAD**

**To: Slawek Jakubowski, 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,



December 7, 2015

Graciela Christlieb, Esquire  
Attorney I.D. 200760  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6164

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Slawek Jakubowski**

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v.

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**Docket No. C – 2016 – 2580573**

**Philadelphia Gas Works**

**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 for compensation for damages as the form of relief. Also, the Commission lacks jurisdiction over the subject matter of the Complaint with regard to the issues raised in the complaint that are beyond the statute of limitations at 66 Pa.C.S. § 3314. The Complaint includes impertinent matter in its requested relief and PGW moves to strike such 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 December 16, 2016, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding settlement and deterioration of a retaining wall at 3256 Treesdale Street, Philadelphia, Pennsylvania (Service Address).
2. The Complainant avers that in 2011, PGW dug under the retaining wall at the Service Address, leaving the retaining wall compromised and weakened.
3. The Complaint asks that PGW pay for damages.
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 request for 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).

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)<sup>1</sup>

6. In the instant matter, the Complainant is asking that PGW either rebuild the retaining wall or pay for damages.

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).

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<sup>1</sup> 52 Pa. Code §5.101(a) (2) emphasis added.

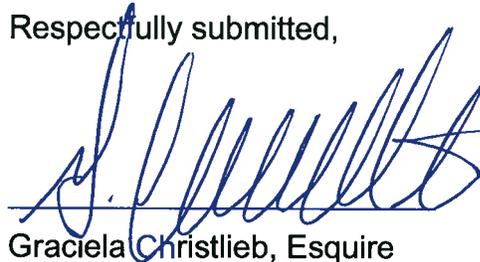
10. The statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose.

11. The Complainant has lost his right to pursue litigation regarding the actions taken by PGW in 2011 as any cause of action arising from those actions falls outside the statute of limitations.

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's preliminary objections to the Complaint.

January 9, 2017

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Christlieb', written over a horizontal line.

Graciela Christlieb, Esquire  
Attorney I.D. 200760  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6164

**VERIFICATION**

I, Graciela Christlieb, 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 Preliminary Objections and Motion to Strike 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.

January 9, 2017

  
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Graciela Christlieb, 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. Slawek Jakubowski  
2742 Atlantic Avenue  
Bensalem, PA 19020

January 9, 2017



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