



PHILADELPHIA GAS WORKS

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September 14, 2017

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

Re: Sanju John v. PGW, Docket No. C – 2017 – 2621095

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: Sanju John
Wendy Vacca

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sanju John

v.

Philadelphia Gas Works

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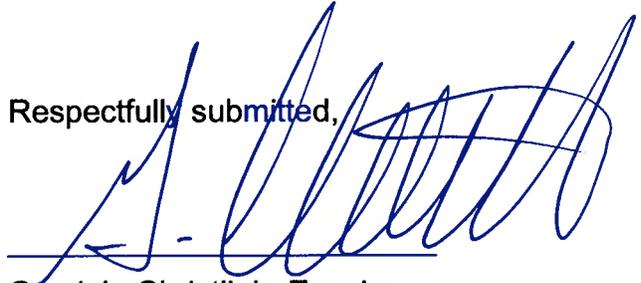
Docket No. C – 2017 – 2621095

NOTICE TO PLEAD

To: Sanju John, 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,



September 13, 2017

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sanju John

v.

Philadelphia Gas Works

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Docket No. C – 2017 – 2621095

**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 damages as the form of relief. Also, the Complainant lacks standing 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 August 14, 2017, the Complainant filed a formal complaint against PGW with the Commission under the above captioned Docket Number, regarding a cracked curb and sidewalk in front of at 1901 Foster Street, Philadelphia, Pennsylvania (Service Address).

2. The Complainant avers that the damage to his sidewalk is the result of PGW installing gas lines at or near the Service Address.

3. The Complaint asks that PGW repair the curb and sidewalk.

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 damages. PGW therefore moves to strike the Complainant's request 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)¹

6. In the instant matter, the Complainant is asking that PGW make repairs to the sidewalk outside the Service Address.

7. As PGW does not perform the type of work requested by the Complainant and would have to contract with and pay someone who does, the Complainant's request is tantamount to asking for monetary damages.

8. 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)

9. 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).

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

10. 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).

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

September 13, 2017

Respectfully submitted,

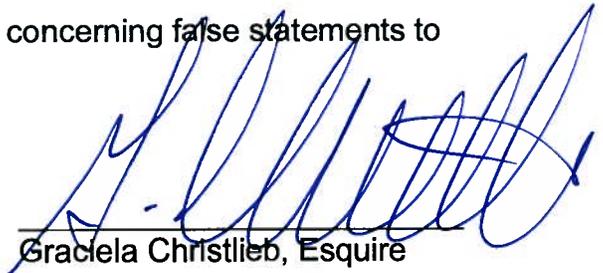
A handwritten signature in blue ink, appearing to read 'Graciela Christlieb', is written over a horizontal line.

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.

September 13, 2017



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. Sanju John
1901 Foster Street
Philadelphia, PA 19116

September 13, 2017



Graciela Christlieb, Esquire
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