



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

Graciela Christlieb, Senior Attorney  
Legal Department  
Direct Dial: 215-684-6164  
FAX: 215-684-6798

January 8, 2019

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JAN 8 2019

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: David Brown v. Philadelphia Gas Works, Docket No. C-2018- 3005868**

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code § 5.101, the Philadelphia Gas Works hereby files its 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,

  
Graciela Christlieb

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

David Brown

v.

Philadelphia Gas Works

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Docket No. C - 2018 - 3005868

NOTICE TO PLEAD

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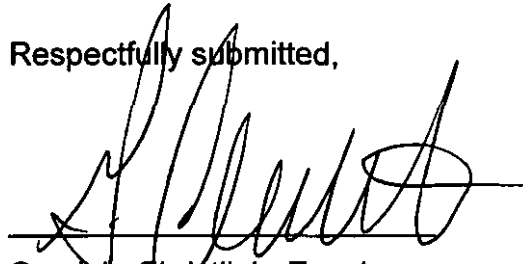
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

To: David Brown, Complainant

Pursuant to 52 Pa. Code §5.101, you are hereby notified to file a written response to the enclosed Preliminary Objections 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,



Graciela Christlieb, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

January 8, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**David Brown**

:

**v.**

**Philadelphia Gas Works**

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**Docket No. C - 2018 - 3005868**

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**PRELIMINARY OBJECTIONS  
AND MOTION TO STRIKE**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §5.101, the Philadelphia Gas Works ("PGW") hereby files its Preliminary Objections to the Complaint in the above captioned case on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint as well as the grounds that the Complaint is legally insufficient as it has failed to state a claim upon which relief can be granted. PGW moves to dismiss the Complaint pursuant to 52 Pa. Code §§5.101(a)(1) and (4). Additionally, PGW moves to strike the requested relief as impertinent matter pursuant to 52 Pa. Code §§5.101(a)(2).

In support of its Preliminary Objections and Motion to Strike, PGW hereby avers the following:

1. On or about October 29, 2018, the Complainant filed a Complaint against PGW with the Pennsylvania Public Utility Commission ("PUC" or "Commission") at the above captioned case, alleging that on October 10, 2018, PGW violated his fourth amendment rights by entering 1353 S. 46<sup>th</sup> Street, Philadelphia, PA ("Property").
2. As relief, the Complainant seeks "a stay away order".
3. On November 28, 2018, PGW filed an Answer to the Complaint wherein it stated that on October 10, 2018, PGW accessed the Property pursuant to a gas leak investigation in the immediate vicinity.

4. 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.<sup>1</sup>

52 Pa. Code §5.101 provides, 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.

...

(4) Legal insufficiency of a pleading.

5. The Commission lacks the authority to review allegations of a criminal or civil nature and has recognized its lack of subject jurisdiction in cases involving alleged violations of private property rights.<sup>2</sup>

6. The Commission has the discretion to "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest."<sup>3</sup>

7. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing.<sup>4</sup>

8. There is no dispute that on October 10, 2018, PGW entered the Property with the stated purpose of investigating a gas leak.

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<sup>1</sup> Order Sustaining Preliminary Objection in *Paul W. Fricker v. PECO Energy Company*, Docket No. C-2009-2094757 (2009).

<sup>2</sup> *Michael C. Morris v. PPL Electric Utilities Corporation*, Docket No. C-20030456 (2005).

<sup>3</sup> 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d).

<sup>4</sup> *Lehigh Valley Power Company v. Pennsylvania Public Utility Commission*, 128 Pa. Cmwlth. 259 (1989), *Edan Transportation Corporation v. Pennsylvania Public Utility Commission*, 154 Pa. Cmwlth. 21 (1993).

9. As the Commission is without jurisdiction to decide on matters involving the violation of private property rights, and the sole issue raised in the complaint is whether PGW violated the Complainant's Fourth Amendment rights when it entered the property, the requested relief should be stricken as impertinent matter and the remainder of the Complaint should be dismissed.

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's Preliminary Objections, grant PGW's Motion to Strike, and dismiss the Complaint.

Respectfully submitted,

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

Graciela Christlieb, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

January 8, 2019

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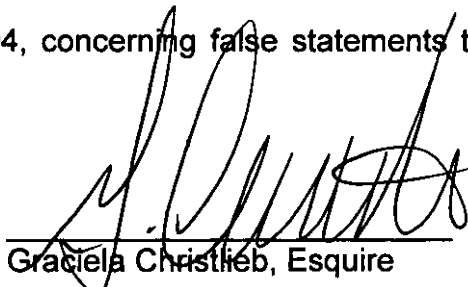
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**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 8, 2019

  
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Graciela Christlieb, Esquire

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SECRETARY'S BUREAU

**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:

David Brown  
1353 S. 46<sup>th</sup> Street  
Philadelphia, PA 19143

January 8, 2019



Graciela Christlieb, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

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