



**PHILADELPHIA GAS WORKS**

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August 27, 2019

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

**Re: Sin Po v. PGW, Docket No. F – 2019 – 3012016**

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: Sin Po  
Wendy Vacca

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Sin Po**

v.

**Philadelphia Gas Works**

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:  
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:

**Docket No. F-2019-3012016**

**NOTICE TO PLEAD**

**To: Sin Po, 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,



August 27, 2019

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Sin Po</b>	:	
	:	
v.	:	<b>Docket No. F-2019-3012016</b>
	:	
<b>Philadelphia Gas Works</b>	:	

**PRELIMINARY OBJECTIONS AND MOTION TO STRIKE**

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 Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.

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

1. City of Philadelphia records indicate that Sin Po and Mary Po are the owners of the property at the Service Address since June 14, 1994.
2. On September 12, 2017 and November 7, 2017, a PGW representative visited the Service Address and completed a foreign load investigation.
3. During the visits, it was confirmed that there was a hair salon operating out of the first floor storefront at the Service Address as well as a residential unit on the second floor.
4. During the visits, PGW discovered that the both units in the Service Address were sharing a single water heater and that the house heater attached to the 2<sup>nd</sup> floor's meter was supplying heat to the entire property.
5. The discovery of the foreign load prompted PGW to take the gas service out of the tenant's name and transfer it into the Complainant's name; also, the tenant's balance for service at the Service Address was transferred to the Complainant's account.

6. On September 25, 2018, a PGW representative visited the property and confirmed that the water heater connections had been corrected, but that a foreign load still existed with respect to the house heater.

7. On November 13, 2018, a PGW representative visited the property and confirmed that the proper corrections had been made to the heater and that there was no longer a foreign load at the Service Address.

8. On November 14, 2018, the service was transferred back into the tenant's name, which finalized the Complainant's account for gas service at the Service Address.

9. On November 15, 2018, PGW mailed the Complainant a final bill for the gas service at the Service Address.

10. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

11. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (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.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

12. The Public Utility Code at 66 Pa.C.S. § 1529.1, requires that a public utility "shall forthwith list the account for the premises in question in the name of the owner" when a residential building contains one or more dwelling units not individually metered. 66 Pa.C.S. § 1529.1(b); *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-

2008-2056428 (Opinion and Order entered May 21, 2010) (Ace Check); 1-A Realty v. Pa. Pub. Util. Comm'n, 63 A.3d 480 (Pa. Cmwlth. 2013).

13. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

14. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of a preliminary objection, the Complainant has failed to allege that PGW has committed or omitted an act in violation of a Commission statute, regulation, order, or PGW's tariff. *County of Allegheny, supra.*

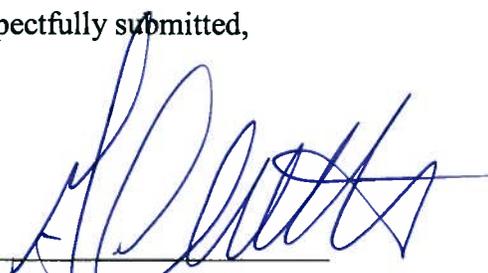
15. Because 66 Pa.C.S. § 1529.1 not only authorizes but requires PGW to place the service in the owner's name, this Complaint must be dismissed. It cannot be a violation for the Company to follow the law as it has done here.

16. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. *See* 52 Pa. Code § 5.101(a)(4).

17. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21 (d).

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's Preliminary Objections, strike Complainant's request that the balance be transferred back to his tenant, and dismiss the Formal Complaint in its entirety with prejudice.

Respectfully submitted,

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

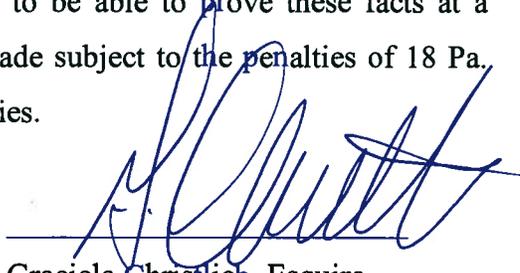
August 27, 2019

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

**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.

August 27, 2019

  
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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:

Sin Po  
4931 Old York Road  
1<sup>st</sup> Floor  
Philadelphia, PA 19141

August 27, 2019



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