

Phone: (215) 271-2242

Email: debra_lindler@hotmail.com

November 14, 2019

VIA ELECTRONIC FILING

Rosemary Chivavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: ANSWER AND NEW MATTER TO PETITION PGW'S PRELIMINARY OBJECTIONS FOR DEBRA LINDLER VS. PHILADELPHIA GAS WORKS (DOCKET NO. C-2019-3012938)

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter are my responses to the Preliminary Objections of PGW. On 11/14/19 at 2PM EST, I spoke with the offices of Rosemary Chiavetta and was forwarded to the Alfonso Stevens which explained that this case is still open. I received the preliminary response from PGW, but did not understand that a response was warranted within 10 days as I am without an attorney and representing myself for the matter. The manner in which the letter was worded, it was assumed that a response was requested from PGW and not me as the formal complainant.

Although I responded in an untimely fashion, I am asking that PUC accepts my responses regarding this matter as the case is still considered open and I am pro se (without an attorney). With this response, we are in protest to amend any petition that could be potentially filed by PGW for failure to file an answer or preliminary objections.

I am in objection to all of the response submitted on 10/09/19 and more specifically the following:

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 requires for compensation as "impertinent matter" pursuant to 52 Pa. Code 5.101(a) (1) & (2).
5. Under the Commission's Rules of Administrative Practice and Procedure at 52 Pa. Code 5.101, the treatment of preliminary objection is comparable to that of Pennsylvania civil practice.
6. Sections a1 and a2
10. The request for relieve if irrelevant to the instant cause of action and therefore "impertinent matter" within the use and meaning of 52 Pa. Code 5.101(a) (2).

LEGAL STAND:

There is legal insufficiency of a pleading. I am in contest that this is an "impertinent matter" as the nature of the complaint is relevant to the case. PGW have missed mandatory statutory deadlines for repairs that allow for no excuse. Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1178 (9th Cir. 2002). Additionally, a court may properly grant preliminary objections when the pleading are legally insufficient for one of more of the reasons enumerated in Rule 1028 of Pennsylvania Rules of Civil Procedure. In ruling on preliminary objections "we will consider as true all well-pleaded facts and interferences reasonably deducible therefrom, but not conclusions of law, argumentative allegations or opinions." Erie Cty. League of Women Voters v. Com., Dept of Envtl. Res., 525 A.2d 1290, 1291 (PA Commw.1987).

1. PRELIMINARY OBJECTIONS AS TO INSUFFICIENT SPECIFICITY IN A PLEADING

Pennsylvania is a fact pleading state, "consequently, a pleading must not only apprise the opposing party of the asserted claim, and 'it must also formulate the issues by summarizing those facts essential to support the claim.'" Richardson v. Wetzel, 74 A.3d 353, 356-57 (Pa. Commw. 2013) quoting Sevin v. Kelshaw, 611 A.2d 1232, 1235 (Pa. Super. 1992). The Pennsylvania Rules of Civil Procedure require that "the material facts on which a cause of action or defense is based shall be stated in concise and summary form." Pa.R.C.P. 1019(a). "The purpose behind the rules of pleading is to enable parties to ascertain, by utilizing their own professional discretion, the claims and defenses asserted in the case." Estate of Swift v. Ne. Hosp. of Philadelphia, 690 A.2d 719, 723 (Pa. Super. 1997). When considering whether an averment is stated with sufficient specificity, the Court must read said averment "in context with all other allegations in that complaint. Only then can the court determine whether the defendant has been put upon adequate notice of the claim against which he must defend." Yacoub v. Lehigh Valley Med. Assocs., P.C., 805 A.2d 579, 589 (Pa. Super. 2002). Thus, "it is not enough to focus upon one portion of the complaint." Id.; see Smith v. Wagner, 588 A.2d 1308, 1310 (Pa. Super. 1991). In the response submitted by PGW, it indicated that the matter was "impertinent" without justification.

PGW agreed that the work was performed in front of my home and also agreed that they had contractors which dug up the front of my property, but they did not agree the damage to inside of my home was due to this outside interference. We are in contest of this position as there was no justification as to how PGW are contesting that the outside repairs did not damage the inside of my home. We are contenting that because its amended complaint seeks specific equitable and injunctive relieve for damages and ask that the "irrelevant and impertinent" wording is stricken. We further maintain that the complaint seeks monetary damages as this can be construed as economic loss and specifically, the "wherefore clause" prays for such other relief as the courts deem necessary. While we, in fact, seek specific equitable and injunctive relief, we overrule PGW's Preliminary Objection, recognizing that the Amended Complaint does not exclude damages as represented by the formal complaint submitted that I filed around September 9, 2019.

2. PRELIMINARY OBJECTIONS AS TO PURPORTEDLY IMPERTINENT ALLEGATIONS:

Lastly, we challenge PGW New Matter as impertinent, arguing that the aforementioned Paragraphs contain para-phrasing and improper legal argument.

3. PGW PRELIMINARY OBJECTIONS ARE LEGALLY INSUFFICIENT

- a) On or about Sept 9th, 2019 the complaint was filed against PGW regarding flooding at my home located at 1344 s. Newkirk Street, Philadelphia, PA 19146.

- b) PGW avers that the work was done by contractors hired by PGW to the gas main line in the area of the service which caused the flooding as they dug up the pavement in front of my home. The contractors were PAPUC No. A84417 No. 65132 Huntingdon Valley, PA US DOT 157394.
- c) I brought the matter to the attention of PGW several times to which there were little to no responses. For this reason, I had to hire an outside contractor for the repairs in order to stop the flooding from further causing the damages to my home as PGW was slow and negligent to respond to my initial request.
- d) No remediation or economic assistance from PGW was offered and this is was a financial hardship due to the out of pocket expenses I had to pay in order to further prevent flooding.
- e) There was no justification as to why my initial request submitted to PGW was denied so I had to further escalate to PUC via this formal complaint on September 9, 2019.
- f) PGW denied that there was outside interference, but I submitted photos and videos of the incidents that lead up to the formal complaint and none of my artifacts were considered or explained by PGW therefore the matter is relevant.
- g) PGW's failure to not address the safety concerns raised in my complaint is insufficiently specific and legally insufficient to raise a genuine issue to be adjudicated in this proceeding.
- h) On 11/8/19, we called the office of G. Chistlieb Esquire at 215-684-6164 in order to remediate this issue and sought to discuss the matter prior to filing a formal response, but did not receive a return call.

We are asking for a motion of practicability to be raised and we would like to continue with a hearing in order to have a resolution to this matter. Should you have any questions, please feel free to contact me.

Respectfully,

Debra Lindler
1344 S. Newkirk Street
Philadelphia, PA 19146
(215)721-2242
Email: debra_lindler@hotmail.com