



PHILADELPHIA GAS WORKS

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March 10, 2021

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

Re: Jordan Brody v. PGW, Docket No. C- 2021 – 3023663

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: Jordan Brody (info@metropolitanphilly.com)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jordan Brody

v.

Philadelphia Gas Works

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:
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Docket No. C – 2021 – 3023633

NOTICE TO PLEAD

To: Jordan Brody, 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,

March 10, 2021

/s/ Laureto Farinas

Laureto Farinas, Esquire
Attorney I.D. No. 50415
Philadelphia Gas Works
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Philadelphia, PA 19122
(215) 684-6982

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jordan Brody

v.

Philadelphia Gas Works

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Docket No. C – 2021 – 3023663

**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 Objections to the Complaint filed in the above captioned matter on the grounds that the Commission lacks jurisdiction over the subject matter of the Complaint, and that the Complaint includes impertinent matter in its requested relief to refund the amount collected in satisfaction of a municipal lien, and moves to strike the requested relief as “impertinent 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 January 12, 2021, the Complainant filed a formal complaint against PGW with the Commission under the above captioned matter, regarding damage to a water line at 6332 Cherokee Street, R, Philadelphia, Pennsylvania (Subject Property).
2. In January 2020, the Complainant contacted PGW alleging that PGW damages the water service at the Service Address.
3. On January 31, 2020, a PGW supervisor was present at a plumber’s excavation at the Service Address.
4. The water line was approximately 18 inches below the gas line and outside of the area excavated by PGW.
5. The Complainant states that he paid \$14,000 to the plumber to replace the water line.
6. The Complaint requests relief in the form of a Commission order to have PGW refund \$14, 000.

7. 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 from compensation for damages for an alleged break of the PLP contract. 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).

8. 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:

(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.

52 Pa. Code §5.101(a) (2)¹

9. Pennsylvania appellate courts have repeatedly held that the Commission is without the authority 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)

10. 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

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

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).

11. 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 and dismiss the Complaint for lack of jurisdiction and strike off the requested relief as impertinent matter.

Respectfully submitted,

March 10, 2021

/s/ Laureto Farinas

Laureto Farinas, Esquire
Attorney I. D. No. 50415
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

VERIFICATION

I, Laureto Farinas, 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 Answer 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.

March 10, 2021

/s/ Laureto Farinas
Laureto Farinas, 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:

Jordan Brody
109 S. 13th Street
3B
Philadelphia, PA 19107

info@metropolitanphilly.com

March 10, 2021

/s/ Laureto Farinas
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