



**PHILADELPHIA GAS WORKS**

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May 18, 2021

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

**Re: Maria DeRitis v. PGW; Docket No. C-2021-3025476**

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,

*/s/ Graciela Christlieb*

Enclosure

cc: Maria DeRitis

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Maria DeRitis**

**v.**

**Philadelphia Gas Works**

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**Docket No. C-2021-3025476**

**NOTICE TO PLEAD**

**To: Maria DeRitis, 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 Dismiss, 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,

May 18, 2021

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire  
Attorney I.D. 200760  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6164

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Maria DeRitis**

v.

**Philadelphia Gas Works**

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**Docket No. C-2021-3025476**

**Philadelphia Gas Works Preliminary Objections**

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 subject matter in the Complaint as the sole issue raised in the Complaint is a repair contract/warranty dispute.

In support of its preliminary objections and motion to strike, PGW hereby avers the following:

1. On November 24, 2020, the Complainant purchased a Parts and Labor plan (“plan”) for her house heater/air conditioner.
2. The start date for coverage under the plan was December 9, 2020.
3. On December 11, 2020, the Complainant contacted PGW for heater service and scheduled an appointment for December 12, 2020.
4. On December 12, 2020, a technician visited the property to service the heater and discovered a bad blower motor circuit board.
5. The technician determined that the failure of the blower motor circuit board predated the Complainant’s purchasing the plan; as such, bad blower motor circuit board is considered a pre-existing condition and is not covered by the plan.
6. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

### **§ 5.101. Preliminary objections.**

(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 be accompanied by a notice to plead, 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.
- (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.

7. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (“Code”), 66 Pa.C.S. § 101 *et seq.*

8. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 1191 (1977); *Allegheny County Port Authority v. Pa. Pub. Util. Comm’n*, 427 Pa. 562, 237 A.2d 602 (1967); *Behrend v. Bell of Pa.*, 257 Pa. Super. 35, 390 A.2d 233 (1978); *Pa. Dept. of Highways v. Pa. Pub. Util. Comm’n*, 198 Pa. Super. 87, 182 A.2d 267 (1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

9. Pursuant to Section 501 of the Code, 66 Pa.C.S. §501, the Commission must “enforce, execute and carry out, by its regulations, orders or otherwise” all the provisions of the Code.

10. The issue of the Commission's jurisdiction over a dispute between a customer and a utility company, however, is not resolved simply because the latter is a public utility. See, *Carl A. Nolan v. Pennsylvanian Power & Light Company*, 1996 Pa. PUC Lexis 127, Docket No. C-00956756 (Order entered October 10, 1996).

11. In *Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Order entered August 30, 2002), the Commission specifically held that a repair contract/warranty dispute did not involve a law, regulation or order that it had jurisdiction to administer, stating:

Servicing the Complainant's appliance is not an essential part of PGW's public gas service. It is merely a supplemental service incidental to its primary gas service. As noted in *Felix v. Pa. Pub. Util. Comm'n*, 146 A.2d 347 (Pa. Super. Ct. 1958), **private services that merely supplement the public services provided by a utility do not fall within the Commission's jurisdiction. PGW's obligations to service the Complainant's appliance are defined by the terms of the private agreement between PGW and the Complainant, not by the public rights embodied in the Public Utility Code.**

As correctly noted by the ALJ, **the Commission has no jurisdiction to rule on the validity of a private agreement of that type.** *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. Ct. 1978).

*Id.* at 4-5 (emphasis added).

12. As the present case involves a purely private contractual dispute between a public utility and a customer relating to a parts and labor plan, it involves merely a supplemental service incidental to the utility's primary obligation to provide gas service to the public and the Commission has no jurisdiction to rule on the validity of this private agreement.

**Wherefore**, PGW respectfully requests that this Commission sustain PGW's preliminary objections and dismiss this Complaint.

Respectfully submitted,

May 18, 2021

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire  
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800 W. Montgomery Avenue  
Philadelphia, PA 19122  
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**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 Motion 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.

May 18, 2021

*/s/ Graciela Christlieb*

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**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).

Service List:

For Complainant via Email:

Maria DeRitis  
2632 St. Christopher Drive  
Philadelphia, PA 19148  
[mariaderitis@aol.com](mailto:mariaderitis@aol.com)

May 18, 2021

*/s/ Graciela Christlieb*

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