



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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April 20, 2022

**VIA ELECTRONIC FILING**

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

Re: Irena Porter v. Philadelphia Gas Works; Docket No. C-2022-3031693

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Preliminary Objection to Formal Complaint with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

Enclosure

cc: Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Preliminary Objection upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

**Via Email Only**

Irena Porter

[whoissmissporter@gmail.com](mailto:whoissmissporter@gmail.com)

Date: April 20, 2022

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Irena Porter,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3031693
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To: Irena Porter**  
5351 Grays Avenue  
Philadelphia, PA 19143  
[whoissmissporter@gmail.com](mailto:whoissmissporter@gmail.com)

Pursuant to Pa. Code § 5.101, you are hereby notified that any answer to the enclosed Preliminary Objection of Philadelphia Gas Works must be filed within ten (10) days of the date of service of the Preliminary Objection.

All pleadings, such as an Answer to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for PGW and, when applicable, the Administrative Law Judge presiding over the proceeding.

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire  
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[graciela.christlieb@pgworks.com](mailto:graciela.christlieb@pgworks.com)

Date: April 20, 2022

Counsel for PGW

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Irena Porter,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3031693
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’  
PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT**

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objection to the Formal Complaint of Irena Porter (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on March 31, 2022 (“Complaint”). Pursuant to 52 Pa. Code § 5.61 and 5.101(d) of the Commission’s regulations, PGW filed an Answer with New Matter to the Complaint on the same date as this Preliminary Objection to the Formal Complaint. In support of this Preliminary Objection, PGW states as follows:

**I. INTRODUCTION**

As more fully set forth in PGW’s Answer with New Matter, Complainant appears to be seeking relief from a theft bill from 2015.

PGW avers that the Complaint raises issues that are beyond the Commission’s jurisdiction as the Commission lacks jurisdiction over claims that are beyond the statute of limitations at 66 Pa.C.S. § 3314.

**II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS**

1. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>1</sup> The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>2</sup>

2. Under Section 5.101(a) of the Commission’s regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

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1. 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

2. *Id.*

- (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; and
- (7) Standing of a party to participate in the proceeding.

3. 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.<sup>3</sup> However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>4</sup>

4. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.<sup>5</sup>

5. While the filing of a formal complaint generally entitles the complainant to a formal hearing, the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”<sup>6</sup> A hearing is necessary only to resolve disputed questions of fact.<sup>7</sup>

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3. County of Allegheny v. Cmwlth. of Pa., 490 A.2d 402 (Pa. 1985).

4. Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

5. Department of Auditor General, et al. v. SERS, et al., 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); P.J.S. v. Pa. State Ethics Commission, 669 A.2d 1105 (Pa. Cmwlth. 1996).

6 52 Pa. Code § 5.21(d).

7 Lehigh Valley Power Comm. v. Pa. P.U.C., 128 Pa. Cmwlth. 259, 563 A.2d 548 (1989).

### III. PRELIMINARY OBJECTIONS BY PGW

6. PGW's responses to Paragraphs 1 to 7 of the Complaint are incorporated herein by reference. In addition, PGW's New Matter to the Complaint is also incorporated herein by reference.

#### A. Dismissal Based On Lack Of Commission Jurisdiction

7. Section 5.101(a)(1) of the Commission's regulations permits a party to file a preliminary objection based on the lack of Commission jurisdiction. To act on the Complaint, the Commission must have jurisdiction.<sup>8</sup> The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.<sup>9</sup> The Commission must act within, and cannot exceed, its jurisdiction.<sup>10</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>11</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>12</sup>

The Commission lacks jurisdiction over allegations that are beyond the Commission's statute of limitations.

8. In the Complaint, Complainant seems to be seeking relief from a theft bill dating back to 2015, which presumably gives rise to the "false accusations" on her account. *See* Complaint at ¶ 5. The photocopied page of PGW Hazard Tags included with the Complaint corroborate that the issue raised in the Complaint is from 2015. While not referred to outright in her prayer for relief, to the extent that Complainant intends to argue that the theft bill from 2015 is somehow a violation of PGW's tariff, the Public Utility Code, or any applicable regulations, those claims are barred by the applicable statute of limitations.

9. The statute of limitations at 66 Pa.C.S. § 3314 is a jurisdictional issue. It requires that any complaint seeking relief under the Public Utility Code be brought within three years from the date at which the liability therefor arose. As a jurisdictional issue, the statute of limitations and the Commission's lack

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<sup>8</sup> *See* 52 Pa. Code § 5.101(a)(1), 5.102.

<sup>9</sup> *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order entered May 28, 2008; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>10</sup> *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

<sup>11</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>12</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), appeal denied, 637 A.2d 293 (Pa. 1993).

of jurisdiction may be raised at any time. *See, e.g., Application of Laurel Pipe Line Company*, Docket No. A-2016- 2575829 (Order entered July 12, 2018), at 23; *Hasty v. Philadelphia Gas Works*, Docket No. C- 2014-2419203 (Final Order entered January 27, 2015).

10. The Complaint was filed March 28, 2022.

11. PGW billed Complainant for the theft in 2015.

12. Any allegations and claims that are beyond the applicable statutory period of limitation are barred and are outside of the Commission’s jurisdiction.

#### IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission (a) grant PGW’s preliminary objections; (b) dismiss the Complaint; and (c) grant any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

*/s/ Graciela Christlieb*

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Date: April 20, 2022

Counsel for PGW