



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Graciela Christlieb, Senior Attorney
Legal Department
Direct Dial: 215-684-6164
FAX: 215-684-6798
E-mail: graciela.christlieb@pgworks.com

May 11, 2022

VIA ELECTRONIC FILING

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

Re: Stanley Jennings v. Philadelphia Gas Works; Docket No. C-2022-3032057

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
Stanley Jennings
sjennings@dcsschool.com

Date: May 11, 2022

/s/ Graciela Christlieb
Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stanley Jennings,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3032057
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Stanley Jennings
sjennings@dcsschool.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
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
graciela.christlieb@pgworks.com

Date: May 11, 2022

Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stanley Jennings,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3032057
	:	
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 Stanley Jennings (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on April 21, 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 this same date. 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 is seeking relief from a balance that accumulated between December 30, 2011 and April 22, 2014.

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.¹ The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.²

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:

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

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.⁵

III. PRELIMINARY OBJECTIONS BY PGW

5. 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 as well as the exhibits attached thereto.

A. Dismissal Based on Lack of Commission Jurisdiction

6. 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. 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. The Commission must act within, and cannot exceed, its jurisdiction. Jurisdiction may not be conferred by the parties where none exists. Subject matter jurisdiction is a prerequisite to

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).

the exercise of power to decide a controversy.

The Commission Lacks Jurisdiction over allegations that are beyond the Commission's statute of limitations.

7. 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 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) and *Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203 (Final Order entered January 27, 2015).

8. In the Complaint, Complainant seeks relief from a balance accrued at 5633 Woodcrest Avenue. *See* Complaint at ¶ 5.

9. Complainant had service in his name at 5633 Woodcrest Avenue from December 30, 2011 to April 22, 2014, putting any cause of action outside the statute of limitations.

10. If, for the sake of argument, PGW were to concede that Complainant did not become aware of this balance until October 25, 2016 when he applied for service at his new address, any cause of action still lies outside of the statute of limitations given the time that has elapsed.

11. Even factoring in the periods of time that the statute of limitations tolled due to Complainant's informal and prior formal complaints, any cause of action is still over a year over the statute of limitations.⁶

12. With all inferences in favor of Complainant, relief is still not possible on any issues relating to the contested bills from 5633 Woodcrest Avenue.

⁶ Three years from October 25, 2016 is October 25, 2019. Complainant's informal complaint at BCS No. 3489274 was open from October 28, 2016 to March 13, 2017; 163 days. The addition of those days pushes the statute of limitations deadline from October 25, 2019 to April 5, 2020. Complainant's formal complaint at Docket No. C-2017-2608025 was open from June 5, 2017 to February 8, 2018; 248 days. The addition of these days pushes the statute of limitations deadline from April 5, 2020 to December 9, 2020.

IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission grant PGW's preliminary objection, dismiss the issues raised in the Complaint that are beyond the statute of limitations, and grant any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Graciela Christlieb

Graciela Christlieb, Esquire
Attorney I.D. 200760
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Telephone: (215) 684-6164
graciela.christlieb@pgworks.com

Date: May 11, 2022

Counsel for PGW