



PHILADELPHIA GAS WORKS

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June 1, 2022

VIA ELECTRONIC FILING

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

Re: Jaycinah Simon v. Philadelphia Gas Works; Docket No. C-2022-3032428

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

Jaycinah Simon

jksimon5412@gmail.com

Date: June 1, 2022

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3032428
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Jaycinah Simon
jksimon5412@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
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
graciela.christlieb@pgworks.com

Date: June 1, 2022

Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jayanah Simon,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3032428
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

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

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objections to the Formal Complaint of Jaycinah Simon (incorrectly captioned as “Jayanah Simon”) (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on May 12, 2022 (“Complaint”). Pursuant to 52 Pa. Code § 5.61 and 5.101(d) of the Commission’s regulations, PGW also filed an Answer with New Matter to the Complaint on this same date. In support of these Preliminary Objections, PGW avers as follows:

I. INTRODUCTION

Complainant is disputing the outstanding balance of her account which accumulated from May 2, 2019, to the present, based on purported violations of several, inapplicable Federal statutes and regulations. *See* Complaint, ¶ 4. Complainant is requesting relief in the form of money damages, a refund, and an order requiring PGW to cease all communications to her about the delinquent account. *Id.*, ¶ 5. In both these Preliminary Objections to her Complaint and as more fully set forth in PGW’s accompanying Answer with New Matter, this matter must be dismissed for lack of jurisdiction and failure to state a legally sufficient claim.

II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS

1. Preliminary objections to a Complaint are a permissible filing under the Commission’s Rules of Administrative Practice and Procedure.¹
2. The Commission’s procedure regarding the disposition of preliminary objections is

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

similar to that utilized in Pennsylvania civil practice.²

3. 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) 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.

52 Pa. Code § 5.101(a)(1-7).

4. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objections, 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

5. 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

6. PGW incorporates herein, as if the same were set forth at length here, its responses to paragraphs 1 to 7 of the Complaint, as pled in its Answer with New Matter. In addition, PGW also incorporates herein all allegations pled in its New Matter to the Complaint as well as the exhibits

² *Id.*; *Montague v. Philadelphia Electric Company*, 66 Pa. P.U.C. 24 (1988).

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).

attached thereto (if any), as if the same were set forth at length here.

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. 52 Pa. Code § 5.101(a)(1).

8. To act on the Complaint, the Commission must have jurisdiction over the subject matter.⁶ 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.⁷ As such, the Commission must act within, and cannot exceed, its jurisdiction.⁸ A party to the proceeding may not create jurisdiction where jurisdiction does not exist.⁹

1. The Commission Lacks Jurisdiction Over All Claims Based on Alleged Violations of Federal Statutes and Regulations.

9. The instant Complaint is based on alleged violations of the Fair Credit Billing Act, 15 U.S.C. § 1601, *et. seq.*; Regulation Z which implements the overarching Truth in Lending Act, 12 C.F.R. 1026, *et. seq.*; and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et. seq.* See Complaint, ¶ 4.¹⁰

10. The United States District Court has jurisdiction over all claims arising under these particular Federal statutes and regulations.¹¹

11. The Commission is not the proper forum for resolving alleged debt collection activities performed by a creditor and alleged billing issues based on credit billing and the extension of open-ended credit as the state legislature has not specifically granted the Commission with such subject matter jurisdiction.¹²

12. Therefore, the Commission lacks jurisdiction over the Complaint and all of its claims

⁶ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993) (“The Commission must have subject matter jurisdiction as a prerequisite to the exercise of its power before it can decide a controversy.”)

⁷ *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁸ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

⁹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹⁰ Complainant's claims are based on alleged violations of Section 1666 of the Fair Credit Billing Act (pertaining to consumer credit cost disclosure and credit billing practices); Section 1026.13 of Regulation Z (pertaining to open-end credit and billing error resolution); and Section 1692g of the Fair Debt Collection Practices Act (pertaining to validation of debts by a debt collector).

¹¹ 15 U.S.C. § 1640(e).

¹² *Feingold*, 383 A.2d at 794.

based on alleged violations of the Fair Credit Billing Act, Regulation Z of the Truth in Lending Act, and the Fair Debt Collection Practices Act.

13. For this reason, PGW respectfully requests that the Commission sustain this Preliminary Objection and dismiss the Complaint.

2. The Commission Lacks Jurisdiction Over Requested Relief in Form of Money Damages and a Cease and Desist Order

14. As part of the relief sought, Complainant is asking the Commission to award her money damages and a cease and desist order. *See* Complaint, ¶ 5.

15. Because the Commission does not have jurisdiction over all claims arising out of alleged violations of the Fair Credit Billing Act, Regulation Z of the Truth in Lending Act, and the Fair Debt Collection Practices Act as discussed above, then the Commission also lacks jurisdiction to award money damages and a cease and desist order.

16. Furthermore, and if it is determined that Complainant has asserted a legally sufficient billing dispute claim which falls within the Commission's jurisdiction (which PGW disputes), the Commission still lacks jurisdiction to award Complainant with money damages.

17. The Commission's enforcement powers do not include the ability to award complainants with money damages.¹³

18. Therefore, the Commission lacks jurisdiction over Complainant's requested relief in the form of money damages and a cease and desist order.

19. For this reason, PGW respectfully requests that the Commission sustain this Preliminary Objection and strike the requested relief from the Complaint as impertinent matter.

¹³ *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold*, 383 A.2d at 794-795.

IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission grant PGW's Preliminary Objections, Strike the requested relief as impertinent matter, dismiss the Complaint, and enter any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Graciela Christlieb

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Date: June 1, 2022

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