



**PHILADELPHIA GAS WORKS**

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July 20, 2022

**VIA ELECTRONIC FILING**

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

**Re: Zenith Real Estate Inc. v. Philadelphia Gas Works; Docket No. C-2022-3033455**

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**  
Zenith Real Estate, Inc.  
[mwolinsky@aol.com](mailto:mwolinsky@aol.com)

Date: July 20, 2022

/s/ Graciela Christlieb  
Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zenith Real Estate, Inc.,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3033455
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To:** Zenith Real Estate, Inc.  
[mwolinsky@aol.com](mailto:mwolinsky@aol.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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800 W. Montgomery Avenue  
Philadelphia, PA 19122  
[graciela.christlieb@pgworks.com](mailto:graciela.christlieb@pgworks.com)

Date: July 20, 2022

Counsel for PGW

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zenith Real Estate, Inc.,	:	
Complainant,	:	
v.	:	Docket No. C-2022-3033455
	:	
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 Zenith Real Estate, Inc. (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on June 30, 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 to the removal of the property at 7042 Greenway Avenue, Philadelphia PA (“Service Address”) from PGW’s Landlord Cooperation Program (“LCP”).

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 as well as the dispute arising out of Complainant’s participation in LCP.

**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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<sup>1</sup> 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).

<sup>2</sup> *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>

### **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

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

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

<sup>5</sup> 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).

not be conferred by the parties where none exists. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.

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 Pipeline 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. From the Complaint, it appears that Complainant is seeking relief arising out of the removal of the Service Address from LCP in 2013.

9. Additionally, In *Fisher v. Philadelphia Gas Works*, Docket No. F-2010-2215047 (Order entered July 31, 2012), the Commission held that enrollment in LCP is a contract between PGW and a landlord for private services that only supplement the public services provided by PGW.

10. The Commission has further held that any rights or obligations in connection with LCP do not arise from the obligations imposed by the Public Utility Code, but from the terms of the private contract between PGW and the landlord and that disputes arising out of participation in LCP do not involve a law, regulation, or order that the Commission has jurisdiction to administer; they constitute private disputes, which fall beyond the scope of the Commission's jurisdiction. *Ovrutsky v. Philadelphia Gas Works*, Docket No. C-2012-2321385 (Order entered December 19, 2012); *McCastle v. Philadelphia Gas Works*, Docket No. F-2013-2345223 (Order entered May 21, 2013).

#### IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission grant PGW's preliminary objection, dismiss the Complaint, and grant any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Graciela Christlieb

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Date: July 20, 2022

Counsel for PGW