



PHILADELPHIA GAS WORKS

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April 24, 2023

DATE OF DEPOSIT

APR 24 2023

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA ELECTRONIC FILING

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

Re: Shari Palmer v. Philadelphia Gas Works; Docket No. C-2023-3039473

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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shari Palmer,
Complainant,
v.
Philadelphia Gas Works,
Respondent.

Docket No. C-2023-3039473

DATE OF DEPOSIT

APR 24 2023

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

To: Shari Palmer
spholla1@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: April 24, 2023

Counsel for PGW

DATE OF DEPOSIT

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APR 24 2023

Shari Palmer, :
Complainant, :
v. :
Philadelphia Gas Works, :
Respondent. :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
Docket No. C-2023-3039473

**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 Shari Palmer ("Complainant") served by the Secretary of the Pennsylvania Public Utility Commission ("Commission" or "PUC") on April 3, 2023 ("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 appears to be contesting the billing from her address at 3047 Frankford Avenue, 1F, Philadelphia, PA, for which she was issued a final bill on March 4, 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.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) Lack of Commission jurisdiction or improper service of the pleading initiating

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.*

- 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 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

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).

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 appears to be contesting the billing from 3047 Frankford Avenue, 1F, Philadelphia, PA. *See* Complaint at ¶ 5; “in 2015 I initially disputed the billing being incorrect...”.

9. As stated in PGW’s New Matter, the issues raised by Complainant regarding the billing at her Frankford Avenue address are barred by the statute of limitations at 66 Pa.C.S. § 3314.

10. Even factoring in the periods of time that the statute of limitations tolled due to Complainant’s Informal and Formal Complaint, any cause of action is still beyond the statute of limitations.⁶

11. Any allegations and claims made 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 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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Telephone: (215) 684-6164
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Date: April 24, 2023

Counsel for PGW

⁶ The final bill for Complainant’s gas service at 3047 Frankford Avenue, 1F was issued on March 4, 2015. Three years from March 4, 2015 is March 4, 2018. Complainant’s Informal Complaint at BCS Docket No. 3659083 was open from October 10, 2018 to July 11, 2019; 274 days. The addition of those days pushes the statute of limitations deadline from March 4, 2018 to December 3, 2018. Complainant’s Formal Complaint at Docket No. F-2019-3013070 was open from September 13, 2018 to August 17, 2020; 339 days. The addition of those days pushes the statute of limitations deadline from December 3, 2018 to November 7, 2019. The billing issues raised in this complaint relating to the Frankford Avenue address are almost 3.5 years beyond the statute of limitations at 66 Pa.C.S. § 3314.

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
Shari Palmer
spholla1@gmail.com

DATE OF DEPOSIT

APR 24 2023

PA PUBLIC UTILITY COMMISSION

/s/ Graciela Christlieb
Graciela Christlieb, Esquire

Date: April 24, 2023

ORIGIN ID:PSQA (215) 684-6164
GRACIELA CHRISTLIEB, ESQ.
PHILADELPHIA GAS WORKS
800 WEST MONTGOMERY AVENUE
4TH FLOOR - LEGAL
PHILADELPHIA, PA 19122
UNITED STATES US

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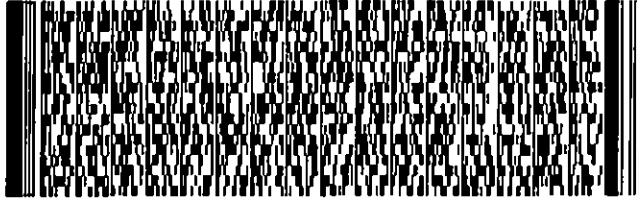
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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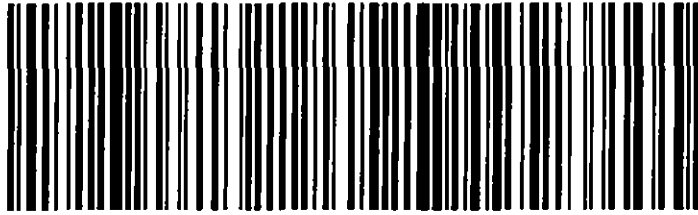
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