



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

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May 25, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105-3265

Re: Bobby Malafee v. Philadelphia Gas Works; Docket No. C-2022-3037213

Dear Secretary Chiavetta:

Enclosed for filing please find the Motion of Philadelphia Gas Works (“PGW”) to Dismiss Formal Complaint of Bobby Malafee (Complainant).

A copy of the Motion to Dismiss has been served on Complainant in the manner indicated on the attached Certificate of Service.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Very truly yours,

/s/Anita J. Murray
Anita J. Murray

/awm
encl.

cc (w/encl.): Bobby Malafee via email – bridesburgpizzaphilly@gmail.com
Special Agent Michael Mroczka

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Philadelphia Gas Works' Motion to Dismiss Complaint was served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA ELECTRONIC MAIL

Bobby Malafee
bridesburgpizzaphilly@gmail.com

Dated: May 25, 2023

By: /s/Anita J. Murray
Anita J. Murray, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|---------------------------|
| Bobby Malafee, | : | |
| Complainant, | : | |
| v. | : | Docket No. C-2022-3037213 |
| | : | |
| Philadelphia Gas Works, | : | |
| Respondent. | : | |

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that if you do not file a written response to the enclosed Motion to Dismiss of Philadelphia Gas Works, within **twenty (20) days** from the service of this Notice, the facts set forth by Philadelphia Gas Works in the Motion to Dismiss Complaint may be granted. All pleadings, such as a Reply to the Motion to Dismiss Complaint, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Philadelphia Gas Works, and Special Agent Michael Mroczka who is presiding over this case.

Efile with:

Secretary Rosemary Chiavetta, Esquire
rchiavetta@pa.gov

With Electronic Mail to:

Special Agent Michael Mroczka
micmroczka@pa.gov

Anita J. Murray, Esquire
anita.murray@pgworks.com

Dated: May 25, 2023

By: */s/Anita J. Murray*
Anita J. Murray, Esquire
Attorney ID No. 84703
800 W. Montgomery Ave.
Philadelphia, PA 19122
(215) 684-6659
Anita.murray@pgworks.com
Attorney for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|---------------------------|
| Bobby Malafee, | : | |
| Complainant, | : | |
| v. | : | Docket No. C-2022-3037213 |
| | : | |
| Philadelphia Gas Works, | : | |
| Respondent. | : | |

**MOTION OF PHILADELPHIA GAS WORKS
TO DISMISS FORMAL COMPLAINT**

Philadelphia Gas Works (“PGW” or “Respondent”), by and through its undersigned attorney, and pursuant to 52 Pa. Code § 5.103, hereby moves to dismiss the Formal Complaint (“Complaint”) of Bobby Malafee (“Complainant”). In support thereof, PGW avers as follows:

I. INTRODUCTION

1. PGW files this Motion to Dismiss Formal Complaint (“Formal Complaint”) of Complainant because the real party in interest is not Complainant but rather, is J&B Bridesburg Pizza, LLC, who is required to have legal representation in this matter. Additionally, Complainant lacks legal standing in his individual capacity and is not the customer of record. *See* 52 Pa. Code §§ 1.21-1.23.

II. FACTUAL AND PROCEDURAL HISTORY

2. On or about December 12, 2022, Complainant filed the Formal Complaint against PGW with the Pennsylvania Public Utility Commission (“Commission”) and requested relief in the form of a payment arrangement as PGW allegedly is threatening or has terminated gas service to the service address. A true and correct copy of the Formal Complaint is attached hereto as Exhibit A.

3. The Formal Complaint alleged the Complainant was Bobby Malafee, the service address was 4776 Richmond Street, First Floor, Philadelphia, PA 19137 (“Service Address”), and the subject PGW account number was 0638842795 (“Account”). *See* Exh. A, pg. 1.

4. On or about January 3, 2022, PGW filed an Answer to the Formal Complaint (“Answer”). A true and correct copy of PGW’s Answer is attached hereto as Exhibit B.

5. Relevant to this Motion to Dismiss, PGW’s Answer averred that the Account was a commercial account in the name of J&B Bridesburg Pizza, LLC (“Customer” or “J&B”). *See* Exh.

B, Opening paragraph and paragraph 4.

6. On February 27, 2023, a hearing was held in this matter before Special Agent Michael Mroczka, with both parties in attendance - Complainant and undersigned legal counsel for PGW. A true and correct copy of the Interim Order Requiring Representation (“Interim Order”) dated March 16, 2023 is attached hereto as Exhibit C.

7. At the hearing, Complainant confirmed the Account was a commercial, not residential, account, in the name of J&B. *See* Exh. C., pg. 1.

8. At the hearing and after Special Agent Mroczka advised Complainant that since the Account was a commercial account, Complainant could not represent J&B and that J&B would need legal representation. *Id.*, pg. 1-2.; 52 Pa. Code §§ 1.2-1.22

9. Special Agent Mroczka issued the Interim Order and gave Complainant to March 29, 2023, to retain legal counsel to represent J&B in this matter and the failure to do so may result in dismissal of the Formal Complaint. *Id.*, pg. 2.

10. To date, Complainant has not retained legal counsel to represent J&B.

11. PGW now files this Motion to Dismiss Formal Complaint

III. LEGAL ARGUMENT

A. The Formal Complaint Must Be Dismissed Because J&B Is Not Represented By Counsel.

12. The Commission’s regulations found at 52 Pa. Code §§ 1.21-1.23, only allow individuals to represent themselves in matters before the Commission. 52 Pa. Code § 1.21(a).

13. The same regulations require attorney representation of “partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities” in “adversarial proceedings.” 52 Pa. Code §§ 1.21-1.22.

14. An “adversarial proceeding” arises where an Answer has been filed in response to the Formal Complaint. *Olivet Baptist Church v. Pittsburgh Water and Sewer Authority*, Docket No. C-2019-3013681 (Opinion and Order entered Dec. 23, 2020).

15. These regulations cannot be waived and are consistent with the rules put into effect by the Pennsylvania Supreme Court. *Olivet Baptist Church, supra*.

16. “The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.” *Olivet Baptist Church, supra; Adventure Alley CLC, LLC v. PECO Energy Co., et. al.*, Docket No. C-2014-2430850 (Final Order entered Nov. 25, 2014).

17. The instant matter became adversarial when PGW filed its Answer on or about January

3, 2022. *See* Exh. B.

18. Although Complainant filed the Formal Complaint under his own name, as averred in its Answer and as subsequently confirmed at the February 27, 2023 hearing, the actual customer of record is J&B and the subject Account is a commercial account, not a residential account. *See* Exh. B-C.

19. Because the customer of record, J&B, is a business entity, then J&B must have legal representation in order to proceed with this matter because J&B cannot represent itself. *New Fizon Catering, Inc. v. PECO Energy Company*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Opinion and Order entered June 24, 2009); *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010).

20. J&B must have legal representation in order to proceed with this matter because Complainant cannot represent J&B. At the hearing, Complainant confirmed he was not an attorney or a licensed Pennsylvania attorney. 52 Pa. Code § 1.21(a).

21. To date, no attorney has entered their appearance on behalf of J&B in this matter.

22. Therefore, the Formal Complaint must be dismissed because J&B lacks legal representation as required by the Commission's regulations and the Interim Order.

B. The Formal Complaint Must Be Dismissed Because Complainant Failed to Abide by Court Order.

23. PGW incorporates the allegations and arguments found in paragraphs 1-22 above as if the same were set forth herein at length.

24. In addition to the Commission's regulations requiring legal representation of business entities like J&B, the Interim Order also required J&B to retain the services of an attorney. *See* Exh. C.

25. The orders of an administrative law judge must be complied with and the failure to do so supports the dismissal of the Formal Complaint. *Empanada City v. UGI Utilities, Inc.*, Docket No. C-2019-3011993 (Opinion and Order entered Aug. 27, 2020); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

26. Here, the Interim Order required J&B to cause an attorney to enter their appearance on or before March 29, 2023. *See* Exh. C.

27. Despite the terms of the Interim Order, J&B has not retained the services of an attorney to assist them in this matter. No attorney has entered their appearance on behalf of J&B in this

proceeding.

28. Therefore, the Formal Complaint must be dismissed because J&B lacks legal representation as required by the Interim Order.

IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission grant its motion and dismiss the Formal Complaint with prejudice.

Dated: May 25, 2023

Respectfully submitted,

By: /s/Anita J. Murray
Anita J. Murray, Esquire
Attorney ID No. 84703
800 W. Montgomery Ave.
Philadelphia, PA 19122
(215) 684-6659
Anita.murray@pgworks.com
Attorney for Philadelphia Gas Works

Exhibit A

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

RCVD PUC SEC BUR
DEC 12 2022 AM 11:30

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name: Bobby Malafee
Street/P.O. Box: 4776 Richmond St Apt. #: First Floor
City: Philadelphia State: PA ZIP: 19137
County: Philadelphia

Telephone Number(s) where we can contact you during the day (required):

267) 693-8261 (home) 267) 693-8261 (mobile)

E-mail Address (required): Bridesburgpizza Philly@gmail.com

Utility Account Number (from your bill): 0638842795

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ ZIP _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PCW

Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|---|---|
| <input type="checkbox"/> ELECTRIC | <input type="checkbox"/> STORM WATER |
| <input checked="" type="checkbox"/> GAS | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> WATER | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> STEAM HEAT | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |

4. Reason for Complaint:

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

The utility is threatening to shut off my service or has already shut off my service.

I would like a payment agreement.

Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

QUESTED KELLER

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

*I Like to Get Payment
Agreement*

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA) / Domestic Violence

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order or any other order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact:

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

b. Legal Representation:

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name: N/A

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

3. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

Bobby Malafee, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Bobby Malafee
(Signature of Complainant)

12-9-22
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **How to File Your Formal Complaint:**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain the tracking information as proof of submission:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

If you are appealing a BCS decision: follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. **ONLY** Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. **All other formal complaints MUST be eFiled or mailed.**

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

Please know that your complaint form and the utility's answer will not be published to the PUC's website. Once your complaint case moves to the Office of Administrative Law Judge, any filings you make should be marked confidential if you do not want them published to the website.

Bobby Malafel
4776 Richmond St
Phila, PA 19137



PHILADELPHIA PA 190

10 DEC 2022 PM 8 L

Pennsylvania Public Commission
400 North Street
Harrisburg PA 17120

17120-007999



Exhibit B



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

January 3, 2023

VIA ELECTRONIC FILING

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

**Re: J&B Bridesburg Pizza, LLC v. Philadelphia Gas Works;
Docket No. C-2022-3037213**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Answer 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' Answer 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

J&B Bridesburg Pizza, LLC

bridesburgpizzaphilly@gmail.com

Date: January 3, 2023

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|----------------------------|
| J&B Bridesburg Pizza, LLC, | : | |
| Complainant, | : | |
| v. | : | Docket No. C-2022-30337213 |
| | : | |
| Philadelphia Gas Works, | : | |
| Respondent. | : | |

PHILADELPHIA GAS WORKS' ANSWER TO FORMAL COMPLAINT

Pursuant to 52 Pa. Code §5.61, Philadelphia Gas Works (“PGW” or “Respondent”) hereby submits this Answer to the Formal Complaint (“Complaint”) of J&B Bridesburg Pizza, LLC (“Complainant”) that was served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on December 12, 2022. In support of this Answer, PGW avers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted. PGW admits that it issued a shut off notice for the gas service to 4776 Richmond Street, Philadelphia, PA (“Service Address”).

PGW admits that the Complainant seeks a payment agreement for the gas service at the Service Address.

By way of further answer, the Complainant established gas service at the Service Address as of June 28, 2019. This is a commercial account. The property is equipped with an automatic meter reading device and bills are based on actual meter reads.

On October 31, 2022, PGW issued a 7-day non-residential shut off notice to the property.

5. Denied. The averments contained in this paragraph are a prayer for relief to which no response is required.
6. Admitted.
7. Admitted.

WHEREFORE, PGW respectfully requests that the Commission deny all relief requested in the Complaint, dismiss the Complaint, and grant any other relief in favor of PGW as deemed 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: January 3, 2022

Counsel for PGW

VERIFICATION

I, Graciela Christlieb, hereby state that I am counsel for the Philadelphia Gas Works, the facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: January 3, 2023

/s/ Graciela Christlieb
Graciela Christlieb, Esquire

Exhibit C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bobby Malafee

v.

Philadelphia Gas Works

:
:
:
:
:
:

C-2022-3037213

**INTERIM ORDER
REQUIRING REPRESENTATION**

On September 19, 2022, Bobby Malafee (Complainant) filed a Formal Complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The complaint alleges that the Respondent is threatening to shut off her electric service and she would like a Commission-issued payment agreement.

On October 10, 2022, the Respondent filed an answer in which it denied the material allegations of fact and conclusions of law in the complaint and claimed that Complainant's account was a commercial account.

By notice dated January 3, 2023, this matter was assigned to me and scheduled for a telephonic hearing on February 27, 2023.

At time of the telephonic hearing, it was confirmed that Complainant's account was a commercial account for J&B Bridesburg Pizza, LLC.

The Commission's regulations provide that only an individual may represent themselves.¹ All others, including a partnership, corporation, trust, association, or governmental

¹ 52 Pa. Code § 1.22(a).

agency or subdivision, must be represented an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.² These regulations are consistent with the rules of the Pennsylvania Supreme Court and may not be waived.³ Accordingly, in order to participate further in these proceedings, J&B Bridesburg Pizza, LLC, must be represented by counsel licensed to practice law in the Commonwealth.⁴

At the hearing, the parties were informed that I would provide Complainant thirty (30) days to have an attorney enter their appearance on behalf of Bobby Malafee/J&B Bridesburg Pizza and the hearing would be rescheduled to a date thereafter.

THEREFORE

IT IS ORDERED:

1. That Complainant, Bobby Malafee/J&B Bridesburg Pizza, LLC., shall cause an attorney to enter an appearance in accordance with 52 Pa. Code §§ 1.21-1.25, on or before **March 29, 2023**.

2. **That failure to cause an attorney to enter an appearance as set forth in Paragraph 1 may result in the dismissal of the complaint in its entirety.**

Date: March 16, 2023

/s/
Michael J. Mroczka
Special Agent

² 52 Pa. Code §§ 1.21 & 1.22.

³ *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994).

⁴ *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010).

C-2022-3037213 - BOBBY MALAFEE v. PHILADELPHIA GAS WORKS

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bridesburgpizzaphilly@gmail.com

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Accepts eservice