



PHILADELPHIA GAS WORKS

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November 2, 2023

VIA ELECTRONIC FILING

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

Re: Melvin A. Roach Jr. v. Philadelphia Gas Works; Docket No. C-2023-3043498

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 ELECTRONIC MAIL

Melvin A. Roach Jr.

roachm646@gmail.com

Date: November 2, 2023

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melvin A. Roach Jr.,	:	
Complainant,	:	
v.	:	Docket No. C-2023-3043498
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Melvin A. Roach Jr.
roachm646@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: November 2, 2023

Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melvin A. Roach, Jr.,	:	
Complainant,	:	
v.	:	Docket No. C-2023-3043498
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

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

Philadelphia Gas Works (“PGW” or “Respondent”), pursuant to 52 Pa. Code § 5.101(a)(1) of the Commission’s regulations, hereby submits the following Preliminary Objection to the Formal Complaint of Melvin A. Roach, Jr. (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on October 13, 2023 (“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 appears to be alleging violations of, inter alia, HJR-192, the UCC, and regulations pertaining to the FTC, CFPB, and TILA. *See* Complaint, ¶4.

II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS

1. The Commission’s Rules of Administrative Practice and Procedure permit parties to file preliminary objections.

2. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

- (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.
- (7) Standing of a party to participate in the proceeding.

3. Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

4. The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlt. 1988).

5. However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlt. 2007)

6. 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. *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlt. 1996).

III. PRELIMINARY OBJECTIONS BY PGW

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

A. Dismissal Based on Lack of Commission Jurisdiction

8. 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).

9. To act on the Complaint, the Commission must have jurisdiction over the subject matter. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992), *alloc. den.*, 637

A.2d 293 (Pa. 1993).

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

11. As such, the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

12. A party to the proceeding may not create jurisdiction where jurisdiction does not exist. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

1. The Commission Lacks Jurisdiction Over Claims Based on Alleged Violations of, inter alia, HJR-192, the UCC, and regulations pertaining to the FTC, CFPB, and TILA.

13. The instant Complaint is based on alleged transactions under and violations of, inter alia, HJR-192, the UCC, and regulations pertaining to the FTC, CFPB, and TILA.

14. The Commission is not the proper forum for resolving the issues raised as the state legislature has not specifically granted the Commission with such subject matter jurisdiction.

15. Therefore, the Commission lacks jurisdiction over the substance of the Complaint.

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

IV. CONCLUSION

WHEREFORE, PGW respectfully requests that this Commission grant PGW's Preliminary Objection, 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: October 20, 2022

Counsel for PGW