



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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March 5, 2024

**VIA ELECTRONIC FILING**

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

Re: Jeffrey Byard v. Philadelphia Gas Works; Docket No. C-2024-3046412

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 AND FIRST CLASS MAIL**

Jeffery Byard  
1716 South 58<sup>th</sup> Street  
Philadelphia, PA 19143  
[jbyard85@hotmail.com](mailto:jbyard85@hotmail.com)

Date: March 5, 2024

*/s/ Graciela Christlieb*  
Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffery Byard,	:	
Complainant,	:	
v.	:	Docket No. C-2024-3046412
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To:** Jeffery Byard  
[jbyard85@hotmail.com](mailto:jbyard85@hotmail.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](mailto:graciela.christlieb@pgworks.com)

Date: March 5, 2024

*Counsel for PGW*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffery Byard,	:	
Complainant,	:	
v.	:	Docket No. C-2024-3046412
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF RESPONDENT  
PHILADELPHIA GAS WORKS**

Philadelphia Gas Works (“PGW” or “Respondent”), pursuant to 52 Pa. Code § 5.101(a)(3) of the Commission’s regulations, hereby submits the following Preliminary Objection to the Formal Complaint of Jeffery Byard (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on February 14, 2024 (“Complaint”). In support of this Preliminary Objection, PGW states as follows:

**I. INTRODUCTION**

The Complaint does not contain information specific enough to allow PGW to understand the allegations against it, conduct a meaningful investigation of the allegations, or prepare a coherent response or defense. Also, the Complaint fails to set forth any facts that could be construed as a violation of a Commission regulation, statute, or order by PGW.

**II. LEGAL STANDARD**

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.Cmwlth. 1988).

5. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlth. 1988).

### **III. PRELIMINARY OBJECTIONS BY PGW**

6. In paragraph 5 of the Complaint “Reason for Complaint,” Complainant marked an “X” next to “Other” and added “Attached.”

7. In paragraph 6 of the Complaint “Requested Relief,” Complainant refers to the “fees, penalty and interest charged associated with delinquent obligations incurred by PGW’s customers in this action...” however, there are no other PGW customers involved in this action and neither the Complainant nor the Byard Group, LLC is currently a customer at 2315 North 17<sup>th</sup> Street.

8. The address in question has multiple units and each unit has had multiple tenants; the Complaint fails to identify which tenant is the subject of the Complaint, what unit is the subject of the Complaint, or even an amount incurred by a tenant that he is contesting. Moreover, PGW has no record of transferring any balance from a tenant at this property to the Complainant or the Byard Group, LLC in the last four years, so it is unable to discern what the Complaint is referring to in order to conduct a meaningful investigation of the allegations and prepare a coherent response.

#### **A. Dismissal Based on Insufficient Specificity of the Pleading**

9. A formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701.

10. A complaint should contain information specific enough to allow the respondent to understand the allegations against it in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense.

11. The Complaint fails to comply with either 66 Pa.C.S. § 701 or 52 Pa.Code § 5.22(a)(5) and contains no information specific enough to allow PGW to prepare a coherent response or defense.

#### **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, including ordering the Complainant to file an amended Complaint.

Respectfully submitted,

*/s/ Graciela Christlieb*

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Date: March 5, 2024

*Counsel for PGW*