



PHILADELPHIA GAS WORKS

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April 12, 2024

VIA ELECTRONIC FILING

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

Re: BLR Properties LLC v. Philadelphia Gas Works; Docket No. F-2024-3046024

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

Anntwinette Dupree, Esquire
lawofficesofadupree@gmail.com
Counsel for BLR Properties LLC

Date: April 12, 2024

/s/ Graciela Christlieb
Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|---------------------------|
| BLR Properties LLC, | : | |
| Complainant, | : | |
| v. | : | Docket No. F-2024-3046024 |
| | : | |
| Philadelphia Gas Works, | : | |
| Respondent. | : | |

NOTICE TO PLEAD

To: BLR Properties
lawofficesofadupree@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 or Special Agent 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 12, 2024

Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| BLR Properties LLC, | : | |
| Complainant, | : | |
| v. | : | Docket No. F-2024-3046024 |
| | : | |
| Philadelphia Gas Works, | : | |
| Respondent. | : | |

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

Pursuant to 52 Pa. Code § 5.101(d) of the Commission’s regulations and the leave granted by the Presiding Officer in this matter on April 10, 2024, Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objection to the Formal Complaint of BLR Properties LLC (“Complainant”). In support of this Preliminary Objection, PGW states as follows:

I. INTRODUCTION

By Hearing Notice dated March 1, 2024, this matter was set for an evidentiary hearing on April 10, 2024. On the date of the hearing, the parties called in as directed. During off the record discussions prior to the start of the hearing, it became apparent to PGW that the Complainant wished to litigate issues relating to the administration of PGW’s Landlord Cooperation Program (“LCP” or “Program”) due to its believe that PGW had failed to fulfill its obligations under the terms of the program. Prior to the taking of evidence in this matter, PGW made an oral motion dismiss the issues raised regarding LCP as the Commission does not have subject matter jurisdiction over the Program. The Presiding Officer in this matter instructed PGW to reduce the objection to writing.

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 the proceeding;

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.*

- (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

A. Dismissal Based on Lack of Commission Jurisdiction

5. 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.

6. The matter of whether the Commission lacks subject matter jurisdiction is not a waivable defense and can be asserted at any time during the proceeding.⁶ Moreover, neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist.⁷

7. 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

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).

⁶ *Charles E. Goodwin v. PGW*, Docket No. F-2015-2497714 (April 5, 2016).

⁷ *Id.*

for private services that only supplement the public services provided by PGW.

8. The Commission has further held that any rights or obligations in connection with the 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 the 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 and grant any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Graciela Christlieb

Graciela Christlieb, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
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Date: April 12, 2024

Counsel for PGW