

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Byard	:	
	:	
v.	:	C-2024-3046412
	:	
Philadelphia Gas Works	:	

**ORDER
SUSTAINING PRELIMINARY OBJECTION**

On February 14, 2024, Jeffrey Byard (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant stated that it involved utility service to Byard Group, LLC, 2315 North 17th Street, Philadelphia, PA.

On March 5, 2024, PGW filed a Preliminary Objection to the Complaint based on insufficient specificity of a pleading. The Respondent’s Preliminary Objection was endorsed with a Notice to Plead, advising the Complainant he had 10 days to file a written answer to the objection.¹ The Complainant did not file a response to PGW’s Preliminary Objection.

By Motion Judge Assignment Notice dated April 3, 2024, PGW’s Preliminary Objection was assigned to me for disposition.

For the reasons set forth below, PGW’s Preliminary Objection will be granted.

¹ 52 Pa.Code § 5.101(f)(1) provides that “[a]n answer to a preliminary objection may be filed within 10 days of date of service.”

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically 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.
- (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.

52 Pa.Code § 5.101.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa.*

State Ethics Comm'n, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for the purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, the Complaint contains general allegations about prior tenants of a property presumably owned by the Complainant. The Complainant alleges PGW is charging the property owner for outstanding bills incurred by the tenants over an unspecified three-year period. The relief requested by the Complainant is to rescind any fees, penalties, and interest charges associated with PGW's customers. However, the Complaint does not contain any names, addresses, account numbers, or any other information identifying the customers/tenants being referenced. The Complaint also does not contain any specific dates or years when outstanding balances were allegedly accrued by the unidentified customers/tenants.

In addition, PGW alleges that neither the Complainant nor Byard Group, LLC is currently a PGW customer at 2315 North 17th Street, Philadelphia, PA. PGW further alleges that the address in question has multiple units, and each unit has had multiple tenants and PGW has no record of transferring any balance from a tenant at this property to the Complainant or Byard Group, LLC in the last four years.

I agree with PGW that the Complaint is insufficient and renders PGW unable to discern what the Complaint is referring to in order to conduct a meaningful investigation of the allegations and prepare a coherent response. Accordingly, PGW's Preliminary Objection shall be granted, and the Complainant shall have the right to file an amended complaint pursuant to 52 Pa.Code § 5.101(h).

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Philadelphia Gas Works in the matter of Jeffrey Byard v. Philadelphia Gas Works at Docket No. C-2024-3046412 is sustained.

2. That the Complainant may file an Amended Complaint specifying, but not limited to, the following:

- a. Names and addresses of tenants/customers at issue;
- b. Dates of service at issue;
- c. Dates and amounts of any balances transferred to the Complainant;

3. That if the Complainant does not file an Amended Complaint complying with ordering paragraph 2 within 10 days of service of this order, this case shall be dismissed.

Date: April 22, 2024

_____/s/
F. Joseph Brady
Administrative Law Judge

C-2024-3046412 – JEFFREY L BYARD v. PHILADELPHIA GAS WORKS

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