



PHILADELPHIA GAS WORKS

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May 15, 2024

VIA ELECTRONIC FILING

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

Re: Lisa Wertz v. Philadelphia Gas Works; Docket No. C-2024-3048687

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.

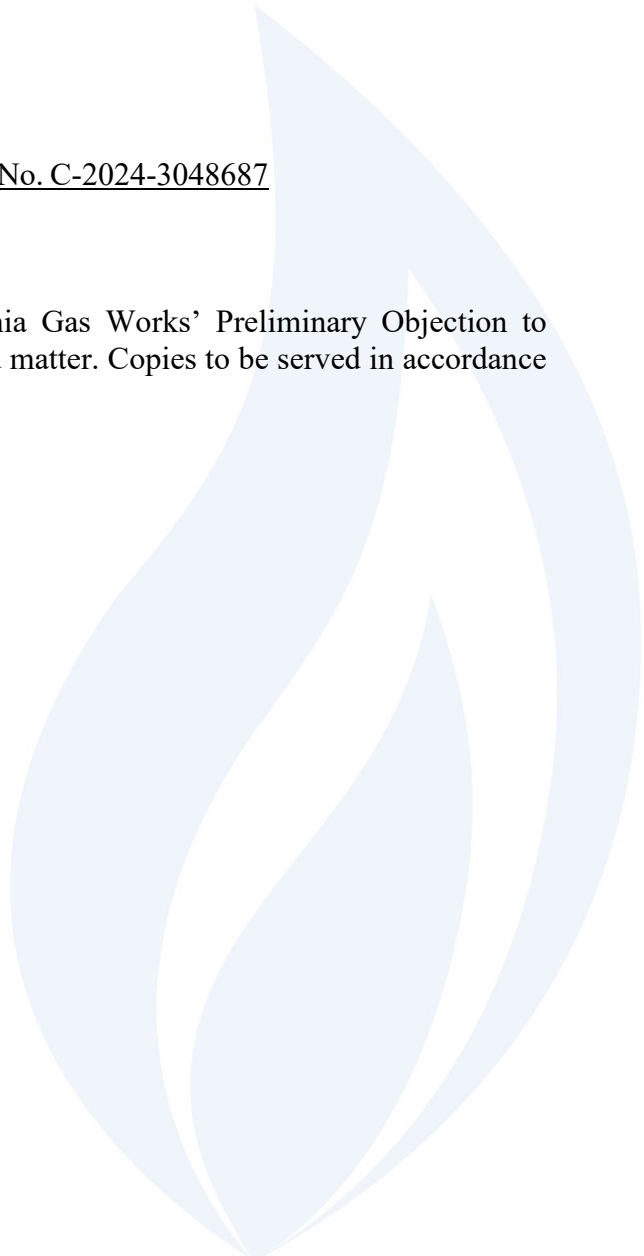
Sincerely,

/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

Lisa Werts

lisawerts2002@gmail.com

Date: May 15, 2024

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa Werts,	:	
	:	
Complainant,	:	
v.	:	Docket No. C-2024-3048687
	:	
	:	
Philadelphia Gas Works,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

To: Lisa Werts
lisawerts2002@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: May 15, 2024

Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa Werts,	:	
	:	
Complainant,	:	
	:	Docket No. C-2024-3048687
v.	:	
	:	
Philadelphia Gas Works,	:	
	:	
Respondent.	:	

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

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objection to the Formal Complaint of Lisa Werts (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on April 25, 2024 (“Complaint”). Pursuant to 52 Pa. Code § 5.61 and 5.101(d) of the Commission’s regulations, PGW filed an Answer with New Matter to the Complaint on this same date. In support of this Preliminary Objection, PGW states as follows:

I. INTRODUCTION

As more fully set forth in PGW’s Answer with New Matter, Complainant appears to be raising issues relating to a balance transfer that occurred when she established gas service in her name on August 1, 2018, which is beyond the statute of limitations at 66 Pa.C.S. § 3314.

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;
- (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;

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.*

- (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

5. PGW's responses to Paragraphs 1 to 7 of the Complaint are incorporated herein by reference. In addition, PGW's New Matter to the Complaint is also incorporated herein by reference as well as any exhibits attached thereto.

A. Dismissal Based on Lack of Commission Jurisdiction

6. 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.

7. The statute of limitations at 66 Pa.C.S. § 3314 is a jurisdictional issue. It requires that any complaint seeking relief under the Public Utility Code be brought within three years from the date at which the liability therefor arose. As a jurisdictional issue, the statute of limitations and the Commission's lack of jurisdiction may be raised at any time. *See, e.g., Application of Laurel Pipe Line Company*, Docket No. A-2016-2575829 (Order entered July 12, 2018) and *Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203 (Final Order entered January 27, 2015).

8. The Complainant appears to be raising issues relating to a balance transfer that occurred

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).

on August 30, 2019.

9. The automatic run date for the statute of limitations was August 1, 2021.⁶

10. All allegations and claims regarding the balance transfer fall outside the applicable statutory period of limitation and are barred under 66 Pa.C.S. § 3314.

11. Additionally, the transferred balance has already been the subject of a Commission payment agreement issued at BCS Docket No. 3652116.

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.

Respectfully submitted,

/s/ Graciela Christlieb

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Philadelphia, PA 19122
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Date: May 15, 2024

Counsel for PGW

⁶ As the Commission has occasionally chosen to apply a 4-year statute of limitations in accordance with 66 Pa. C.S. §1312(a) when dealing with complaints involving balance transfers, PGW notes that even under Section 1312(a), the run date would be August 1, 2022, which is still almost 2 years prior to the filing of this Complaint. In regard to the use of Section 1312(a) in balance transfer cases, PGW respectfully submits that Section 1312(a) is not a statute of limitations provision; it is a remedies provision that governs how far back in time the Commission can go when issuing a credit or refund in a rate or rate-related case. Complaints involving balance transfers are neither rate cases, nor are they rate related. Complainants disputing balance transfers are not disputing the rate being billed when the transferred balance accrued; they are disputing the determination made by the utility that they are liable for the balance. A determination of liability is made pursuant to 52 Pa. Code § 56.35 and includes questions of residency, not rates. 66 Pa. C.S. § 3314(a), however is the statute of limitations provision that governs how long a customer has to file a complaint - three years from the date the liability arose. In balance transfer cases, the liability arose when the determination about liability was made by the utility.