



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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May 20, 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 the Amended Formal Complaint in 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: Hon. F. Joseph Brady, Pennsylvania Public Utility Commission [w/enc.]  
Cert. of Service [w/enc.]

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**NOTICE TO PLEAD**

**To:** Jeffrey Byard  
1716 S. 58<sup>th</sup> Street  
Philadelphia, PA 19143  
[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 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](mailto:graciela.christlieb@pgworks.com)

Date: May 20, 2024

*Counsel for PGW*

**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 AND REGULAR MAIL**

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

Date: May 20, 2024

*/s/ Graciela Christlieb*  
Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PRELIMINARY OBJECTION OF THE PHILADELPHIA GAS WORKS  
TO THE FORMAL COMPLAINT OF JEFFREY BYARD**

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objection to the Formal Complaint of Jeffrey Byard (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on April 29, 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 is challenging PGW’s right to collect on municipal claims owed to PGW for gas service pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §7101, et seq. (“Municipal Lien Act”). PGW avers that the Complaint raises issues that are outside the Commission’s jurisdiction as 66 Pa. C.S.A. § 2212(n) divests the Commission of jurisdiction over the filing or administration of liens that exist pursuant to the Municipal Lien Act.

**II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS**

1. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>1</sup> The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>2</sup>

2. Under Section 5.101(a) of the Commission’s regulations, preliminary objections must

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<sup>1</sup> 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).

<sup>2</sup> *Id.*

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;
- (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.<sup>3</sup> However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>4</sup>

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.<sup>5</sup>

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

#### **A. The Commission lacks jurisdiction over the filing or administration of municipal liens.**

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.

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

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<sup>3</sup> County of Allegheny v. Cmwlth. of Pa., 490 A.2d 402 (Pa. 1985).

<sup>4</sup> Stanton-Negley Drug Co. v. Dep't of Pub. Welfare, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>5</sup> 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).

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. While municipal utility bills are the debts of the customers receiving service, property owners are responsible for utility charges, independent of and in addition to a lien against the property, and regardless of whether the owner or a tenant received the utility service.<sup>6</sup>

8. The City of Philadelphia, as owner of PGW, has the right to collect on municipal claims owed to PGW for gas service pursuant to the Municipal Claim and Tax Lien Law, Act 153 of 1923, P.L. 207, 53 P.S. §7101, et seq. (“Municipal Lien Act”).

9. A municipal lien arises automatically, by operation of law, as soon as a charge for a municipal service is assessed.<sup>7</sup>

10. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. § 1414, provides that “[a] city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply ...”

11. The Natural Gas Choice and Competition Act, 66 Pa. C.S.A. § 2212(n), provides that “[n]othing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.”

12. 66 Pa. C.S.A. § 2212(n) divests the Commission of jurisdiction over the filing or administration of liens filed pursuant to the Municipal Lien Act.

13. The Commission has repeatedly recognized its lack of subject jurisdiction in cases involving a dispute over a municipal lien. (*see Dung Phat, LLC v. PGW*, Docket No. C-2009-2135667 (Final Order entered January 13, 2010), *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673 (Final Opinion and Order entered January 13, 2010), *David Golan v. PGW*,

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<sup>6</sup> See 53 P.S. § 7251; *Skupien v. Borough of Gallitzin*, 134 Pa.Cmwlth. 115, 578 A.2d 577 (1990) (citing *McArther v. City of Phila. Tax Review Bd.*, 116 Pa.Cmwlth. 139, 541 A.2d 415 (1988)).

<sup>7</sup> See Section 3 of the Lien Act, 53 P.S. § 7106(a)(1); *Borough of Ambler v. Regenbogen*, 713 A.2d 145 (Pa. Cmwlth. 1998). Although the underlying debt is personal to the customer, the lien is *in rem* against the real property at which service was provided. Section 4 of the Lien Act, 53 P.S. § 7107; Pa. R.C.P. No. 3190; *City of Philadelphia v. Perfetti*, 119 A.3d 396 (Pa. Cmwlth. 2015).

Docket No. C-2009-2138115 (Final Order entered February 4, 2010), *2020 West Passyunk Avenue Inc. v. PGW*, Docket No. C-2009-2138727 (Final Order entered February 4, 2010), *Jean Charles v. PGW*, Docket No. C-2009-2138638 (Final Order entered February 5, 2010), *Agron Vata v. PGW*, Docket No. C-2009-2149960 (Final Order entered August 24, 2010), *William Petravich v. PGW*, Docket No. C-2010-2188984 (Final Opinion and Order entered February 10, 2011), *Avner and Gail Yamin v. PGW*, Docket No. C-2011-2221883 (Final Order entered June 29, 2011), *Ardelle Jackson v. PGW*, Docket No. C-2009-2119940 (Final Opinion and Order entered July 1, 2011), *Larry and Gail Newman v. PGW*, C-2011-2273565 (Final Opinion and Order issued March 29, 2012)).

14. As the Commission is without jurisdiction to decide on matters involving the imposition or administration of a municipal lien, the requested relief should be stricken. As there is no other issue upon which the Complainant could obtain relief, the Complaint should be dismissed.

#### 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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Date: May 20, 2024

*Counsel for PGW*