



PHILADELPHIA GAS WORKS

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June 24, 2024

VIA ELECTRONIC FILING

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

Re: Deborah Wilson Funeral Home v. Philadelphia Gas Works; Docket No. C-2023-3043695

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Motion to Dismiss with regard to the above-captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Please contact me if you have any questions regarding this filing.

Sincerely,

/s/ *Graciela Christlieb*

Graciela Christlieb, Esq.

Enclosures

cc: The Hon. Darlene D. Heep, Pennsylvania Public Utility Commission [w/enc.]
Cert. of Service [w/enc.]

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah L. Wilson Funeral Home, Inc.	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3043695
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' following **Motion to Dismiss** 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 Email Only

Deborah Wilson, CEO
Deborah L Wilson Funeral Home, Inc.
216 W Coulter Street
Philadelphia, PA 19144
Deborah.Wilson@dlwfuneralhome.com

Date: June 24, 2024

/s/ Graciela Christlieb
Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah L. Wilson Funeral Home, Inc.	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3043695
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Via Email Only
Deborah Wilson, CEO
Deborah L Wilson Funeral Home, Inc.
216 W Coulter Street
Philadelphia, PA 19144
Deborah.Wilson@dlwfuneralhome.com

You are hereby notified that an Answer or other responsive pleading to the enclosed **Motion to Dismiss** of Philadelphia Gas Works (“PGW”) must be filed within 20 days of the date of service, unless the presiding Administrative Law Judge directs the filing of a response sooner.

All pleadings, such as an Answer to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and the Office of Administrative Law Judge.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/>

With an electronic copy to:

Graciela Christlieb, Esquire
Philadelphia Gas Works
800 West Montgomery Ave
Philadelphia, PA 19122
Graciela.Christlieb@pgworks.com

Date: June 24, 2024

/s/ Graciela Christlieb
Counsel for PGW

**BEFORE THE
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	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’
MOTION TO DISMISS COMPLAINT**

To: The Honorable Darlene Heep:

Pursuant to 52 Pa. Code § 5.103 of the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), Philadelphia Gas Works (“PGW” or “Respondent”) files this Motion to Dismiss the Formal Complaint (“Complaint”) filed by Deborah L. Wilson Funeral Home, Inc. (“Funeral Home” or “Complainant”).

The grounds for this Motion are that:

(1) the Funeral Home is a Pennsylvania corporation which is required by the Commission’s regulations at 52 Pa. Code §§ 1.21 and 1.22 to be represented by a licensed attorney in this proceeding. A review of the docket shows that despite multiple warnings the Complainant has not had an attorney enter an appearance on its behalf.

(2) the Funeral Home’s Complaint was filed outside the three year statute of limitations. Here, PGW billed the Complainant in 2010 for the unauthorized usage (which was discovered in April 2010). The subject Complaint was filed more than a decade later, in 2023.

(3) the Funeral Home failed to comply with the Order of Administrative Law Judge (“ALJ”) Darlene Heep issued on May 23, 2024 (“Third Prehearing Order”) requiring the Complainant

to, (a) on or before June 11, 2024 to cause its legal counsel to enter his or her appearance with the Commission in accordance with the provisions of 52 Pa. Code § 1.24(b); and (b) on or before June 18, 2024 to file a response to the Preliminary Objection of Philadelphia Gas Works, which seeks dismissal of the Complaint for lack of jurisdiction due to the statute of limitations under 66 Pa. C.S. § 3314. A review of the docket shows that the Complainant has not complied with either prong of the Third Prehearing Order; and

(4) the Commission cannot grant the requested relief. The Commission does not direct payment arrangements for commercial customers. Nor does it direct payment arrangements when the property owner is responsible for charges due to tampering and theft of service. The Commission also lacks subject matter jurisdiction over the amounts billed for the subject unauthorized usage, since those amounts are now subject to docketed liens against the Property. In 2021, the Pennsylvania Supreme Court declared that PGW's docketed liens are judgments within the jurisdiction of the courts, not the Commission.

Therefore, PGW respectfully requests that the Commission dismiss the Complaint, with prejudice, filed by the Funeral Home. In support of this Motion, PGW states as follows:

I. Background and Procedural History

1. The Complainant filed a Complaint against PGW, which the Commission served on PGW on October 20, 2023, regarding gas service provided to the Funeral Home at 214-216 W. Coulter Street, Philadelphia, Pennsylvania, 19144 ("Property" or "Service Address"). Paragraph 11 of the Complaint states that the Complaint was being verified by the "CEO" of the Funeral

Home. In Paragraph 4 of the Complaint, the Funeral Home states that it is disputing gas bills issued by PGW and is requesting a payment agreement (after service was already terminated by PGW).

2. The Complaint was filed using the Commission’s Form. The Complainant did not provide any information for legal representation in Section 10, which explains that: “Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.”

3. On November 13, 2023, PGW timely filed an Answer and New Matter, which was accompanied by a Notice to Plead. PGW’s Answer with New Matter was served on the Complainant. In Paragraph 8 of the New Matter, PGW avers that the Funeral Home was a commercial customer of PGW. Public Records state that the Funeral Home is a Pennsylvania corporation.¹ Paragraph 9 of the New Matter alleges that the Funeral Home is the owner of the Service Address and has been since January 6, 2005. Public records state that the Funeral Home owns the Property.²

4. PGW also timely filed Preliminary Objection³ to the Complaint on November 13, 2023. PGW’s Preliminary Objection was served on the Complainant. PGW’s Preliminary Objection as well as Paragraphs 10 through 19 of PGW’s New Matter seek the dismissal of the Complaint for lack of jurisdiction due to the three-year statute of limitations under 66 Pa. C.S. § 3314.

¹ See Pennsylvania Department of State Bureau of Corporations records for Entity Number 3129206, which are available at: <https://www.corporations.pa.gov/Search/CorpSearch>. This record is a “public document” within the scope of 52 Pa. Code § 5.406.

² See Philadelphia Office of Property Assessment records for at 214-216 W. Coulter Street, Philadelphia, which are available at <https://property.phila.gov/>. This record is a “public document” within the scope of 52 Pa. Code § 5.406.

³ <https://www.puc.pa.gov/pdocs/1804975.pdf>.

5. Paragraphs 12 and 13 of PGW's New Matter aver that PGW discovered evidence of theft in April 2010 and that PGW billed the Complainant for the unauthorized usage between May 8, 2006 and April 23, 2010. Paragraphs 14 through 16 of PGW's New Matter aver the Complainant challenged the unauthorized usage charges via informal complaints and did not appeal the decisions by the BCS. Paragraph 17 of PGW's New Matter avers that, on December 16, 2011, PGW abandoned the gas service to the Property to prevent theft by way of a by-pass. This means that there is no physical pipe to deliver gas to the Property, and that there has been no gas service (authorized or unauthorized) to the Service Address since that time.

6. The theft of service balance (as well as the then-outstanding regular balance) are subject to docketed liens against the Property filed on March 30, 2011 and September 29, 2011.⁴

7. A Reply to New Matter was due on November 29, 2023. The Funeral Home did not file a Reply to the New Matter.

8. An answer to PGW's Preliminary Objections was originally due on November 29, 2023.

9. By Hearing Notice issued on February 15, 2024,⁵ a telephonic evidentiary hearing was scheduled for April 18, 2024. That Notice informed the Complainant that corporations "must be represented by an attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else." That Notice was served on both the Complainant and PGW.

⁴ See Philadelphia Civil Dockets for Case Nos. 110333707, 110333708 and 110932223, which are available at https://fjdefile.phila.gov/efsfd/zk_fjd_public_qry_00.zp_disclaimer. The civil dockets are "public documents" within the scope of 52 Pa. Code § 5.406.

⁵ <https://www.puc.pa.gov/pcdocs/1816744.docx>.

10. The Pre-Hearing Order⁶ entered on February 23, 2024. That Pre-Hearing Order directed that the Funeral Home – no later than March 8, 2024 - (a) shall have an attorney enter an appearance on behalf of Deborah Wilson Funeral Home or submit a statement as to why counsel is not required to comply; and (b) may file a response to PGW’s Preliminary Objection. Section 8 of that Pre-Hearing Order again informed the Complainant that corporations “must be represented by an attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else.” The February 23, 2024 Pre-Hearing Order was served on both the Complainant and PGW.

11. Before the scheduled hearing on April 18, 2024, Deborah Wilson requested a continuance on behalf of the Funeral Home. The continuance was granted.⁷ The hearing was rescheduled for May 22, 2024.⁸ That rescheduled hearing notice again informed the Complainant that corporations “must be represented by an attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else.” That Notice was served on both the Complainant and PGW.

12. The Second Pre-Hearing Order was entered on May 3, 2024. Section 8 of that Pre-Hearing Order again informed the Complainant that corporations “must be represented by an attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else.” The May 3, 2024 Pre-Hearing Order was served on both the Complainant and PGW.

13. The hearing was rescheduled for July 30, 2024.⁹ That Notice again informed the Complainant that corporations “must be represented by an attorney licensed to practice law in

⁶ <https://www.puc.pa.gov/pcdocs/1817625.docx>.

⁷ <https://www.puc.pa.gov/pcdocs/1825062.pdf>.

⁸ <https://www.puc.pa.gov/pcdocs/1824984.pdf>.

⁹ <https://www.puc.pa.gov/pcdocs/1829959.pdf>.

Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else.” That Notice was served on both the Complainant and PGW.

14. The Third Pre-Hearing Order¹⁰ was entered on May 23, 2024. That Pre-Hearing Order directed that the Funeral Home to (a) no later than June 11, 2024 to have an attorney enter an appearance on behalf of Deborah Wilson Funeral Home; and (b) no later than June 18, 2024 to file a response to PGW’s Preliminary Objection. Section 8 of that Pre-Hearing Order again informed the Complainant that corporations “must be represented by an attorney licensed to practice law in Pennsylvania, or admitted pro hac vice. Only an attorney may represent someone else.” The May 23, 2024 Pre-Hearing Order was served on both the Complainant and PGW.

15. A review of the docket shows that the Complainant has not complied with either prong of the Third Prehearing Order. Further, no such filing has been served on counsel for the Respondent.

II. Applicable Legal Standards

16. 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 any regulation or order of the commission.”¹¹ The Commission’s regulations further require that a complaint contain a clear statement of the relief sought.¹²

17. The party seeking affirmative relief from the Commission bears the burden of proof.¹³ A complainant must show that the named utility is responsible or accountable for the

¹⁰ <https://www.puc.pa.gov/pcdocs/1830510.pdf>.

¹¹ 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(4).

¹² 52 Pa. Code § 5.22(a)(5).

¹³ 66 Pa.C.S. § 332(a).

problem described in the complaint in order to prevail.¹⁴ This must be shown by a preponderance of the evidence.¹⁵

18. A failure to file a reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.¹⁶

19. The Commission's regulations require the corporations to be represented in this proceeding by an attorney licensed to practice law in Pennsylvania.

- a. The Commission's regulation at 52 Pa. Code § 1.21(c) provides that in nonadversarial proceedings, a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. In addition, the Commission's regulation at 52 Pa. Code § 1.35(b)(ii) permits pleadings, including complaints, submittals, or other documentary filings to be signed by an officer of a corporation, trust, association or other organized group.¹⁷
- b. The Commission regulation at 52 Pa. Code § 1.21(b) provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice law in the Commonwealth of Pennsylvania. The regulation at 52 Pa. Code § 1.8 defines an adversarial proceeding as one that is contested, and which will be decided on the basis of a formal record. Once the answer is filed, the proceeding becomes adversarial.¹⁸ This rule is consistent with the Pennsylvania Bar Rules promulgated by the Supreme Court.¹⁹ The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.²⁰

¹⁴ *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

¹⁵ *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlt. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

¹⁶ 52 Pa. Code § 5.63.

¹⁷ 52 Pa. Code § 1.22; *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlt. 1994); *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, PUC Docket No. C-2008-2033437 (Order entered Feb. 4, 2010).

¹⁸ *New Fizon Catering, Inc. v. PECO Energy Company*, Docket Nos. C-2008-2065498 and C-2008-2079076, (Opinion and Order entered June 24, 2009) (*New Fizon Catering*); *see also* 52 Pa. Code § 1.8.

¹⁹ *See New Fizon Catering*, at pp. 7-8.

²⁰ *Adventure Alley CLC, LLC v. PECO Energy Company and Great American Power*, Docket No. C-2014-2430850 (Final Order entered November 25, 2014) ("*Adventure Alley*"), *citing McCain v Curione, Pa. Board of Probation and Parole*, 527 A.2d 591 (Pa. Cmwlt. 1987).

20. The Commission has dismissed formal complaints for the lack of legal representation of a business entity once an answer was filed, making the proceeding adversarial.²¹

21. Even if the Commission had jurisdiction over a complaint filed by an unrepresented corporation, the formal complaint may be dismissed based on a complainant's failure to comply with an order issued by an ALJ.²²

22. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.²³ Questions on subject matter jurisdiction may be raised at any time, since an order issued without subject matter jurisdiction is void from the beginning.²⁴

23. Section 3314(a) of the Public Utility Code divests the Commission of jurisdiction to hear the Complainant's action brought more than three years from the date the alleged liability arose.²⁵

24. The Commission lacks subject matter jurisdiction over amounts that are subject to liens docketed under the Lien Law.²⁶ Payment for unpaid gas service provided by PGW can be

²¹ See, e.g., *Sherwood Springs Property Holdings, LLC v. Pittsburgh Water and Sewer Authority and Pennsylvania-American Water Company*, Docket No. C-2018-3004826 (Final Order entered January 3, 2019) ("*Sherwood Springs*"); 2018 WL 6413895.

²² *Sherwood Springs* *3; *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) ("*Snyderville*") (dismissal is an appropriate sanction for failure to comply with an order of an administrative law judge).

²³ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993). 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. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order entered May 28, 2008; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Allegheny County Port Authority v. PUC*, 427 Pa. 562, 237 A.2d 602 (1967). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

²⁴ See *Vichosky v. Boucher*, 162 Pa. Superior Ct. 598, 60 A.2d 381, 1948 Pa. Super. LEXIS 298 (1948).

²⁵ 66 Pa. C.S. § 3314(a). See, e.g., *Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, Final Order (Act 294) entered January 27, 2015 adopting Initial Decision dated November 19, 2014; *Hynn Yoo and Yu Shin Yoo v. Philadelphia Gas Works*, Docket No. C-2013-2369915, Final Order (Act 294) entered July 10, 2014 adopting Initial Decision dated April 7, 2014; *Tyrone Brown v. Philadelphia Gas Works*, Docket No. F-2018-2641015, Final Order (Act 294) entered May 17, 2018 adopting the Initial Decision issued March 20, 2018; *Sythierno Mansour v. Philadelphia Gas Works*, Docket No. C-2016-2528326, Final Order (Act 294) entered October 25, 2016 adopting the Initial Decision issued August 19, 2016.

²⁶ The Municipal Claims and Tax Lien Act, 53 P.S. § 7101, et seq. ("Lien Law").

secured by liens²⁷ under the Lien Law.²⁸ This ability to use municipal liens for unpaid gas service is preserved and protected by Sections 1402²⁹ and 1414³⁰ of the Public Utility Code. In 2021, the Pennsylvania Supreme Court declared that PGW’s docketed liens are judgments.³¹ Judgments are subject to the Judicial Code³² and the Lien Law³³ and are within the jurisdiction of the courts. Nothing indicates that the Commission has jurisdiction to amend or modify amounts subject to judgments (docketed liens).³⁴

²⁷ 53 P.S. § 7107 gives a municipality the right to impose a lien, inter alia, on any property which has benefited by any service or improvement furnished by the municipality. *Sledge v. Borough of Homestead*, 677 A.2d 1327 (Pa. Cmwlth. 1996). (Municipality can legally place a lien upon the property benefitted for tenant’s failure to pay for water and sewerage bills.) Between the municipality and the property owner, it is the property owner (landlord) which is responsible for the tenant it places in possession of the premises. *City of Philadelphia v. Northwood Textile Mills, Inc.*, 149 A.2d 60, 63 (Pa. 1959).

²⁸ See, e.g., *Philadelphia v. Perfetti*, 119 A.3d 396, 400 (Pa. Cmwlth. 2015 (citing 53 P.S. § 7107), appeal denied, 131 A.3d 493 (Pa. 2016).

²⁹ 66 Pa. C.S. § 1402. In Section 1402(4), the Legislature found and declared that: “it is appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability to provide natural gas for the benefit of the residents of the city.” 66 Pa. C.S. § 1402(4).

³⁰ 66 Pa. C.S. § 1414. Section 1414(a) confirms that the municipal lien power extends to claims for unpaid gas services owed to PGW: 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.” 66 Pa. C.S. § 1414(a) (citing 53 P.S. § 7106).

³¹ *PGW v. PUC*, 249 A.3d 963 (Pa. 2021) (“PGW II”) (subsequent history not listed).

³² The Pennsylvania Supreme Court held that the amounts subject to PGW’s docketed municipal liens are subject to post-judgment interest as authorized by the Judicial Code, 42 Pa. C.S. § 8101 and 41 P.S. § 202, since the docketed municipal liens must be “treated in the same manner as a judgment that has been rendered following an adjudicative process.” *PGW II*, 249 A.3d at 974.

³³ The Pennsylvania Supreme Court explained that the Lien Law includes mechanisms by which the property owner can challenge docketed liens (judgments) after their entry under the Lien Law. 53 P.S. § 7112; see, e.g., *City of Phila. v. Manu*, 76 A.3d 601, 604 (Pa. Cmwlth. 2013) (The Lien Law is intended to “furnish a complete and exclusive system in itself, so far as relates to” municipal liens). Specifically, the Supreme Court explained that: “... a property owner may challenge a recorded municipal lien, including the amount thereof, by serving the municipality with a notice to issue a writ of scire facias, thereby forcing a hearing on the lien and allowing the property owner to assert defenses thereto. 53 P.S. § 7184; *N. Coventry Twp. v. Tripodi*, 64 A.3d 1128, 1133 (Pa. Cmwlth. 2013). Alternatively, a property owner may pay the amount of the lien into court and then obtain a hearing on the validity of the amount of the lien. 53 P.S. § 7182.” *PGW II*, 249 A.3d at 971.

³⁴ *Gasparro v. PUC*, 814 A.2d 1282, 1285 (Pa. Cmwlth. 2003) (PUC lacks jurisdiction after a judgment exists). In *Gasparro*, the customer filed a complaint with the Commission after the utility had obtained a default judgment against the customer. The Commonwealth Court held that the Public Utility Code did not empower the Commission to review the merits of that judgment or to conduct a post-judgment review of the underlying facts and charges.

25. The Commission does not direct payment arrangements for commercial customers. For residential customers, the Responsible Utility Customer Protection Act³⁵ makes explicit the power of the Commission to establish at least one payment arrangement per customer.³⁶ Commercial customers are not entitled to a Commission authorized payment agreement under that Act.³⁷

26. The Commission has held that payment arrangements are not appropriate when the property owner is responsible for charges due to tampering and theft of service.³⁸ “The Commission will not issue a payment arrangement to a complainant when the record demonstrates a lack of good faith effort on the part of the customer to pay the utility bills.”³⁹ By law a public utility is entitled to receive payment for the service it provides.⁴⁰ Otherwise, customers' unpaid bills are included in the utility's uncollectible expenses and ultimately paid by the remaining ratepayers.⁴¹

27. PGW’s Commission-approved tariff has the force and effect of law.⁴² PGW’s Tariff provides that, prior to reconnection, commercial (non-residential) customers must pay all charges

³⁵ 66 Pa. C.S. §§ 1401, *et seq.*

³⁶ 66 Pa. C.S. §§ 1403, 1405(a).

³⁷ *Faith Love & Hope Tabernacle v. UGI Utilities, Inc.*, PUC Docket No. C-2010-2163224, Initial Decision dated April 18, 2011, adopted by Final Order (Act 294) entered June 28, 2011 (Commercial customers are not entitled to a payment arrangement under 66 Pa. C.S. §§ 1403, 1405(a) or under the Commission regulations at 52 Pa. Code, Chapter 56); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, PUC Docket No. C-20055032, Initial Decision dated March 14, 2006, adopted Opinion and Order entered July 31, 2006 (No payment arrangement was directed because the Complainant is a commercial customer of PGW) .

³⁸ *See, e.g., Akeem Simmons, et al. v. UGI Utilities, Inc.*, PUC Docket No. C-2017-2605783, Opinion and Order entered on July 12, 2018; *James T. Counsel, III v. Philadelphia Gas Works*, PUC Docket No. C-2014-2438368, Initial Decision dated May 7, 2015, adopted Opinion and Order entered November 19, 2015; *Darnell Fassett v. Philadelphia Gas Works*, Opinion and Order entered April 27, 2015 at Docket No. F-2014-2408541. (Fassett).

³⁹ *George Crawford v. National Fuel Gas Distribution Corporation*, Docket Number C-20066348, Final Order entered December 6, 2007.

⁴⁰ *Scaccia v. West Penn Power Company*, 55 Pa. P.U.C. 637 (1982).

⁴¹ *Cf., Bolt v. Duquesne Light Co.*, 66 Pa. PUC 463 (1988); *Thomas P. O'Toole v. The Bell Telephone Co. of Pennsylvania*, Docket Number C-923964 (Final Order entered August 20, 1992).

⁴² *Cheltenham & Abington Sewerage Co. v. PUC*, 25 A.2d 334, 336 (Pa. 1942).

associated with non-payment terminations and restoration, including but not limited to charges for unpaid Gas Service.⁴³

28. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest.⁴⁴ A hearing is necessary only to resolve disputed questions of fact, and, when the question presented is one of law, the Commission need not hold a hearing.⁴⁵

III. Argument

29. The allegations in PGW's new matter are deemed to be admitted.⁴⁶

a. Failure to Obtain Legal Representation

30. The Complaint was signed by Deborah Wilson on behalf of the Funeral Home. While Ms. Wilson, as CEO of the Funeral Home, may have been authorized to file the Complaint, she cannot represent the Funeral Home in this adversarial proceeding or at an evidentiary hearing that may be scheduled in this matter. The proceeding became adversarial upon the filing of an Answer and New Matter by PGW on November 13, 2023.⁴⁷

31. The Funeral Home is a corporation. The Funeral Home has not disputed its corporate status.⁴⁸

⁴³ PGW Gas Service Tariff, First Revised Page No. 32, at Rule 5.9.B.

⁴⁴ 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

⁴⁵ *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993).

⁴⁶ 52 Pa. Code § 5.63.

⁴⁷ *New Fizon Catering*.

⁴⁸ PGW Answer and New Matter ¶¶ 8, 9.

32. The Funeral Home was informed that a failure to secure legal representation or otherwise comply with the provisions of the ALJ's Orders may result in the dismissal of the Complaint.⁴⁹

33. The Funeral Home did not comply with the Third Pre-Hearing Order⁵⁰ by June 11, 2024, and still to this date has not complied with the directive in the Third Pre-Hearing Order to cause its legal counsel to enter his or her appearance with the Commission. A review of the docket shows that no legal counsel has entered his or her appearance on behalf of the Complainant; nor has the Complainant shown cause as to why it is not required to be represented by counsel under the Commission's regulations. Moreover, the Complainant has not served counsel for the Respondent with either such filing.

34. In the absence of the Funeral Home securing legal representation, the Commission does not have jurisdiction to hear this matter.⁵¹ Further, the Complainant has failed to comply with the Third Prehearing Order, which warrants dismissal of the Complaint. On these grounds, PGW respectfully requests that the Complaint be dismissed, with prejudice.⁵²

b. The Funeral Home's Allegations Are Beyond The Three-Year Limitation Period

35. The Commission lacks subject matter jurisdiction because the allegations in the Complaint predate the applicable limitations period. This Complaint was filed on October 20, 2023. Three (3) years before that date is October 20, 2020. To be within the applicable limitations period, the allegations in the Complaint must have occurred on or after October 20, 2020. **They**

⁴⁹ Hearing Notice issued on February 15, 2024; Pre-Hearing Order entered on February 23, 2024; Second Pre-Hearing Order was entered on May 3, 2024; Hearing Notice issued on May 20, 2024; Third Pre-Hearing Order was entered on May 23, 2024.

⁵⁰ <https://www.puc.pa.gov/pcdocs/1830510.pdf>.

⁵¹ *Sherwood Springs*.

⁵² *Snyderville*.

do not. The allegations in the Complaint occurred before October 20, 2020: The termination of service occurred in April 2010;⁵³ and, the theft of service balance was billed in April 2010.⁵⁴ In 2011, it was determined (by BCS) that there were no “incorrect charges” on the bills for gas service at the Property.⁵⁵ At that time, it was determined that the Funeral Home is responsible, as the beneficiary of the gas and owner of the Property, for a theft of service balance that resulted from unauthorized usage at the Property.

c. There Are No Commission-Directed Payment Arrangements For Theft Of Service Balances

36. The Commission does not direct payment arrangements for commercial customers and should not direct a payment arrangement for the Funeral Home whose has a theft of service balance. The Funeral Home’s Complaint checked “the box” requesting a payment arrangement.⁵⁶ No explanation was given.⁵⁷ PGW’s Tariff – which has the force and effect of law – requires the full theft of service balance is required for restoration of gas service to the Property. Granting a payment arrangement to a party responsible for utility tampering and theft of service would send the wrong message to all other law abiding ratepayers that those who willfully misuse utility service can receive the benefit of a delayed repayment period at no interest to repay a debt arising from the misuse of service.

⁵³ PGW Answer and New Matter ¶ 4, 12.

⁵⁴ PGW Answer and New Matter ¶ 12-13.

⁵⁵ PGW Answer and New Matter ¶ 14-16; PGW Exhibit A.

⁵⁶ Complaint ¶ 4. The Complaint also indicates that it was told the amount of the theft of service balance. Complaint ¶ 7(c).

⁵⁷ Complaint ¶ 5.

d. The Commission Lacks Jurisdiction Over Amounts Subject to Docketed Liens

37. The Commission lacks subject matter jurisdiction because the theft of service balance is subject to a docketed lien. The theft of service balance is subject to docketed lines filed in 2011. Amounts under docketed liens must be challenged before the courts,⁵⁸ not the Commission.⁵⁹

e. A Hearing Is Not Necessary

38. A hearing in the instant case is not necessary in the public interest and would be a waste of Commission resources. For the reasons stated above, an evidentiary would be a pointless exercise.

39. The Complaint should be dismissed with prejudice.⁶⁰ Given the failure to obtain counsel and the failure to file an Answer to the Preliminary Objections, Funeral Home has failed to participate in the legal proceeding it initiated, and which has caused PGW to devote substantial resources.

⁵⁸ *Gasparro*. The Commission lacks jurisdiction when there is a judgment, *see* PGW II; *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002) (“*Equitable Gas*”). In *Equitable Gas*, *Equitable* commenced a civil action in the Court of Common Pleas against a former customer. Judgment was entered in favor of *Equitable*, but there was a dispute over the amount of post-judgment interest. The Superior Court held that the legal rate of post-judgment interest is 6% per year, pursuant to 42 Pa.C.S. § 8101 (as opposed to the 18% annual interest under *Equitable*’s Commission-approved tariff).

⁵⁹ *Faye Payne v. Philadelphia Gas Works*, C-2011-2247124; 2012 Pa. PUC LEXIS 271, 2012 WL 1066610 (PUC does not authority to order the City to remove or reduce the lien on the Complainant's property).

⁶⁰ *See, e.g., Stephen Little v. Pittsburgh Water and Sewer Authority*, Docket No. F-2021-3027107 (Order entered February 3, 2022 at 8-9) (complaint dismissed with prejudice for failure to prosecute).

WHEREFORE, PGW respectfully requests that the Commission: (a) grant this Motion to Dismiss; (b) dismiss the Complaint with prejudice; and (c) grant any other relief in favor of PGW that is deemed to be reasonable, appropriate, and in the public interest.

Respectfully submitted,

/s/ Graciela Christlieb

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Date: June 24, 2024

Counsel for PGW

VERIFICATION

I, Graciela Christlieb, hereby state that: (1) I am counsel for Philadelphia Gas Works (“PGW”); (2) I have reviewed the statements set forth in the foregoing Motion as to their accuracy; and (3) the facts set forth therein are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: June 24, 2024

/s/ Graciela Christlieb