



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Graciela Christlieb, Senior Attorney
Legal Department
Direct Dial: 215-684-6164
FAX: 215-684-6798
E-mail: graciela.christlieb@pgworks.com

June 24, 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' Motion for Issuance of Interim Order in 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. 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.	:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' following **Motion** 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
Jeffrey Byard, CEO
Byard Group, LLC
1716 S. 58th Street
Philadelphia, PA 19143
jbyard85@hotmail.com

Date: June 24, 2024

/s/ Graciela Christlieb
Counsel for PGW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

To: Via Email Only
Jeffrey Byard, CEO
Byard Group, LLC
1716 S. 58th Street
Philadelphia, PA 19143
jbyard85@hotmail.com

You are hereby notified that an Answer or other responsive pleading to the enclosed **Motion** 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
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PHILADELPHIA GAS WORKS’
MOTION FOR ISSUANCE OF INTERIM ORDER**

To: The Honorable F. Joseph Brady:

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”) submits this Motion for Issuance of Interim Order (“Motion”) in the above-captioned Complaint proceeding.

The grounds for this Motion are that:

- (1) PGW requests the issuance of an Interim Order correct the caption to reflect that the correct Complaint and the real party in interest is Byard Group, LLC (“LLC,” “Landlord,” or “Complainant”) — as opposed to an individual, Jeffrey Byard, who signed the Complaint as CEO/Owner of the LLC.
- (2) PGW requests the issuance of an Interim Order directing the LLC to secure legal representation for this proceeding within a set period of time. The LLC is a limited liability company, 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.

In support of this Motion, PGW states as follows:

I. Background and Procedural History

1. The CEO of the LLC (Jeffrey Byard) filed a Formal Complaint (“Original Complaint”) against PGW, which the Commission served on PGW on February 14, 2024, regarding gas service provided by PGW to 2315 North 17th Street, Philadelphia, PA (“Property” or “Service Address”). The Original Complaint generally states that it involves service to the LLC at the Property.

2. The Original Complaint was filed using the Commission’s Form. Section 11 of the Original Complaint states that the Complaint was being verified by the “CEO” of the LLC. Jeffrey Byard did not provide any information for legal representation. Section 10 of the Original Complaint 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 March 5, 2024, PGW timely filed a Preliminary Objection, which was accompanied by a Notice to Plead. PGW alleged that the Original 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. No response was filed to PGW’s Preliminary Objection.

4. By Motion Judge Assignment Notice dated April 3, 2024,¹ PGW’s Preliminary Objection was assigned to Administrative Law Judge F. Joseph Brady (“ALJ”) for disposition.

5. PGW’s Preliminary Objection was granted.²

¹ <https://www.puc.pa.gov/pcdocs/1823079.pdf>

² <https://www.puc.pa.gov/pcdocs/1825302.pdf>

6. The Owner of the LLC (Jeffrey Byard) filed an Amended Formal Complaint (“Amended Complaint”) against PGW, which the Commission served on PGW on April 29, 2024, challenging the responsibility (liability) of the LLC’s Property for the outstanding balance accumulated by one of LLC’s tenants at the Property.

7. On May 20, 2024, PGW timely filed an Answer with New Matter, which was accompanied by a Notice to Plead. PGW explains that the LLC is seeking reductions in the unpaid gas bills accumulated by the LLC’s tenant so as to reduce the liability of the LLC’s Property for unpaid gas bills under the Lien Law.

8. On May 20, 2024, PGW timely filed a Preliminary Objection, which was accompanied by a Notice to Plead. PGW alleges that the Amended Complaint should be dismissed because it raises issues that are outside the Commission’s jurisdiction.

9. The Owner of the LLC (Jeffrey Byard) filed a reply to PGW’s New Matter on June 7, 2024. The reply alleges that PGW must pursue the LLC’s Tenant, not the LLC’s Property, for any unpaid gas bills.

10. PGW’s Preliminary Objection to the Amended Complaint is pending before the ALJ.

11. A telephonic evidentiary hearing has been scheduled for July 24, 2024.³ 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.”

³ <https://www.puc.pa.gov/pcdocs/1829511.pdf>

II. Relief Requested by PGW

a. The Caption Should Be Amended So That The LLC Is The Complainant

12. PGW requests the issuance of an Interim Order correcting the caption to reflect the real party in interest, the LLC.

13. This proceeding should be captioned as being filed by the LLC. The LLC owed the Property, which it sold on November 14, 2023.⁴ During its ownership, the LLC rented the Property to tenants.⁵ The LLC is challenging the responsibility (liability) of the LLC's Property⁶ for the outstanding balance accumulated by one of LLC's tenants at the Property.⁷

14. This proceeding was incorrectly captioned as being filed by Jeffrey Byard. Jeffrey Byard is an individual who is the CEO and Owner of the LLC. Mr. Byard is "the responsible party to contact for official business" regarding the Property in matters regarding PGW.⁸

15. The LLC, and not Jeffrey Byard is the correct Complainant in this proceeding.⁹ The LLC appears to be involved with the Property and the Tenants. Jeffery Byard appears to be acting

⁴ Amended Complaint at p. 1.

⁵ Amended Complaint at p. 1. The Pennsylvania Supreme Court has indicated that the Lien Law imposes the primary duty to pay these charges on the property owner, even where the owner and its tenant have agreed that responsibility for payment lies with the tenant and the municipality bills the tenant directly instead of the owner. *City of Philadelphia v. Northwood Textile Mills*, 395 Pa. 112, 149 A.2d 60 (1959).

⁶ Section 7107 of the Lien Law, 53 P.S. § 7107, establishes the owner of the property as responsible for paying the charges for utility services consumed at the property. See *City of Philadelphia v. Perfetti*, 119 A.3d 396, 400 (Pa. Cmwlth. 2015). In addition, Section 7106 of the Lien Law, 53 P.S. § 7106, gives a municipality the right to impose a lien on any property benefited by any service 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 benefited for tenant's failure to pay for water and sewerage bills.). Between the municipality and the corporate owner, it is the corporation (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).

⁷ It is well settled that certain collections and lien practices of municipal utilities are beyond the Commission's jurisdiction. The Commission does not have jurisdiction over actions taken by utilities to collect a debt. See, e.g., *Gasparro v. PUC*, 814 A.2d 1282 (Pa. Cmwlth. 2003); *Donald Ashman v. National Fuel Gas Distribution Corporation*, Docket F-9031384, Opinion and Order issued January 21, 1993; 1993 Pa. PUC LEXIS 1 (PUC lacks jurisdiction to prohibit utility from pursuing its legal right to collect a debt).

⁸ Amended Complaint at p. 1.

⁹ See, *B&Z Holdings, LLC v. PECO Energy Company – Electric*, PUC Docket No. F-2020-3019239, Opinion and Order entered January 13, 2022 (noting that the Commission's case tracking system indicates Nelli Belder as the Complainant even though she submitted the filing on behalf of B&Z Holdings, LLC. The caption was corrected in the Initial Decision to reflect that B&Z Holdings, LLC was the Complainant.)

on behalf of the LLC as CEO/Owner of the LLC. A corporation or LLC is regarded as an independent entity even if the corporate stock is owned entirely by one person.¹⁰ The property of a wholly owned LLC belongs to the LLC, not to the owner of LLC.¹¹

b. The LLC Must Obtain Legal Representation

16. PGW requests the issuance of an Interim Order directing the LLC to secure legal representation for this proceeding within a set period of time, as established by the ALJ.

17. The LLC is a limited liability company and owned the Property.¹²

18. The Commission's regulations require limited liability companies to be represented in this proceeding by an attorney licensed to practice law in Pennsylvania. 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.¹³ This rule is consistent with the Pennsylvania Bar Rules promulgated by the Supreme Court.¹⁴ The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.¹⁵

¹⁰ *Kaites v. Department of Environmental Resources*, 108 Pa. Commw. 267, 529 A.2d 1148 (Pa. Cmwlth. 1991).

¹¹ See *Moss v. Elan*, 400 Pa. Super. 555, 583 A.2d 1254 (1990).

¹² See *Philadelphia* Office of Property Assessment records for at 2315 North 17th Street, which are available at <https://property.phila.gov/>. This record is a "public document" within the scope of 52 Pa. Code § 5.406.

¹³ *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.

¹⁴ See *New Fizon Catering*, at pp. 7-8.

¹⁵ *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. Cmwlth. 1987).

19. As an LLC, the Complainant needs to be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania.¹⁶

20. Non-attorneys are prohibited from representing companies and other business entities before the Commission.¹⁷

21. Jeffrey Byard is not an attorney admitted to practice before the Supreme Court of Pennsylvania,¹⁸ has not entered an appearance as an attorney in this proceeding, and has not sought to be admitted *pro hac vice*.¹⁹

22. The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.²⁰

23. If an attorney's appearance for the LLC is not entered before the hearing, counsel for PGW intends to orally move for dismissal of the Complaint at the hearing on the grounds that the Complainant is not represented by legal counsel, which deprives the Commission of jurisdiction to hear this matter. PGW's counsel understands that the LLC may need additional time to seek counsel and has no objection to the Court rescheduling of the hearing for such a purpose should it deem it necessary.

24. PGW files this Motion to avoid needing to orally request this relief at the hearing. If PGW must wait until the hearing, PGW will be required to expend substantial resources, both in legal fees and in staff time, to prepare for defending the Amended Complaint in the event that the oral motion is held in abeyance or denied. PGW does not have shareholders, and it is PGW's

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

¹⁷ See 52 Pa. Code. §§ 1.21–1.23.

¹⁸ See <https://www.padisiplinaryboard.org/for-the-public/find-attorney>.

¹⁹ See 52 Pa. Code §§ 1.22–23.

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

ratepayers who would be required to shoulder the burden of these resources. Funds collected from ratepayers are better used to support PGW's operations.

III. Conclusion

WHEREFORE, PGW respectfully requests that the Commission: (a) grant this Motion for Issuance of Interim Order; and (b) 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*

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

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