



**PHILADELPHIA GAS WORKS**

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June 27, 2024

**VIA ELECTRONIC FILING**

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

Re: Ernest Turner v. Philadelphia Gas Works; Docket No. F-2024-3049464

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Preliminary Objections to the 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

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Gas Works' Preliminary Objections 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**

Ernest Turner

[ernestturner22@gmail.com](mailto:ernestturner22@gmail.com)

Date: June 27, 2024

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ernest Turner,	:	
Complainant,	:	
v.	:	Docket No. F-2024-3049464
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To:** Ernest Turner  
[ernestturner22@gmail.com](mailto:ernestturner22@gmail.com)

Pursuant to Pa. Code § 5.101, you are hereby notified that any answer to the enclosed Preliminary Objections 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 Objections, 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: June 27, 2024

*Counsel for PGW*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ernest Turner,	:	
	:	
Complainant,	:	
	:	Docket No. F-2024-3049464
v.	:	
	:	
Philadelphia Gas Works,	:	
	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’  
PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT**

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objections to the Formal Complaint of Ernest Turner (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) June 7, 2024 (“Complaint”). Pursuant to 52 Pa. Code §§ 5.61, 5.62 & 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 these Preliminary Objections, PGW states as follows:

**I. INTRODUCTION**

As more fully set forth in PGW’s Answer with New Matter, Complainant is seeking to challenge PGW’s Delivery Charge on behalf of himself as well as the “Residents of Philadelphia.”

**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 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;

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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.*

- 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**

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.

#### **A. Dismissal Based on Impertinent Matter**

6. Section 5.101(a)(2) of the Commission's regulations permits a party to file a preliminary objection based on the inclusion of "scandalous or impertinent matter."

7. The challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter as they exceed the Commission's powers given that the Commission has no authority to allow a public utility to deviate from its tariff.<sup>6</sup>

8. The challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter and should be dismissed from the Complaint.

#### **B. Dismissal Based on Legal Insufficiency**

9. Section 5.101(a)(4) of the Commission's regulations permits a party to file a preliminary objection based on the legal insufficiency of a pleading.

10. The challenge to PGW's Delivery Charge is legally insufficient as it fails to support a claim that PGW has violated a Commission regulation, statute, or order.

11. The Complainant makes no allegation that PGW incorrectly calculated or applied

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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).

<sup>6</sup> Philadelphia Suburban Water Co. v. Pennsylvania Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002).

the Delivery Charge, only that the Delivery Charge itself is price gouging.

12. The Delivery Charge is a charge that has been approved by the Commission and is a part of PGW's duly filed and approved tariff.

13. A public utility may not charge a rate other than the rates set forth in its tariff.<sup>7</sup>

14. The challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter and should be dismissed from the Complaint.

### **C. Dismissal Based on Lack of Standing**

15. Section 5.101(a)(7) of the Commission's regulations permits a party to file a preliminary objection based on a lack of standing.

16. The Complainant seeks to challenge PGW's Delivery Charge for himself as well as for the "Residents of Philadelphia."

17. The Complainant does not have the standing to represent other customers; while an individual customer may represent himself or herself before the Commission,<sup>8</sup> an individual cannot act on behalf of other customers and make requests for relief on their behalf.

18. The portion of the Complaint purporting to represent the "Residents of Philadelphia" should be dismissed from the Complaint.

## **IV. CONCLUSION**

WHEREFORE, PGW respectfully requests that this Commission grant PGW's Preliminary Objections, dismiss the challenge to PGW's Delivery Charge and associated prayer for relief, 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: June 27, 2024

*Counsel for PGW*

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<sup>7</sup> 66 Pa. C.S. §1303.

<sup>8</sup> 52 Pa.Code § 1.21.