



**PHILADELPHIA GAS WORKS**

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September 11, 2024

**VIA ELECTRONIC FILING**

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

Re: Magdalena Cruz v. Philadelphia Gas Works; Docket No. C-2024-3050848

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 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**

Magdalena Cruz

[magdalena423.rios@gmail.com](mailto:magdalen423.rios@gmail.com)

Date: September 11, 2024

*/s/ Graciela Christlieb*

Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Magdalena Cruz,	:	
Complainant,	:	
v.	:	Docket No. C-2024-3050848
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To:** Magdalena Cruz  
[magdalena423.rios@gmail.com](mailto:magdalen423.rios@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  
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800 W. Montgomery Avenue  
Philadelphia, PA 19122  
[graciela.christlieb@pgworks.com](mailto:graciela.christlieb@pgworks.com)

Date: September 11, 2024

*Counsel for PGW*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Magdalena Cruz,	:	
Complainant,	:	
v.	:	Docket No. C-2024-3050848
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

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

Philadelphia Gas Works (“PGW” or “Respondent”) submits the following Preliminary Objections to the Formal Complaint of Magdalena Cruz (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on August 22, 2024 (“Complaint”). Pursuant to 52 Pa. Code § 5.61 and 5.101(d) of the Commission’s regulations, PGW also filed an Answer with New Matter to the Complaint on this same date. In support of these Preliminary Objections, PGW avers as follows:

**I. INTRODUCTION**

Complainant appears to be requesting a refund for a gas range she purchased; Complainant further claims that the amount is \$780.00. *See* Complaint, ¶5.

**II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS**

1. Preliminary objections to a Complaint are a permissible filing under the Commission’s Rules of Administrative Practice and Procedure.<sup>1</sup>

2. The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>2</sup>

3. 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:

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<sup>1</sup> 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>2</sup> *Id.*; *Montague v. Philadelphia Electric Company*, 66 Pa. P.U.C. 24 (1988).

- (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.

52 Pa. Code § 5.101(a)(1-7).

4. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objections, 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>

5. 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**

6. PGW incorporates herein, as if the same were set forth at length here, its responses to paragraphs 1 to 7 of the Complaint, as pled in its Answer with New Matter. In addition, PGW also incorporates herein all allegations pled in its New Matter to the Complaint as well as the exhibits attached thereto (if any), as if the same were set forth at length here.

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<sup>3</sup> *County of Allegheny v. Cmwth. 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. Cmwth. 2007).

<sup>5</sup> *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwth. 1996).

**A. Dismissal Based on Lack of Commission Jurisdiction and Removal of Impertinent Matter**

7. 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. 52 Pa. Code § 5.101(a)(1).

8. To act on the Complaint, the Commission must have jurisdiction over the subject matter.<sup>6</sup> 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.<sup>7</sup> As such, the Commission must act within, and cannot exceed, its jurisdiction.<sup>8</sup> A party to the proceeding may not create jurisdiction where jurisdiction does not exist.<sup>9</sup>

9. Section 5.101(a)(2) of the Commission’s regulations permits a party to file a preliminary objection based on the inclusion of impertinent matter. 52 Pa. Code § 5.101(a)(2).

10. Impertinent matter is an allegation which is not legally recoverable in the cause of action pleaded in the sense that it is irrelevant to that cause of action.<sup>10</sup>

**1. The Commission Lacks Jurisdiction Over Requested Relief in the Form of Money Damages**

11. As part of the relief sought, Complainant is asking the Commission to award money damages in the form of a refund for an appliance she purchased. *See* Complaint, ¶ 5.

12. The Commission’s enforcement powers do not include the ability to award complainants with money damages.<sup>11</sup>

**2. The Impertinent Matter Should be Stricken from the Complaint**

13. As the Commission is without jurisdiction to award money damages, the inclusion of the requested relief of money damages constitutes impertinent matter.

14. The impertinent matter should be stricken from the Complaint.

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<sup>6</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993) (“The Commission must have subject matter jurisdiction as a prerequisite to the exercise of its power before it can decide a controversy.”)

<sup>7</sup> *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>8</sup> *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

<sup>9</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>10</sup> *Olivieri v. Olivieri*, 242 Pa. Super. 457, 364 A.2d 361 (1976), *Hudock v. Donegal Mutual Insurance Co.*, 438 Pa. 272, n. 2 (1970).

<sup>11</sup> *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold*, 383 A.2d at 794-795.

**IV. CONCLUSION**

WHEREFORE, PGW respectfully requests that this Commission grant PGW's Preliminary Objections, Strike the requested relief as impertinent matter, dismiss the Complaint, and enter any other relief to PGW that is deemed to be reasonable and appropriate.

Respectfully submitted,

*/s/ Graciela Christlieb*

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Date: September 11, 2024

*Counsel for PGW*