



**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

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

November 7, 2024

**VIA ELECTRONIC FILING**

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

Re: Jaycinah Simon v. Philadelphia Gas Works; Docket No. F-2024-3051634

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Preliminary Objection 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

Jaycinah Simon

[jksimon5412@gmail.com](mailto:jksimon5412@gmail.com)

Date: November 7, 2024

/s/ Graciela Christlieb

Graciela Christlieb, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon,	:	
Complainant,	:	
v.	:	Docket No. F-2024-3051634
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**NOTICE TO PLEAD**

**To:** Jaycinah Simon  
[jksimon5412@gmail.com](mailto:jksimon5412@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)  
*Counsel for PGW*

Date: November 7, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon,	:	
Complainant,	:	
v.	:	Docket No. F-2024-3051634
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’  
PRELIMINARY OBJECTION TO AMENDED FORMAL COMPLAINT**

Philadelphia Gas Works (“PGW” or “Respondent”), pursuant to 52 Pa. Code § 5.101(a)(1) and (2) of the Commission’s regulations, hereby submits the following Preliminary Objection to the Formal Complaint of Jaycinah Simon (“Complainant”) served by the Secretary of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on October 18, 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 alleging violations of Uniform Commercial Code, GAAP, HJR-192, extortion laws, consumer protection laws, bankruptcy laws, and the Emergency Banking Act of 1933. *See* Complaint, ¶4 and ¶5.

**II. LEGAL STANDARDS FOR PRELIMINARY OBJECTIONS**

1. The Commission’s Rules of Administrative Practice and Procedure permit parties to file preliminary objections.
2. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:
  - (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.
- (7) Standing of a party to participate in the proceeding.

3. Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

4. The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlt. 1988).

5. However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlt. 2007).

6. 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. *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlt. 1996).

7. The Commission is authorized to dismiss a complaint if a hearing is not necessary. 52 Pa. Code § 5.21(d)

8. If there exists no factual issue pertinent to the resolution of a case, a hearing is unnecessary.

9. The Commission has recognized that the public interest is prejudiced by the wasteful use of the agency's and the company's time and resources in addressing a complaint. *See, e.g., Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995), *see also, e.g., Charles Nichols III v. Bell Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995).

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

10. 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.

**A. Dismissal Based on Lack of Commission Jurisdiction**

11. The Commission's regulations permit a party to file a preliminary objection based on the lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

12. To act on the Complaint, the Commission must have jurisdiction over the subject matter. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

13. The Commission is a creation of the General Assembly and has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

14. As a creation of the General Assembly, the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

15. A party to the proceeding may not create jurisdiction where jurisdiction does not exist. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

16. The instant Complaint appears to allege violations of the Uniform Commercial Code, GAAP, HJR-192, extortion laws, consumer protection laws, bankruptcy laws, and the Emergency Banking Act of 1933.

17. The Commission is not the proper forum for resolving the issues raised pertaining to the above as the state legislature has not specifically granted the Commission with such subject matter jurisdiction.

18. Therefore, the Commission lacks jurisdiction over those portions of the Complaint.

19. For this reason, PGW respectfully requests that the Commission sustain this Preliminary Objection and dismiss the Complaint.

**B. Dismissal Based on the Inclusion of Scandalous or Impertinent Matter**

20. The Commission's regulations permit a party to file a preliminary objection based on the inclusion of scandalous or impertinent matter. 52 Pa. Code § 5.101(a)(2).

21. 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. *See Olivieri v. Olivieri*, 242 Pa. Super. 457, 364 A.2d 361 (1976), *Hudock v. Donegal Mutual Insurance Co.*, 438 Pa. 272, n.

2 (1970).

22. The Complaint contains impertinent matter in the form of alleged violations of the Uniform Commercial Code, GAAP, HJR-192, extortion laws, consumer protection laws, bankruptcy laws, and the Emergency Banking Act of 1933 as the Commission does not have the power to address any of the issues raised pertaining thereto, so none of those issues are legally recoverable through this action.

23. For this reason, PGW respectfully requests that the Commission sustain this Preliminary Objection and dismiss the Complaint.

#### **IV. CONCLUSION**

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

Respectfully submitted,

/s/ Graciela Christlieb

Graciela Christlieb, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
*Counsel for PGW*

Date: November 7, 2024