

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Awkard	:	
	:	
v.	:	F-2026-3060546
	:	
Philadelphia Gas Works	:	

INTERIM ORDER ON PGW’S PRELIMINARY OBJECTION

On February 5, 2026, Gary Awkard (Complainant or Mr. Awkard) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on his gas bill from the utility. In particular, Mr. Awkard alleges that,

I am disputing multiple Philadelphia Gas Works (PGW) charges totaling \$1,998.88, \$1,995.57, and \$1,179.48 that were improperly applied to my property at 2250 N Park Avenue, Philadelphia, PA. My personal PGW account (#273429505) is current, in good standing, and has never had any past-due balance. I was not the account holder for the disputed charges and did not authorize PGW service for the individuals who incurred them.

Complaint ¶ 4.

As relief, the Complainant requests that the Commission order PGW to remove all disputed charges and associated liens which were improperly applied to his property at 2250 N. Park Avenue, PA (the Premises).

This Complaint is a timely appeal of the informal decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 4107961. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On March 10, 2026¹, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, PGW denied all material allegations of fact and conclusions of law in the Complaint. In its New Matter, PGW avers that the basis of the Complaint is the municipal claim that PGW has with respect to the outstanding debt for gas service to the Premises. According to PGW, the Complainant seeks to have the Commission adjudicate PGW's rights under the Pennsylvania Municipal Claim and Tax Lien Law (Lien Law), 53 P.S. §§ 7101-7455 by removing its municipal claim. PGW requests that the Commission deny all relief requested in the Complaint and dismiss the Complaint because the Commission's enforcement powers do not include jurisdiction to adjudicate PGW's rights under the Lien Law.

Also on March 10, 2026, the Respondent filed a Preliminary Objection seeking to dismiss the Complaint because the Commission lacks subject matter jurisdiction to adjudicate PGW's rights under the Lien Law.

By Motion Judge Assignment Notice dated April 15, 2026, PGW's Preliminary Objection was assigned to me for disposition.

As of the date of this Order, the Complainant has not filed an Answer to the New Matter or a response to the Preliminary Objection.

PGW's Preliminary Objection is ready for disposition.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

¹ The Complaint was served on the Respondent by the Commission on February 18, 2026.

Commission regulations provide:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically 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.
- (7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101. (Emphasis added).

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. *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985). 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. Cmwlth. 2007).

Commission regulations also provide that the content of a formal complaint must include a clear and concise statement of the act or omission being complained of and a clear and

concise statement of the relief sought. 52 Pa. Code §§ 5.22(1), (5), (6). The pleading must be sufficiently specific so that the defending party will know how to prepare its defense. *Jackson v. Duquesne Light Company*, Docket No. C-2018-2644080 (Order entered July 12, 2018, adopting Initial Decision dated May 8, 2018).

In the present Complaint, the Complainant alleges that there are incorrect charges on his gas bill from the utility. In particular, Mr. Awkard alleges that,

I am disputing multiple Philadelphia Gas Works (PGW) charges totaling \$1,998.88, \$1,995.57, and \$1,179.48 that were improperly applied to my property at 2250 N Park Avenue, Philadelphia, PA. My personal PGW account (#273429505) is current, in good standing, and has never had any past-due balance. I was not the account holder for the disputed charges and did not authorize PGW service for the individuals who incurred them.

Complaint ¶ 4.

PGW has interpreted the relief requested in the Complaint as an attempt to have the Commission adjudicate PGW's rights under the Pennsylvania Municipal Claim and Tax Lien Law (Lien Law), 53 P.S. §§ 7101-7455 by removing its municipal claim on the Premises. PGW requests that the Commission deny all relief requested in the Complaint and dismiss the Complaint because the Commission's enforcement powers do not include jurisdiction to adjudicate PGW's rights under the Lien Law.

Subject matter jurisdiction² is a prerequisite to the exercise of the power to decide a controversy. Cf., *Hughes v. Pa. State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390 (1992), app. denied, 536 Pa. 633, 637 A.2d 293 (1993). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Comm'n*, 157 Pa.Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v.*

² Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. *Riedel v. The Human Relations Comm'n Of the City Of Reading*, 559 Pa. 33; 39, 739 A.2d 121; 124 (1999).

Martorano, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa.Super. 148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel, *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa.Cmwlth. 1995).

Keeping the foregoing principles regarding jurisdiction in mind, the issue is whether or not the Commission has jurisdiction with respect to the City's municipal liens.

Acting under the authority and power granted in the Municipal Claim and Tax Lien Law, 53 P.S. § 7101 et seq., the City files a lien to enforce municipal claims against property for unpaid natural gas service rendered by Respondent at the property.

Only the City, being a municipality, can file a municipal lien. Respondent is a municipal utility that is wholly owned by the City. Respondent consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders. *Public Advocate v. Philadelphia Gas Comm'n*, 544 Pa. 129, 674 A.2d 1056 (1996).

Respondent does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim as set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. § 7101. Consequently, when Respondent provides natural gas service to an entity within the borders of the City and is not paid, it is the City that has a municipal claim which it can enforce by way of a lien on the property that was provided natural gas service.

The procedure which the City must follow to establish a lien on a specific property, such as the Premises, is set forth in the Municipal Claim and Tax Lien Law. See, 53 P.S. §§ 7106(b), (c), 7143. The lien is docketed with the Prothonotary (a clerk of the court) and maintained in an in rem index (an index maintained by property identification rather than by party name). See, 53 P.S. § 7106(b). Enforcement of the lien is a judicial procedure controlled by the Court of Common Pleas, with due process safeguards provided to protect the rights of interested parties. See, *Newberry Twp. v. Stambaugh*, 848 A.2d 173 (Pa.Cmwlth. 2004), app. denied, 580 Pa. 708, 860 A.2d 491 (2004), 53 P.S. §§ 7106(c), 7283. Ultimate recovery of the

amount of the municipal claims resulting in the lien is effectuated by a court ordered sheriff's sale. 53 P.S. § 7283.

The proceeding to obtain and enforce the City's municipal claim lien is an *in rem* proceeding.³ "Accordingly, the lien is either valid or invalid as to the property in question rather than as to the respective property interests involved." *Borough of Towanda v. Brannaka*, 61 Pa.Cmwlth. 622; 625-626, 434 A.2d 889; 891 (1981). What this means is that the Premises, not Complainant, is responsible for satisfying the claim secured by the municipal lien. No personal responsibility is asserted against the Complainant by the filing of the lien on the Premises. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). See, also, *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir. 1988).

The difference between an *in personam* judgment and an *in rem* municipal lien is best explained by an example. If A obtains a personal judgment against B in the amount of \$100,000 and enters the judgment in County X, where B owns three pieces of real property worth \$25,000 each, A can have all three properties sold by the Sheriff of County X to satisfy the judgment. However, if City A enters a municipal lien in the amount of \$30,000 against Property 1 of three separate pieces of real property worth \$25,000 each that B owns in County X, only Property 1 can be sold to satisfy the lien. The debt can only be recovered from the specific property upon which the *in rem* municipal lien has been placed. If the specific property was being rented by a landlord to a tenant, neither is personally liable for payment of the municipal claim amount. *Philadelphia v. Northwood Textile Mills, Inc.*, 395 Pa. 112, 149 A.2d 60 (1959). Only the *thing*, the specific property subject to the municipal lien, is liable for the amount owed.

In the instant case, the entire proceeding for the effectuation of and defense to the statutory lien of the City is within the jurisdiction of the Court of Common Pleas of Philadelphia

³ "A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*. An 'action *in rem*' is a proceeding that takes no cognizance of owner but determines right in specific property against all the world, equally binding on everyone." Black's Law Dictionary 713 (5th ed. 1979).

County⁴, not the Commission. Municipal lien proceedings are exclusively matters of judicial, not administrative, jurisdiction.

Additionally, keeping in mind that the lien is that of the City, not Respondent, as to the lien proceeding there is no public utility involved. In obtaining a municipal lien upon the premises, the City is acting in its capacity as a municipality only. The Commission is given jurisdiction over public utilities by the Public Utility Code, 66 Pa.C.S.A. §§ 101 et seq., not over municipalities acting in their municipal capacity.⁵

distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, and Chapter 22 (relating to natural gas competition).

66 Pa.C.S.A. § 1414(a) (footnotes omitted). Code section 1414(a) reiterates the General Assembly's determination that the previously existing right of the City to enforce payment for natural gas service rendered by the Respondent through the municipal claim and lien procedure of the Municipal Claim and Tax Lien Law remains unabated. The reference to "chapter 22" (of the Code) in section 1414(a) is especially revealing as to the legislature's intent. 66 Pa.C.S.A. § 2212(n) states:

(n) Collections.--Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred

⁴ Or the Municipal Court of Philadelphia if the amount is within its jurisdiction. 53 P.S. §§ 7101 et seq.

⁵ The Commission has jurisdiction over municipalities providing public utility service outside of their municipal boundaries, but only as to the public utility service being rendered. *Petition of Borough of Boyertown*, 77 Pa.Cmwlth. 357, 466 A.2d 239 (1983). The instant case does not involve municipal extra-territorial service, nor is the lien proceeding public utility service.

to as the Municipal Claim and Tax Lien Law, or otherwise.

66 Pa.C.S.A. § 2212(n) (footnote omitted). Code section 2212(n) specifically states that “[n]othing contained in this title”, that is; Title 66, the entire Code, shall abrogate the right of the City to collect unpaid bills for natural gas service through the mechanisms provided by the Municipal Claim and Tax Lien Law. As explained above, those mechanisms are not within the jurisdiction of the Commission. The language of this section strengthens the legal conclusion that claims of municipal liens are not properly within the jurisdiction of the Commission.

The Commission has consistently recognized its lack of subject matter jurisdiction in cases involving a dispute over a municipal lien placed upon a property. In *Cornelia Strowder v. Philadelphia Gas Works*, Docket No. C-20028036 (Order entered December 30, 2002) the Commission determined that it had no jurisdiction to rule on the validity of a lien. In *Debra Williams Lawrence v. Philadelphia Gas Works*, Docket No. C-20066672 (Order entered January 22, 2007) the Commission adopted an initial decision citing the Municipal Claim and Tax Lien Law and 66 Pa. C.S. §2122(n) and holding that the Commission lacked jurisdiction and authority to contravene the statute or take action contrary to its mandate. In *Tina L. Francis-Young v. Philadelphia Gas Works*, Docket No. C-2008-2029672 (Order entered February 23, 2009) the Commission adopted an initial decision citing 66 Pa. C.S. §1414(a) and concluding that the Commission lacked jurisdiction over a lien imposed by the Respondent. These decisions affirm that the Commission lacks jurisdiction over a municipal lien. See also, *Agron Vata v. Philadelphia Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010); *Ardelle Jackson v. Philadelphia Gas Works*, (Order entered June 29, 2011); and *Larry and Gail Newman v. Philadelphia Gas Works*, Docket No. C-2011-2273565 (Order entered March 29, 2012).

For the purposes of disposition of the preliminary objection, the Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Apart from the municipal liens, in the present Complaint Mr. Awkard also discusses his personal account

with PGW alongside three other accounts pertaining to his tenants and generally claims that there are incorrect charges in his gas bill from PGW. Therefore, PGW's Preliminary Objection is granted, in part, to the extent that Complainant's request for relief is the removal of the municipal liens on the Premises. PGW's Preliminary Objection is denied, in part, to the extent Mr. Awkard appears to allege that the tenants' accounts were either transferred or intermingled with his personal account.

Consequently, the case will be set for a hearing for the limited purpose of addressing Mr. Awkard's claim that his tenants' accounts were either transferred or intermingled with his personal account.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Philadelphia Gas Works in the matter of Gary Awkard v. Philadelphia Gas Works at Docket No. F-2026-3060546 is granted, in part, and denied, in part.

2. That the portion of the Complaint seeking relief in the form of the removal of the municipal liens on the Premises is dismissed for lack of Commission jurisdiction.

3. That matter shall be set for a hearing for the limited purpose of addressing Mr. Awkard's claim that his tenants' accounts were either transferred or intermingled with his personal account.

Date: June 1, 2026

_____/s/_____
Eranda Vero
Administrative Law Judge

F-2026-3060546 - GARY AWKARD v. PHILADELPHIA GAS WORKS

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