

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Dennis J. Vicario
v.
Philadelphia Gas Works

Public Meeting held October 14, 2011
2213955-ALJ

Docket No. C-2010-2213955

MOTION OF COMMISSIONER WAYNE E. GARDNER

Mr. Vicario filed this Complaint against Philadelphia Gas Works (PGW) asking that the Commission remove a lien related to his unpaid gas balance that had been placed on his residence on May 27, 2007. In addition to objecting to the lien, Mr. Vicario disputed the correctness of the amount of the lien. Mr. Vicario is the PGW customer of record and he resided at the premises for the time when the unpaid balance relating to the lien accrued. Mr. Vicario stated that the lien was discovered during a title search in 2010. Mr. Vicario asserted that he had not received notice of the lien and he questioned the allocation of LIHEAP grants for which he qualified to his account. In its Answer, PGW stated that Mr. Vicario's service was terminated on June 5, 2007, and that his account went into write-off status on September 24, 2007. PGW admitted that the lien in the amount of \$1,739 was placed on the service address on May 28, 2007, to collect an unpaid balance owed to PGW by Mr. Vicario. According to PGW, Mr. Vicario then entered into PGW's Customer Responsibility Program (CRP) on November 4, 2007. PGW also asserted that, consistent with the CRP guidelines, Mr. Vicario applied for LIHEAP grants that were properly posted to his account. PGW also filed Preliminary Objections (POs) averring that the Commission lacks jurisdiction over the subject matter and requesting dismissal of the Complaint. Mr. Vicario alleges in his Complaint that he received a new account number when he became a CRP customer and that he is current on that account. The ALJ granted the POs based on the Commission's lack of jurisdiction over municipal liens.

The law with regard to Preliminary Objections is clear. 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. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Commw. of Pa. v. The Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Commw. Ct. 1988). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. Ct. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Commw. Ct. 2003) (citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Commw. Ct. 2002)).

It is well-settled that the Commission does not have jurisdiction over the placement of municipal liens. Nonetheless, I disagree with the ALJ's decision to sustain PGW's Preliminary Objections. In addition to the lien-related issue, the Complaint alleged billing and notice issues that are squarely within our jurisdiction. 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). I agree with the ALJ's decision to dismiss the lien-related issues. However, I disagree with the ALJ's decision to dismiss the entire Complaint because allegations in the Complaint raise questions of fact as to the correct application of his LIHEAP grants to his balance due and the responsibility of PGW to notify Mr. Vicario of his past due balance.

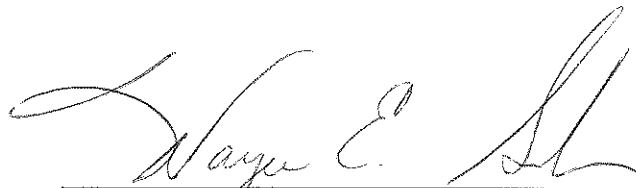
To address the LIHEAP billing and the notice issues, this matter is remanded to the Office of Administrative Law Judge for further proceedings. Due to the passage of time between the allegations giving rise to the Complaint and the date of this Motion and the fact that the Commission does not have authority to remove a municipal lien, as part of any remand, I direct Mr. Vicario to notify the Commission, in writing with a copy to counsel for Philadelphia Gas Works, as to whether he intends to proceed with the remand proceeding. Such notification is to be filed with the Commission's Secretary within 20 days of the entry date of the Order regarding this Motion. If Mr. Vicario elects to proceed, the remand proceeding shall be conducted on an expedited basis, with a procedural schedule to be worked out by the Parties and the Presiding Officer.

THEREFORE, I MOVE THAT:

1. The Initial Decision in this proceeding issued January 31, 2011, be modified consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

October 14, 2011

Date



Wayne E. Gardner, Commissioner