

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimekia Mayo	:	
	:	
v.	:	C-2016-2562263
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS  
AND DISMISSING COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against her natural gas utility alleging that she was not responsible for the charges on her utility bills. This decision dismisses the customer’s complaint because the charges that the customer contests were incurred more than three years prior to the date the customer filed her complaint.

**HISTORY OF THE PROCEEDING**

On August 12, 2016, Kimekia Mayo (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The complaint alleges that the Complainant is not responsible for charges on her natural gas utility bills incurred in 2004.

According to the complaint, the Complainant was a ward of the state under the care of the Department of Human Services (DHS) in 2004. The complaint alleges that in 2004 the Complainant was unable to take care of herself.

The complaint further asserts that when the Complainant was no longer under the care of DHS, she received a bill from the Respondent that was so high she has never been able to pay off her balance. Included in this bill were charges incurred in 2004. The complaint requests that the Commission direct the Respondent to remove charges on her bill incurred from 2004 to 2006.

The Respondent filed an answer with new matter and preliminary objections on September 7, 2016. The answer asserts that on August 10, 2016, the Complainant requested that service to the address shown on the complaint be terminated. According to the answer, the Respondent complied with the Complainant's request.

The new matter asserts that the Complainant's complaint is barred by the statute of limitations at 66 Pa.C.S. § 3314. The new matter argues that 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. The answer with new matter requests that the Commission dismiss the Complainant's complaint.

The preliminary objections reiterate the assertions in the Respondent's new matter. The preliminary objections contend that the subject matter of the Complainant's complaint is outside the Commission's subject matter jurisdiction because the statute of limitations bars the claim. The preliminary objections conclude that the Complainant's complaint is barred by the statute of limitations and request that the Commission dismiss the complaint.

By notice dated October 26, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to either the Respondent's the new matter or its preliminary objections. The

preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

### FINDINGS OF FACT

1. The Complainant in this case is Kimekia Mayo.
2. The Respondent in this case is Philadelphia Gas Works.
3. On August 12, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer with new matter on September 7, 2016.
5. On September 7, 2016, the Respondent filed preliminary objections.
6. The Complainant has not filed a response to either the Respondent's new matter or its preliminary objections.

### DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. 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.

Here, the Respondent's preliminary objections assert lack of Commission jurisdiction, pursuant to 52 Pa.Code § 5.101(a)(1).

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) (Equitable). A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

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). The Commission must view the factual assertions in 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.

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa.Code § 5.101(a)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa.Code § 5.101(a)(1) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa.Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n, 540 A.2d 1006 (Pa.Cmwlth. 1988); White Oak Borough Authority v. Pa. Pub. Util. Comm'n, 103 A.2d 502 (Pa. Super. 1954).

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. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa.Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa.Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

Viewing the factual assertions in the complaint in this case in the light most favorable to the Complainant for purposes of disposing of the preliminary objections, the Complainant was a ward of the state under the care of the DHS in 2004. In 2004 the Complainant was unable to take care of herself. When the Complainant was no longer under the

care of DHS, she received a bill from the Respondent that was so high she has never been able to pay off her balance. Included in this bill were charges incurred in 2004.

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objection, the Respondent alleges that the complaint raises issues that are outside the subject matter jurisdiction of the Commission. I agree. As set forth below, the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of subject matter jurisdiction over the Complainant's complaint.

Preliminarily, I will address whether it is appropriate for the Respondent to raise a statute of limitations defense by preliminary objection. As stated above, 52 Pa.Code § 5.101(a)(1)-(7) limits the grounds upon which preliminary objection may be filed. The statute of limitations at 66 Pa.C.S. § 3314 must concern Commission jurisdiction or improper service, failure of the complaint to conform to the Commission's Rules of Practice and Procedure, lack of specificity, legal insufficiency, lack of capacity to sue, non-joinder or mis-joinder of a party or cause of action or the pendency of a prior proceeding or agreement for alternative dispute resolution in order to be raised through preliminary objections.

My research has not uncovered any Commission decisions where the Commission has determined that the statute of limitations at 66 Pa.C.S. § 3314 may be raised through preliminary objections, pursuant to 52 Pa.Code § 5.101(a). Commission preliminary objections, pursuant to 52 Pa.Code § 5.101, are analogous to preliminary objections pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure in civil practice. I will, therefore, look to Pennsylvania appellate court rulings that determine whether the statute of limitations may be raised through preliminary objections pursuant to Pa. R.C.P. 1028 for guidance on this issue.

Pennsylvania appellate courts have set forth very clear standards as to when a statute of limitations may be raised by preliminary objections, pursuant to Pa. R.C.P. 1028. If the statute of limitations is a non-waivable defense, it may be raised as a preliminary objection, pursuant to Pa. R.C.P. 1028. However, if the statute of limitations is waivable, it must be raised by new matter in a responsive pleading. Reuben v. O'Brien, 445 A.2d 801 (Pa.Super 1982)

(Reuben). A statute of limitations is non-waivable if the time limitation contained in it terminates not just the remedy but the actual right to bring the action. A statute of limitations is waivable if the time limitation contained in it terminates just the remedy, but not the right to bring the action. Reuben.

The statute of limitation at 66 Pa.C.S. § 3314 is non-waivable. The statute at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. This is a non-waivable statute of limitations since it terminates the right to bring an action before the Commission as well as any remedy the Commission may order. The statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose and is properly raised through preliminary objections, pursuant to 52 Pa.Code § 5.101(a)(1).

Since the statute at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose, it is appropriate for me to apply the statute of limitations to this proceeding. Applying the three year statute of limitations at 66 Pa.C.S. § 3314 to this case, the Complainant filed her complaint on August 12, 2016, alleging that the Respondent billed her for charges incurred in 2004. Since the three year statute of limitations at 66 Pa.C.S. § 3314 bars the Complainant from continuing any prosecution against the Respondent for events that occurred prior to August 12, 2013, the claims in the Complainant's complaint are barred.

Accepting as true all the facts alleged in the complaint, the Complainant is not entitled to relief as a matter of law. The dispute alleged in the complaint arose prior to August 12, 2013. The claims in the Complainant's complaint are therefore barred by the three year statute of limitations at 66 Pa.C.S. § 3314. Counsel v Philadelphia Gas Works, Docket No. C-2014-2438368 (Opinion and Order entered November 19, 2015); Pearson v Duquesne Light Company, Docket No.C-2015-2465168 (Final Order entered July 7, 2015).

The Commission lacks subject matter jurisdiction to adjudicate the issues raised by the Complainant's complaint. Since the Commission's subject matter jurisdiction does not extend to adjudicating the issues raised in the Complainant's complaint, I will sustain the preliminary objections and dismiss the Complainant's complaint.

### CONCLUSIONS OF LAW

1. No action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. 66 Pa.C.S. § 3314.

2. A statute of limitations is non-waivable if the time limitation contained in it terminates not just the remedy but the actual right to bring the action. Reuben v. O'Brien, 445 A.2d 801 (Pa.Super 1982).

3. The statute of limitations at 66 Pa.C.S. § 3314 is non-waivable.

4. The statute at 66 Pa.C.S. § 3314 divests the Commission of subject matter jurisdiction to hear an action brought more than three years from the date the liability arose.

5. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2016-2562263 be dismissed.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Philadelphia Gas Works at Docket No. C-2016-2562263 are sustained.

