

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Samantha Moses	:	
	:	
v.	:	C-2017-2635927
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**  
**GRANTING PRELIMINARY OBJECTION AND DISMISSING COMPLAINT**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint filed against a natural gas distribution company by a customer who averred that there are incorrect charges that were placed on her bill in 2007. Even when accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to the complainant, it is clear that the complainant is not entitled to relief under any circumstances as a matter of law because the Commission lacks jurisdiction to hear the complaint since it is barred by the statute of limitations. As a result, the preliminary objections filed by the company will be granted and the complaint will be dismissed.

**HISTORY OF THE PROCEEDING**

On November 6, 2017, Samantha Moses filed with the Pennsylvania Public Utility Commission a formal complaint against Philadelphia Gas Works (PGW), docket number C-2017-2635927. In her complaint, Ms. Moses averred that there are incorrect charges on her

bill. Ms. Moses explained that, on May 16, 2007, she requested service be terminated where she was living and then paid the remaining balance in full. Ms. Moses added that she received a bill for \$1,300 in August, 2007. Ms. Moses requested that the \$1,300 be removed from her account because she paid her bill in full in May 2007. Ms. Moses provided additional averments, as discussed further below, in support of her complaint.

On December 19, 2017, PGW filed an answer and new matter in response to the complaint filed by Ms. Moses. PGW denied that there are incorrect charges on Ms. Moses' bill or that she should be given a \$1,300 credit. In its new matter, which was not accompanied by a notice to plead, PGW averred that the statute of limitations 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. PGW attached several documents to its filing and concluded that the complaint should be dismissed.

Also on December 19, 2017, PGW filed a preliminary objection. In its preliminary objection, which was accompanied by a notice to plead, PGW argued that the Commission lacks jurisdiction over the subject matter of the complaint because the issues arose beyond the statute of limitations. PGW also argued that the complaint includes impertinent matter in its requested relief to remove monies owed. PGW reiterated the history of this matter as described in its new matter and noted that Section 3314 of the Public Utility Code 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. PGW concluded that the complaint should be dismissed for lack of jurisdiction and the impertinent matter should be stricken.

Ms. Moses' answer to PGW's preliminary objection was due January 2, 2018 but Ms. Moses did not file an answer.

On January 29, 2018, a motion judge assignment notice was issued informing the parties that I was assigned as the Presiding Officer and responsible to resolve any issues which might arise during the preliminary phase of this proceeding. The preliminary objection filed by

PGW is ready for disposition. For the reasons discussed below, PGW's preliminary objection will be granted and the complaint will be dismissed.

### FINDINGS OF FACT

1. The Complainant in this case is Samantha Moses.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 1236 Robbins Street, Philadelphia, PA.
4. On November 6, 2017, Ms. Moses filed a formal complaint against PGW.
5. On December 19, 2017, PGW filed an answer with new matter in response to the complaint filed by Ms. Moses.
6. Also on December 19, 2017, PGW filed a preliminary objection in response to the complaint filed by Ms. Moses.
7. Ms. Moses did not file an answer to PGW's preliminary objection.

### DISCUSSION

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

- (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 a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable 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. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. Moses and should dismiss the complaint only if it appears that Ms. Moses would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979). The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

In this case, Ms. Moses argued in her complaint that an incorrect charge of \$1,300 was placed on her bill in 2007. Ms. Moses requested that the incorrect charge be removed. In response, PGW argued in its preliminary objection that the matter of which Ms. Moses complains is beyond the Commission's statute of limitations and Ms. Moses has lost her right to

pursue litigation regarding her bills for gas service in 2007. PGW argued that the Commission lacks jurisdiction to hear the complaint and the requested relief should be stricken as impertinent matter.

Ms. Moses' complaint will be dismissed because, even when accepting as true all well pleaded averments in the complaint, as well as every reasonable inference from those averments, and viewing the complaint in the light most favorable to Ms. Moses, it appears that Ms. Moses would not be entitled to relief under any circumstances as a matter of law. PGW's preliminary objection will, therefore, be granted and the complaint will be dismissed.

To begin, 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. 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. Pennsylvania 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).

PGW is correct that, in this case, the underlying issue is barred by the statute of limitations. Section 3314 of the Public Utility Code provides:

**§ 3314. Limitation of actions and cumulation of remedies.**

**(a) General Rule.** No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). When accepting as true Ms. Moses' averment that PGW billed her for the amount in dispute in 2007, it is clear that the date at which the liability arose was older than three

years. Since PGW billed her for the disputed amount in 2007, Ms. Moses would have had to timely raise her complaint by 2010. Instead, Ms. Moses filed her complaint ten years after the liability arose. Therefore, any complaint filed after 2010 is barred by the statute of limitations. As a result, Ms. Moses' underlying issue is barred by the statute of limitations and the Commission lacks jurisdiction to hear the complaint. The complaint should be dismissed.

Finally, it is noted that PGW's failure to attach a notice to plead to its new matter in this case does not alter whether the preliminary objection should be granted. This decision is not based on any facts deemed admitted by Ms. Moses as a result of her failure to respond to new matter. Instead, the Commission lacks jurisdiction to hear the complaint filed by Ms. Moses because the events complained of occurred beyond the statute of limitations. The fact that the events complained of are beyond the statute of limitations means that, even when accepting as true all well pleaded averments in the complaint, as well as every reasonable inference from those averments, and viewing the complaint in the light most favorable to Ms. Moses, Ms. Moses would not be entitled to relief under any circumstances as a matter of law. PGW's failure to attach a notice to plead to its new matter does not change the underlying disposition of the preliminary objection.

In conclusion, even when accepting as true all well pleaded facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Ms. Moses, it is clear that Ms. Moses is not entitled to relief under any circumstances as a matter of law. As a result, PGW's preliminary objection will be granted and the complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101.
2. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation

Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

3. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable 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).

4. For purposes of disposing of preliminary objections, 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. Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

6. 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. Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977).

7. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super. 1945).

8. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

9. 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. Cmwlt. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

10. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314(a).

11. Even when accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Ms. Moses, it is clear that Ms. Moses would not be entitled to relief under any circumstances as a matter of law and the complaint should be dismissed. 52 Pa.Code § 5.101.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection filed by Philadelphia Gas Works at docket number C-2017-2635927 dated December 19, 2017 is hereby granted.
2. That the formal complaint filed by Samantha Moses against Philadelphia Gas Works at docket number C-2017-2635927 dated November 6, 2017 is hereby dismissed.
3. That this matter be marked closed.

Date: February 5, 2018

\_\_\_\_\_/s/  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge