

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ana Rosario	:	
	:	F-2022-3034525
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This decision grants the Preliminary Objection of Philadelphia Gas Works and dismisses the Formal Complaint as filed beyond the statute of limitations, divesting the Commission of jurisdiction over the matter.

HISTORY OF THE PROCEEDINGS

On August 9, 2022, Ana Rosario (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (PGW). The Complainant alleged that there are incorrect charges on her PGW bill.¹ The Complainant also wrote on the Complaint form “Since, 2015, I have been reporting this amount is not mine.” As requested relief, the Complainant stated that she did not reside at the address where the contested charges were incurred (service address one or SA1) and would like all disputed charges deleted from her account.

¹ Due to a Protection from Abuse Order issued to protect the Complainant, her street address will not be used in this decision to identify the service address.

On September 9, 2022, PGW filed PHILADELPHIA GAS WORKS' ANSWER WITH NEW MATTER TO FORMAL COMPLAINT (Answer and New Matter) and a Preliminary Objection. In the Answer, PGW denied all material allegations of the complaint and averred that the Complainant established service at her current address stated in the complaint as of July 15, 2015.

In the New Matter, PGW averred that the Complainant had gas service at SA1 from August 28, 2013 through August 26, 2015. PGW also averred that from June 15, 2015 through July 9, 2015, the Complainant had PGW service at a different address (SA2) and, before terminating service at SA1, the Complainant established service at a third address, the current service address stated by the Complainant in the instant Complaint (SA3). PGW further averred in the New Matter that subsequently the Complainant filed four informal complaints with the Bureau of Consumer Services (BCS) challenging the PGW charges at SA1.²

PGW also asserted in the New Matter that the instant Complaint seeking relief from a balance accrued from or before 2015 is barred by the three-year statute of limitations set forth in 66 Pa.C.S. § 3314. PGW also contended that the Complainant's repeated filings regarding this issue establish a pattern of abusing the Commission's complaint process to avoid collection activity while her balance has risen to over \$10,000.

In the Preliminary Objection, PGW again asserted that the Complaint pertains to charges incurred by the Complainant from August 28, 2013 through August 26, 2015 and, therefore, the Complaint should be dismissed as barred by the statute of limitations.

A Notice to Plead was attached to the Preliminary Objection and a Notice to Plead was attached to the Answer and New Matter. The Notice to Plead attached to the Answer and New Matter advised Ms. Rosario that any answer or reply must be filed within 20 days of service. The Notice to Plead attached to the Preliminary Objection advised Ms. Rosario that she

² In the New Matter, PGW identified the informal Complaints filed by the Complainant as follows: April 13, 2016, BCS Docket No. 3427174; September 23, 2016, BCS Docket No. 3479718; March 29, 2017, BCS Docket Number 3508098 and October 11, 2019, BCS Docket Number 3740867.

must file any answer within ten days of service. To date, the Complainant has not filed an answer to either the New Matter or Preliminary Objection.

On October 14, 2022, a Motion Judge Assignment Notice assigned the Preliminary Objection of PGW to the undersigned. This matter is ready for a decision.³

FINDINGS OF FACT

1. The Complainant is Ana Rosario.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant had PGW gas service at SA1 from August 28, 2013 through August 26, 2015.
4. The Complainant had PGW gas service at SA2 from June 15, 2015 through July 9, 2015.
5. Before terminating service at SA1, Complainant established service at SA3.
6. SA1, SA2, and SA3 are three different physical addresses.
7. In the instant Complaint, the Complainant is challenging PGW charges from SA1 incurred from August 28, 2013 through August 26, 2015.
8. The Complainant filed the following informal complaints challenging the PGW charges at SA1 as follows: April 13, 2016, BCS Docket No. 3427174; September 23,

³ Commission Regulations provide that “[f]ailure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.” 52 Pa. Code § 5.63(b). The Complainant did not file a timely response to the new matter, the new matter is deemed in default and the facts stated by PGW in its New Matter are deemed admitted by the Complainant. *Id.*

2016, BCS Docket No. 3479718 March 29, 2017, BCS Docket Number 3508098; and October 11, 2019, BCS Docket Number 3740867.

9. On March 12, 2020, the BCS issued its decision at BCS case number 3740867, dismissing the Complainant's October 11, 2019 informal complaint. New Matter Exhibit I.

10. The Complainant did not appeal the dismissal of her October 11, 2019 BCS complaint at Docket Number 3740867.

11. Complainant's current Formal Complaint was filed August 9, 2022.

DISCUSSION

The grounds for granting Preliminary Objections are found in Section 52 Pa. Code § 5.101(a). It states in pertinent part:

§ 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(a).

A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). 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. Commonwealth*, 490 A.2d 402 (Pa. 1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor Gen. v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Order entered July 18, 1994); *see also, Interstate Traveler Servs., Inc. v. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Therefore, a preliminary objection can be granted only if recovery or relief is not possible after the Complainant's averments in the Complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted. 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).

As a general rule, “[n]o 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 therefor arose[.]” 66 Pa.C.S. § 3314(a).

Ms. Rosario states in her Complaint that there are incorrect charges on her bill and that she began challenging these incorrect charges in 2015. As relief she is seeking that these charges be removed from her PGW bill.

PGW seeks to dismiss this matter under 52 Pa. Code § 5.101(a)(1), asserting that the Commission lacks jurisdiction to hear the Complaint because the instant Complaint, filed August 9, 2022, seeks relief from charges accrued at SA1 from August 28, 2013 through August 26, 2015. The statute of limitations at 66 Pa.C.S. § 3314 is a jurisdictional issue, PGW asserts, and the statute requires that any complaint seeking relief under the Public Utility Code be brought within three years from the date at which the liability therefore arose.

Complainant wrote on her current Complaint form that she seeks to have the charges from 2013 to 2015 removed from her PGW account. Complainant therefore admits that the contested charges existed no later than 2015, almost seven years prior to filing the current Complaint. She has filed at least four informal complaints on these same charges – two in 2016, one in 2017, and one in 2019. Each of those informal complaints was closed after a determination not in favor of the Complainant. Nothing in the law or regulations supports a determination that repeatedly filing informal complaints on the same charges extends or tolls the statute of limitations.

The instant Complaint, filed in 2022, was filed more than three years after the charges were incurred by the Complainant between 2013 and 2015. As the instant Complaint was not filed within the three-years statute of limitations, the Commission does not have the jurisdiction to grant the Complainant the relief requested, and the Complaint will be dismissed. *See Collins v Pennsylvania-American Water Co.*, Docket No. F-2017-2628770 (Opinion and Order August 29, 2019).

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. For purposes of disposing of the preliminary objection filed by PGW, all well pleaded, material facts of the Complainant, as well as every reasonable inference from those facts, were accepted as true. *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).

3. The three-year statute of limitations at 66 Pa.C.S. § 3314, is a jurisdictional issue.

4. This Complaint was filed more than three years after the challenged charges were incurred by the Complainant and therefore the Commission is without jurisdiction to award the relief requested. 66 Pa.C.S. § 3314.

5. This Complaint is dismissed without a hearing because a hearing is not in the public interest. 66 Pa.C.S. § 703(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Philadelphia Gas Works filed at Ana Rosario v. Philadelphia Gas Works, Docket Number F-2022-3034525, is sustained.

