

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Coe	:	
	:	
v.	:	C-2022-3035763
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Motion to Dismiss filed by Philadelphia Gas Works and dismisses the Formal Complaint filed by Christopher Coe due to his failure to appear at the prehearing conference on February 28, 2023, comply with the orders of the presiding officer, and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On September 30, 2022, Christopher Coe (Complainant or Mr. Coe) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission), using the Commission’s Formal Complaint form. He checked the box indicating that Philadelphia Gas Works (PGW, Company, or Respondent) was threatening to cut off his service or had already done so. As relief, he indicated he would like the Commission to order PGW to “provide [him] with the Refund Credit due under PASC 12-6313(b) for all Purchase Money Loans under PASC 12-6325(c) in regards to the Finance Charges on the account which was pre-paid under PASC-12-6313(a), in addition to compensation for the willful violations committed under PASC 12-

6351 as Unfair Trade Practices pursuant to PASC 12-6355.” He indicated that the “total compensation due is \$7,000.”

Attached to the Complaint were two typed pages entitled, “Notice of Default and Immediate Discharge of Alleged Obligation.” Complainant writes,¹

The following correspondence is in response to the communication received dated 8/4/2022 in which [PGW and its counsel] claimed that the instruments received were not acceptable for credit on account. Please be advised I am well aware of my right of Credit under the Truth in Lending Act as well as the use of a credit card by PGW to create the account of the Organization in which I am a Beneficiary of, and Entitlement holder too [see 15 USC 1602]. For further clarification on my stance as a consumer regarding this matter, the billing dispute regarding the most recent statement of account with the instrument/coupon attached was returned to you institution for setoff of the alleged obligation of the account. In addition I made a request pursuant to the Treatment of Credit Balances for a proper accounting of the credit balance to be assessed and distributed/refunded from the account [see USC 1666d]. Please reference all previous statements of account and coupons provided by PGW that are in violation and contain billing errors of the accounting nature [see USC 1666(5)].

The nature of the communication received from you on behalf of PGW is false and misleading to the Fair Debt Collection Practices Act, in addition to the fact your use of interstate commerce in an attempt to collect a debt proves that you as well as PGW are in fact a Debt Collector [see 15 USC 1692e(3)][see 15 USC 1692a(6)].

Please be advised the instrument/coupon was indorsed and claimed before being tendered as payment of the alleged obligation under Pennsylvania State Law [see PASC 13-3603 and 13-3306]. According to Pennsylvania State Law the action of me claiming the instrument on behalf of the Organization causes immediate discharge of the obligation [see PASC 13-3306]. Refusal of or non-honoring of the instrument without returning the instruments is grounds for discharge as said in the Pennsylvania state laws.

¹ This excerpt is included here verbatim.

Also, according to the Trading With the Enemy Act [TWEA], “Private Property Shall Not Be Taken For Use Without Just Compensation.” The fact PGW was able to create an account in the name of the Organization and issue an instrument in the form of a coupon in the name of the Organization from said account is proof my Organization’s private property was used in which I have not received just compensation for the said use of. In addition to the fact that “All obligation are obligations of the United States,” and that term Bill is defined as an obligation of the United States with a term not more than one year [see 18 USC 8] [see 31 CFR 357.2].

All compensation and/or credits are to be returned and/or refunded to me as the Grantor and Entitlement Holder of the account immediately after a proper accounting has been performed for all withholdings due. In addition, all future payments directed to the account are now to be sent to me in a form presented in the Treatment of Credit Balances from the Consumer Refund Credit Account or escrow held by PGW in the name of the Organization [see 15 USC 1666d] [see 15 USC 1692h].

Complainant then indicates that the “laws in correspondence with this communication are as follows: TWEA, TILA, FDCPA, FCBA, 31 CFR 357.2, and PASC13-3306, 13-3603.”

On October 20, 2022, PGW filed an Answer and New Matter to the Complaint, as well as a Preliminary Objection. In its Answer, PGW avers it provides gas service to Complainant at 879 Brooklyn Street, Philadelphia, PA (service location), Complainant has not made a payment on the account since he established gas service on December 8, 2021, and it served a shut off notice for service at the service location.

In its New Matter, PGW argues the Commission lacks jurisdiction over the Complaint insofar as the issues raised therein arise out of alleged violations of 12 Pa.C.S.A., Pt. V, Ch. 63. PGW Further argues the Commission lacks jurisdiction to award money damages.

In its Preliminary Objection, PGW argues Complainant claims in the Complaint that he is owed a “Refund Credit” under the PASC, which PGW believes to be a reference to

Title 12 of the Pennsylvania Statutes and Court Rules (Title 12). PGW argues that the Complaint is based on transactions under and violations of Title 12, and the Commission is not the proper forum for resolving issues arising out of Title 12. PGW further argues the Commission lacks jurisdiction to award money damages.

The Preliminary Objection contained a Notice to Plead, which informed Complainant that any response to the Preliminary Objection must be filed within in ten days of service. Complainant did not file a response to the Preliminary Objection.

On November 30, 2022, I issued an Interim Order granting PGW’s Preliminary Objection such that (1) Mr. Coe’s request for relief in the form of monetary damages was stricken from the Complaint, and (2) Mr. Coe was ordered to file an amended complaint with the Commission by December 9, 2022. I explained that in his amended complaint, Mr. Coe must “*clearly, plainly, and specifically*: (1) identif[y] which bills or charges he believes are incorrect, if any; (2) identif[y] which statute(s) over which the Commission has jurisdiction to administer, PGW violated, if any, and how; and (3) identif[y] which Commission regulation(s), order(s), or tariff provision(s) PGW violated, if any, and how.” I also explained he must “indicate the relief he is seeking from the Commission, **other than monetary damages**, as well as an explanation as to why he believes he is entitled to that relief.”² Ordering Paragraph 4 of the November 30, 2022, Interim Order explained, “Complainant’s failure to file an Amended Complaint as ordered...may result in dismissal of this proceeding.” Finally, I ordered PGW to file an answer and/or other responsive pleading or motion by January 4, 2023.

Complainant did not file an amended complaint by December 9, 2022, and PGW did not file a motion by January 4, 2023. Therefore, by Notice dated January 10, 2023, the Commission scheduled a prehearing conference for February 28, 2023.

The January 10, 2023, Notice was e-served upon both Mr. Coe and PGW.

² (Emphasis in original).

On January 17, 2023, PGW filed a Motion to Dismiss the Complaint, arguing Complainant failed to file an amended complaint as directed and that the original complaint failed to put PGW on sufficient notice of the alleged facts and issues to be litigated such that it could prepare a defense.

The Motion to Dismiss contained a Notice to Plead, advising Complainant that a response was due within 20 days, or by February 16, 2023.

On January 26, 2023, I issued an Interim Order holding PGW's Motion to Dismiss the Complaint in abeyance pending the prehearing conference scheduled for February 28, 2023.

The prehearing conference convened as scheduled on February 28, 2023. Counsel for PGW appeared, but Mr. Coe did not. Out of an abundance of caution and in an attempt to give Mr. Coe every opportunity to participate in the conference, I had my legal assistant call Mr. Coe. She called Mr. Coe three times, but got an automated message that the "call was unavailable" each time. PGW again moved for dismissal of the Complaint, and the conference was adjourned.

The record was closed by Interim Order dated March 8, 2023. This matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Christopher Coe.
2. Respondent is Philadelphia Gas Works, a jurisdictional public utility in the Commonwealth of Pennsylvania.
3. On September 30, 2022, Complainant filed a Complaint against Respondent.

4. On October 20, 2022, PGW filed an Answer and New Matter to the Complaint, as well as a Preliminary Objection.

5. The Preliminary Objection contained a Notice to Plead, informing Complainant that a response was due in ten days of service.

6. Complainant did not file a response to the Preliminary Objection.

7. On November 30, 2022, I issued an Interim Order granting PGW's Preliminary Objection.

8. The November 30, 2022, Interim Order struck Mr. Coe's request for monetary damages from the Complaint, directed Mr. Coe to file an amended complaint with the Commission by December 9, 2022, and directed PGW to file an answer and/or other responsive pleading or motion by January 4, 2023.

9. The November 30, 2022, Interim Order was e-served upon both Mr. Coe and PGW.

10. Complainant did not file an amended complaint by December 9, 2022, and PGW did not file a motion by January 4, 2023.

11. By Notice dated January 10, 2023, the Commission scheduled a prehearing conference for February 28, 2023.

12. The January 10, 2023, Notice was e-served upon both Mr. Coe and PGW.

13. On January 17, 2023, PGW filed a Motion to Dismiss the Complaint, arguing Complainant failed to file an amended complaint as directed and that the original complaint failed to put PGW on sufficient notice of the alleged facts and issues to be litigated such that it could prepare a defense.

14. The Motion to Dismiss contained a Notice to Plead, advising Complainant that a response was due within 20 days, or by February 16, 2023.

15. Complainant did not file a response to the Motion to Dismiss.

16. On January 26, 2023, an Interim Order was issued holding PGW's Motion to Dismiss in abeyance pending the prehearing conference scheduled for February 28, 2023.

17. The prehearing conference convened as scheduled on February 28, 2023.

18. Complainant did not appear at the prehearing conference on February 28, 2023.

19. Complainant did not settle, withdraw, or request a continuance of this matter.

20. As of the date of this Initial Decision, Complainant has not contacted the Commission to explain his failure to attend the February 28, 2023, prehearing conference.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard. *Id.*

All notices and orders issued by the Commission in this proceeding were e-served on Complainant.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support

dismissal of the matter. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

Since filing his Complaint, Complainant has not participated in this proceeding in any way. He failed to file a response to the Preliminary Objection, an amended complaint as ordered by the November 30, 2022, Interim Order, or a response to the Motion to Dismiss. Additionally, he failed to appear at the prehearing conference.

Under these circumstances, Complainant has had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161101 (Opinion and Order entered Oct. 25, 1993).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, Complainant bears the burden, by proving by a preponderance of the evidence, that he is entitled to relief requested. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

The Commission's rules provide, "A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission." 52 Pa. Code § 5.21. A formal complaint must set forth, in a clear and concise statement, the act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(5).

In Complainant's original Complaint and the attached typed pages, Complainant specifically, and repeatedly, references (what is likely) Title 12 of the Pennsylvania Consolidated Statutes (Commerce and Trade) and Title 13 of the Pennsylvania Consolidated Statutes

(Commercial Code), as well as various federal laws and regulations. As I explained in the November 30, 2022, Interim Order, the Commission lacks jurisdiction over Title 12 and Title 13 of the Pennsylvania Consolidated Statutes and lacks jurisdiction over any federal laws or regulations. Complainant also references a “billing dispute” and “billing errors” in his original Complaint, but did not identify which charges or bills were incorrect. Therefore, I ordered Complainant to file an amended complaint, giving him clear, detailed instructions on what was required. Respondent is entitled to sufficient notice of Complainant’s claims so that it can prepare a defense.

By failing to file an amended complaint as directed by the November 30, 2022, Interim Order, failing to file a response to the Motion to Dismiss, and failing to appear at the February 28, 2023, conference, Complainant has failed to provide Respondent sufficient information about his claims such that Complainant is entitled to move forward to an evidentiary hearing in this matter. Notably, Ordering Paragraph 4 of the November 30, 2022, Interim Order, warned Complainant that “Complainant’s failure to file an Amended Complaint as ordered...may result in dismissal of this proceeding.” Under these circumstances, the Complaint must be dismissed. 52 Pa. Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

3. Parties must comply with the orders of an administrative law judge, and a complainant’s failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed at Christopher Coe v. Philadelphia Gas Works at Docket No. C-2022-3035763 is dismissed.
2. That the Secretary's Bureau shall mark Docket No. C-2022-3035763 closed.

Dated: May 31, 2023

/s/
Emily I. DeVoe
Administrative Law Judge