

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Victoria Whitaker

v.

Philadelphia Gas Works

**Public Meeting September 21, 2023
3035783-ALJ
Docket No. C-2022-3035783**

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission) for disposition is an Initial Decision (ID) dismissing the Formal Complaint filed against Philadelphia Gas Works (PGW) at the above-captioned docket. The Formal Complaint (1) requests a Commission payment arrangement and (2) alleges that the Complainant's outstanding balance should not include a balance transfer from 2018.

Upon review, I agree with the ID to deny the request for a payment arrangement. Based on the evidentiary record, the Complainant defaulted on a prior Commission-issued payment arrangement and failed to meet the burden of proof that she is entitled to a second Commission-issued payment arrangement or to an extension of the previous Commission-issued payment arrangement. The ID also explains why the presiding officer granted the Preliminary Objection filed by PGW to dismiss the balance transfer issue as barred by the 3-year statute of limitations under Section 3314(a) of the Public Utility Code (Code), 66 Pa. C.S. § 3314(a).¹

The Motion proposes to uphold the ID on the payment arrangement but not on the balance transfer. Rather, the motion proposes to apply a 4-year statute of limitations in accordance with Section 1312(a) of the Code, 66 Pa. C.S. §1312(a), and Commission precedent and find that the balance transfer issue is not time-barred.

While not bound by the rule of *stare decisis*, the Commission must render consistent opinions and should either follow, distinguish, or overrule its own precedent. *Bell Atl. v. Pa. Pub. Util. Comm'n*, 672 A.2d 352, (Pa. Cmwlth. 1995); citing *Pennsylvania Trust v. Dep't of Env'tl. Prot.*, 863 A.2d 93, 107 (Pa. Cmwlth. 2004). I acknowledge that the 4-year statute of limitations pertaining to requests for credits or refunds has not always been applied consistently in cases challenging liability for an outstanding account balance transferred to a Complainant. Rather, the Commission at times has applied a 3-year statute of limitations in these cases. *See, e.g., Lesley Sheaffer v. PPL Electric Utilities Corp.*, Docket No. C-2022-3032209 (Initial Decision dated December 9, 2022; Final Order entered January 10, 2023).

¹ It is undisputed that the balance transfer occurred on November 27, 2018. According to the ID, the Complainant had until November 27, 2021, to timely raise her Complaint. Even factoring in the periods of time that the statute of limitations tolled due to the Complainant's Informal Complaint, the ID concludes that any cause of action on this issue is still beyond the statute of limitations. As a result, the ID further concludes that Section 3314(a) divests the Commission of jurisdiction to hear the Complainant's action on the balance transfer. Accordingly, this issue was stricken from the Complaint at the outset of the hearing. ID at 6-7.

Nevertheless, I support the proposed Motion because the use of a 4-year statute of limitations in this case is consistent with judicial precedent. Specifically, I note the decision of the Commonwealth Court of Pennsylvania that the 4-year statute of limitations in Code Section 1312, not the 3-year limitations period under Code Section 3314, applies in a refund (or credit) proceeding before the Commission. *LP Water and Sewer Co. v. Pa. P.U.C.*, 772 A.2d 733 (Pa. Cmwlth. 1998).

However, I have concerns about using a 4-year statute of limitations in customer complaint cases that involve a credit or refund request. I question whether Section 1312(a) was intended to be a statute of limitations provision. In my view, Section 1312(a) is a remedies provision that governs how far back in time a customer can go to obtain a credit/refund in a rate or rate-related case – four years back from the filing of a complaint. In comparison, I view Section 3314(a) as a statute of limitations provision that governs how long a customer has to file a complaint with the Commission – three years from the date the liability arose. In my view, these two statutory provisions are reconcilable in this manner.

Also, I would prefer to have a uniform statute of limitations applicable in all types of customer complaint cases before the Commission. As it stands now, that arguably is not the case, as we have a 4-year statute of limitations in billing-related complaints requesting a credit/refund and a 3-year statute of limitations in, for example, service reliability complaints that do not involve a request for a credit or refund.


In addition, I note there is other relevant law that applies to the balance transfer issue. Section 1403 of the Code defines a “payment arrangement” as “an agreement whereby *a customer who admits liability for billed service* is permitted to amortize or pay the unpaid balance of the account in one or more payments.” (Emphasis added). 66 Pa. C.S. §1403. A payment arrangement, by definition, requires the customer to admit liability for the billed services, including a transferred balance. So, by entering into a payment arrangement that includes a transferred balance, a customer admits liability for the transferred balance. *See, e.g., David Harris v. Philadelphia Gas Works*, C-2012-2298901 (Initial Decision dated November 15, 2012; Final Order entered January 4, 2013).

In applying this law to the present case, a key issue in any remand is whether the 2018 balance transfer was subject to the 2019 Commission payment arrangement and hence, whether the Complainant has admitted liability for the 2018 balance transfer. To that end, the ID finds the following facts regarding the balance transfer. On November 27, 2018, the Complainant requested service from PGW, and PGW transferred the outstanding balance from the Complainant’s mother, who was the prior customer of record at the Service Address, to the Complainant. F.F. No. 4. After the balance transfer, the Complainant on August 6, 2019, received a Commission-issued payment arrangement for her outstanding account balance, which was \$3,674.34. F.F. No. 5; PGW Ex. 4. The Complainant then defaulted on the Commission-issued payment arrangement. F.F. No. 9.

Upon review of the record, there is no testimonial or other evidence specifically documenting that the 2018 balance transfer was included in the Complainant’s \$3,674.34 balance subject to the August 2019 Commission payment arrangement. From an evidentiary perspective, that is why I am willing to support a remand here. If during the remand it is shown that the

transferred balance from 2018 was subject to the 2019 Commission payment arrangement, then the Complainant has admitted liability for the transferred balance in accordance with the Code and Commission precedent. If so, then the Complainant is responsible for the 2018 balance transfer as a matter of law.

Date: September 21, 2023

A handwritten signature in black ink, appearing to read "J.F. Coleman, Jr.", written over a horizontal line.

**JOHN F. COLEMAN, JR.
COMMISSIONER**