

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Victoria Whitaker

v.

Philadelphia Gas Works

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C-2022-3035783

INITIAL DECISION ON REMAND

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision on Remand grants the Complainant’s Petition for Leave to Withdraw the remainder of her Formal Complaint.

HISTORY OF THE PROCEEDING

On September 30, 2022, Victoria Whitaker (Complainant or Ms. Whitaker) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company, or Respondent). In the Complaint, the Complainant placed checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.” The Complainant also alleged that her outstanding balance should not include a balance transfer that occurred in 2018.

On October 24, 2022, PGW filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, PGW admitted in part and denied in part various material allegations of the Complaint. PGW admitted that it issued a shut off notice for the gas service at 6428 Boyer Street, Philadelphia, PA. In its New Matter, PGW averred that the portions of the Complaint regarding the 2018 balance transfer are barred by the statute of limitations at 66 Pa.C.S. § 3314, which 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 requested that the Complaint be dismissed.

Also on October 24, 2022, PGW filed a Preliminary Objection to the Complaint, along with a Notice to Plead. In its Preliminary Objection, PGW reiterated their argument that the portions of the Complaint regarding the 2018 balance transfer are barred by the statute of limitations at 66 Pa.C.S. § 3314 and should be dismissed.

On February 2, 2023, a hearing was held. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Jessica Antonetti, a Customer Review Officer at PGW. Ms. Antonetti sponsored five exhibits, which were admitted into the record without objection.

On May 25, 2023, I issued an Initial Decision wherein I first provided the rationale for granting PGW's Preliminary Objection because it was beyond the statute of limitations to bring a cause of action. Thereafter, I found that the Complainant failed to carry her burden of proving that she is entitled to a second or subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement and recommended that the remainder of the Complaint be dismissed.

On October 16, 2023, the Commission entered an Opinion and Order adopting, as modified, the Initial Decision and remanding this matter to the Office of Administrative Law Judge (OALJ) for further proceedings as deemed necessary related to the limited issue of determining whether PGW properly transferred the account balance to Ms. Whitaker in 2018, culminating in the issuance of an Initial Decision on Remand. *Whitaker v. Phila. Gas Works*, Docket No. C-2022-3035783 (Opinion and Order entered Oct. 16, 2023).

By Hearing Notice dated October 19, 2023, a Further Telephonic Hearing on Remand was scheduled for December 7, 2023.

A Prehearing Order was issued on November 9, 2023, advising the parties of the date and time of the scheduled hearing on remand, and informing them of the procedures applicable to this proceeding.

On November 30, 2023, the Complainant requested a continuance in order to retain legal counsel. I reserved judgment on the continuance request until a prehearing conference could be held prior to the hearing scheduled for December 7, 2023.

On December 7, 2023, the hearing on remand convened as scheduled. The Complainant appeared *pro se*. Graciela Christlieb, Esquire, appeared on behalf of PGW. At the outset of the hearing, both parties agreed to continue the hearing until January 31, 2024, so that the Complainant could retain legal counsel. Tr. 33-39.

On December 8, 2023, an Order was issued formally granting the Complainant's request for a continuance in order to retain legal counsel.

By Hearing Notice dated December 8, 2023, a Further Telephonic Hearing on Remand was scheduled for January 31, 2024.

On January 31, 2024, the hearing on remand convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW.

At the outset of the hearing, the Complainant made a verbal motion to withdraw the remainder of her Complaint. Counsel for PGW objected to the motion to withdraw and requested that the Complaint be dismissed with prejudice for abuse of process. I reserved judgment and allowed PGW to present evidence in support of its request.

In support of its request to dismiss, PGW presented the testimony of Jessica Glace, the Manager of the Customer Review Unit at PGW. PGW also offered three additional exhibits, which were admitted into the record without objection.

The record closed on February 19, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Victoria Whitaker.
2. The Respondent is Philadelphia Gas Works, a gas utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complainant receives gas service from PGW at 6428 Boyer Street, Philadelphia, Pennsylvania (Service Address). Tr. 6.
4. 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. I.D. at 3.

5. By Hearing Notice dated December 8, 2023, a Further Telephonic Hearing on Remand was scheduled for January 31, 2024.

6. The Further Telephonic Hearing on Remand convened as scheduled on January 31, 2024. Tr. 40-69.

7. At the hearing, under oath, the Complainant requested to withdraw the remainder of her Complaint. Tr. 44.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a).

The petition is granted only by permission of the presiding officer or the Commission. *Id.* The presiding officer or Commission must consider the petition, any objections thereto, and the public interest in determining whether to permit withdrawal of the pleading. 52 Pa. Code § 5.94.

A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, particularly in proceedings involving *pro se* litigants. 52 Pa. Code §§ 1.2(a), (c), (d). Thus, the Complainant's verbal request, under oath at the January 31, 2024 hearing will be treated as a petition for leave to withdraw the Complaint.

In this case, a hearing on remand was held pursuant to the Commission's Opinion and Order adopting, as modified, the Initial Decision and remanding this matter to the OALJ. *Whitaker v. Phila. Gas Works*, Docket No. C-2022-3035783 (Opinion and Order entered Oct. 16, 2023). In that Opinion and Order, the Commission specifically ordered the record remanded to the OALJ for further proceedings as deemed necessary related to the limited issue of determining whether PGW properly transferred the account balance to Ms. Whitaker in 2018. *Id.* at Ordering ¶ 4.

Originally, the hearing on remand convened as scheduled on December 7, 2023. However, prior to going on the record, the Complainant expressed a desire to obtain legal counsel. As a result, at the outset of the hearing, both parties agreed to continue the hearing until January 31, 2024, so that the Complainant could retain legal counsel.

The hearing on remand reconvened on January 31, 2024, wherein the Complainant stated that she did not retain legal counsel. Tr. 44. The Complainant did state that she consulted with two attorneys about her case, and as a result, she now wishes to withdraw the remainder of the Complaint regarding the 2018 balance transfer. Tr. 45.

PGW objected to the Complainant's Petition to Withdraw on the grounds that the Complainant continues to file informal and formal complaints regarding the 2018 balance transfer and her total outstanding balance. Tr. 45-46, 63-66. Instead, PGW requested that the Complaint be dismissed with prejudice and the Complainant be barred from filing any future complaints, informal or formal, based on the 2018 balance and/or her outstanding balance that is the subject of this Formal Complaint. *Id.*

I will not grant PGW's requests. First, the Commission directed that this hearing on remand was specifically limited to determining whether PGW properly transferred the account balance to Ms. Whitaker in 2018. Therefore, any abuse of process issues outside of the 2018 balance transfer are likewise outside the scope of the Commission's Order. Moreover, I find PGW's request to be untimely as it was not raised during the original hearing in this matter. Finally, it is unnecessary to bar future complaints regarding the 2018 balance transfer as they are already barred by the four-year statute of limitations set forth at 66 Pa.C.S. §1312. Accordingly, PGW's objection to the Complainant's Petition to Withdraw is overruled and PGW's request to dismiss the Complaint with prejudice and bar future complaints is denied.

Here, the Complainant had the opportunity to discuss her case with legal counsel and decided that she no longer wishes to pursue any claims related to the 2018 balance transfer. Under these circumstances, granting the Complainant's request to withdraw the remainder of the Complaint is in the public interest because doing so will eliminate the need for litigation and save the Commission and parties any additional costs in time and money they would otherwise incur litigating a case wherein the relief sought cannot be granted. Further, the Complaint does not contain any novel issues or issues that would impact the public interest. Accordingly, the Complainant's Petition for Leave to Withdraw the remainder of the Formal Complaint shall be granted.

CONCLUSIONS OF LAW

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

2. The Commission's Rules of Practice and Procedure permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa. Code § 5.94.

