

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hassan Gamble

v.

Philadelphia Gas Works

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F-2023-3044777

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Hassan Gamble against Philadelphia Gas Works because it is barred by 66 Pa.C.S. § 316 and the statute of limitations.

HISTORY OF THE PROCEEDING

On December 4, 2023, Hassan Gamble (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) seeking to have his gas service reconnected and a payment plan for the past due balance.¹

On January 2, 2024, 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 terminated the gas service at 5037 Aspen

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3952829, which dismissed Complainant's November 1, 2023 informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

Street, Philadelphia, PA (Service Address). In its New Matter, PGW made the following averments that were admitted into the record at the April 11, 2024, hearing:

1. On August 14, 2012, PGW terminated the gas service to the Service Address at the curb valve.
2. On July 22, 2017, PGW found the gas on at the curb valve and turned it back off.
3. On October 3, 2017, PGW abandoned the gas service at the main valve.
4. On October 17, 2017, the Complainant contacted PGW and made an application for gas service at the Service Address.
5. On October 26, 2017, PGW gained entry to the Service Address and discovered a tampered meter bypass.
6. On November 7, 2017, the Complainant again contacted PGW for restoration terms. PGW advised the Complainant that he would have to pay the bypass charges before PGW would restore the gas service to the Service Address.
7. On January 4, 2018, the Complainant filed an informal complaint against PGW with the Commission's Bureau of Consumer Services (BCS) at Docket No. 3583911 seeking restoration of service and a payment arrangement.
8. On January 10, 2018, BCS issued a decision dismissing the informal complaint and informing the Complainant that he must comply with PGW's restoration terms.
9. The Complainant did not appeal the decision issued at BCS Docket No. 3583911.

10. As the gas service was abandoned in October of 2017, there has been no gas service to the Service Address in over six years.

PGW argues that the determination of theft and the Complainant's responsibility for the bypass charges are issues that are now beyond 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.

The Complainant did not file an Answer to PECO's New Matter.

Also on January 2, 2024, PGW filed a Preliminary Objection to the Complaint, along with a Notice to Plead. In its Preliminary Objection, PGW reiterated their argument that the determination of theft and the Complainant's responsibility for the bypass charges are issues beyond the statute of limitations at 66 Pa.C.S. § 3314 and should be dismissed.

The Complainant did not file an Answer to PGW's Preliminary Objection.

By Hearing Notice dated February 8, 2024, an Initial Call-In Telephonic Hearing was scheduled for April 11, 2024, and the matter was assigned to me.

A Prehearing Order was issued on February 29, 2024, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 11, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW. At the hearing, Attorney Christlieb made a motion to admit the facts PGW alleged in its New Matter based on Complainant's failure to timely respond to the same and then rested on PGW's Preliminary Objection.

The record closed on April 23, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Hassan Gamble, who resides at 5037 Aspen Street, Philadelphia, PA. Tr. 5.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides electric service to the Complainant at the Service Address.

3. The Complainant has resided at the Service Address since 2011. Tr. 5.

4. On August 14, 2012, PGW terminated the gas service to the Service Address at the curb valve. PGW New Matter; Tr. 13.

5. On July 22, 2017, PGW found the gas on at the curb valve and turned it back off. PGW New Matter; Tr. 13.

6. On October 3, 2017, PGW abandoned the gas service at the main valve. PGW New Matter; Tr. 13.

7. On October 17, 2017, the Complainant contacted PGW and made an application for gas service at the Service Address. PGW New Matter; Tr. 13.

8. On October 26, 2017, PGW gained entry to the Service Address and discovered a tampered meter bypass. PGW New Matter; Tr. 13.

9. On November 7, 2017, the Complainant again contacted PGW for restoration terms. PGW advised the Complainant that he would have to pay the bypass charges before PGW would restore the gas service to the Service Address. PGW New Matter; Tr. 13.

10. On January 4, 2018, the Complainant filed an informal complaint against PGW with the Commission's Bureau of Consumer Services (BCS) at Docket No. 3583911 seeking restoration of service and a payment arrangement. PGW New Matter; Tr. 13.

11. On January 10, 2018, BCS issued a decision dismissing the informal complaint and informing the Complainant that he must comply with PGW's restoration terms. PGW New Matter; Tr. 13; BCS Docket No. 3583911.

12. The Complainant did not appeal the decision issued by BCS at Docket No. 3583911. PGW New Matter; Tr. 13.

13. As the gas service was abandoned in October of 2017, there has been no gas service to the Service Address in over six years. PGW New Matter; Tr. 13.

DISCUSSION

In this case, PGW filed Preliminary Objections to the Complaint based on the statute of limitations. However, based on the record, I conclude that the Complaint is barred by the Public Utility Code (Code) at 66 Pa.C.S. § 316. Although this issue was not raised by either party, an issue of subject matter jurisdiction may be raised at any stage of a proceeding by a party or *sua sponte* by the presiding officer or by the Commission. *Blackwell v. State Ethics Commission*, 567 A.2d 630 (Pa. 1989).

As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §101–3316; *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Matorano*, 235 A.2d 602 (Pa. 1967). Indeed, subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

In the instant Complaint, the Complainant is seeking to have his gas service reconnected and a payment arrangement for the outstanding balance. However, in 2018, the Complainant filed a complaint against PGW with the BCS (Docket No. 3583911) seeking the same exact relief as he seeks now. On January 10, 2018, the BCS issued a decision dismissing the complaint and informing the Complainant that he must comply with PGW's restoration terms. BCS Docket No. 3583911. The Complainant did not appeal the BCS decision, therefore, it is a final binding decision. 52 Pa. Code § 56.163(3); *see also, Ruskey v. Pa. Elec. Co.*, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019).

The Commission has previously confirmed that the decision of whether or not to dismiss a complaint brought on the same allegations as a prior complaint is answered by the Code at 66 Pa.C.S. § 316. *See Howell v. Phila. Gas Works*, Docket No. C-2016-2568426 (Opinion and Order entered May 2, 2017). Section 316 provides, in pertinent part:

Whenever the commission shall make any rule, regulation, finding, determination, or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316. Section 316 of the Code precludes a collateral attack upon a Commission order that has not been set aside by the Commission or reversed upon appeal. *Howell* at 7.

Here, Mr. Gamble's current Complaint reasserts the same allegations, arguments, and request for relief that he set forth in his 2018 BCS complaint that was already decided. The decision issued at BCS Docket No. 3583911 was not set aside by the Commission or by the courts and thus, has conclusive effect. This means that the Complainant is barred by Section 316 from re-litigating the issues raised in his prior complaint. 66 Pa.C.S. § 316. Accordingly, Mr. Gamble's current Complaint shall be dismissed, with prejudice, pursuant to Section 316 of the Code.

Additionally, I find that the Complainant is also barred by the statute of limitations. The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection

practice is comparable to Pennsylvania civil practice in respect to the filing of preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). The Commission's Rules provide, in relevant 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).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp.'s Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). 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 Emp. 's Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

In this case, the Complainant is seeking to have his gas service reconnected after it was terminated in 2017 for theft of service. To this end, Section 3314 of the 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). The Commission has consistently held that Section 3314, “is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order.” *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

Here, the date at which the alleged liability arose is older than three years, and thus, barred by the statute of limitations. The Complainant’s gas service was disconnected on October 3, 2017, for theft of service. On January 4, 2018, the Complainant filed an informal complaint with the BCS about the disconnection of gas service. On January 10, 2018, BCS issued a decision dismissing the informal complaint and informing the Complainant that he must comply with PGW’s restoration terms. Therefore, the Complainant had until January 10, 2021, to file an appeal and/or formal complaint in the matter. Instead, the Complainant filed his Complaint in 2023 – six years after the alleged liability arose. As a result, Section 3314(a) divests the Commission of jurisdiction to hear the Complainant's action. Accordingly, PGW’s Preliminary Objection shall be granted, and the Complaint shall be dismissed.

Finally, it is noted that the Complainant also seeks a payment arrangement on the outstanding balance in order to reinstate service. The Commission has held that while it is not precluded from providing a payment arrangement to an applicant who has had their service

properly terminated, an applicant that resided at the service address during the theft of service is not eligible for a payment arrangement. See *Fassett v. Phila. Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered Apr. 27, 2015), and *Brockington v. PECO Energy Co.*, Docket No. F-2023-2344242 (Final Order entered Sept. 29, 2015). The record in both the prior case and the current case, indicates that the Complainant resided at the service address during the time the theft of service occurred. Accordingly, he is not entitled to a Commission-issued payment on the outstanding balance in order to reinstate service.

CONCLUSIONS OF LAW

1. An issue of subject matter jurisdiction may be raised at any stage of a proceeding by a party or *sua sponte* by the presiding officer or by the Commission. *Blackwell v. State Ethics Commission*, 567 A.2d 630 (Pa. 1989).
2. 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).
3. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945).
4. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).
5. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).
6. The decision of whether or not to dismiss a complaint brought on the same allegations as a prior complaint is answered by the Public Utility Code at 66 Pa.C.S. § 316. *Howell v. Phila. Gas Works*, Docket No. C-2016-2568426 (Opinion and Order entered May 2, 2017).

7. Whenever the commission shall make any rule, regulation, finding, determination, or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa.C.S. § 316.

8. The Complainant is barred from re-litigating the decision issued by the BCS at Docket No. 3583911 on January 10, 2018. 66 Pa.C.S. § 316.

9. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code § 5.101.

10. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveler Servs., Inc. v. Pa. Dept. of Env't. Res.*, 406 A.2d 1020 (Pa. 1979).

11. The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

12. No action for the recovery of any penalties or forfeitures or any prosecution shall be maintained unless brought within three years from the date at which the liability arose. 66 Pa.C.S. § 3314(a).

13. Section 3314 of the Public Utility Code “is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order.” *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

14. The Complainant’s Complaint is barred by the statute of limitations. 66 Pa.C.S. § 3314(a).

15. The Complainant is not eligible for a Commission-issued payment arrangement because he resided at the service address during the theft of service. *Fassett v. Phila. Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered Apr. 27, 2015), and *Brockington v. PECO Energy Co.*, Docket No. F-2023-2344242 (Final Order entered Sept. 29, 2015).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Philadelphia Gas Works is granted consistent with the above discussion.
2. That the Formal Complaint filed by Hassan Gamble in *Hassan Gamble v. Philadelphia Gas Works*, Docket No. F-2023-3044613, is dismissed with prejudice.
3. That Docket No. F-2023-3044613 be marked closed.

Date: July 22, 2024

_____/s/
F. Joseph Brady
Administrative Law Judge