

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terria Wilks	:	
	:	
v.	:	C-2024-3049293
	:	
Philadelphia Gas Works	:	

**INTERIM ORDER  
GRANTING IN PART AND DENYING IN PART PGW’S PRELIMINARY OBJECTION**

On May 29, 2024, Terria Wilks (Complainant or Ms. Wilks) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), against Philadelphia Gas Works (PGW, Company, or Respondent) regarding service at 7545 Sherwood Road, Philadelphia, PA (service location). Complainant checked boxes indicating the utility was threatening to shut off her service or had already done so and requesting a payment arrangement (PAR). Under requested relief, Complainant wrote, “I would like to receive an affordable payment arrangement. I believe the charges [were] billed incorrectly before year 2009. This bill has been a problem since. The gas being shut off threatens my 14 years old son[s’] quality of life.” For service by the Commission, Complainant selected eService, checking the box next to this option.

On June 19, 2024, PGW filed an Answer and New Matter, as well as a Preliminary Objection. In its Answer, PGW admits it issued a 10-day shut-off notice to Complainant. PGW further explains that the Complainant has received multiple PGW-issued payment agreements that remain unsatisfied as well as two PUC-issued payment agreements issued at Bureau of Consumer Services (BCS) Docket Nos. 3594648 and BCS 3796411 that remain unsatisfied.

In its New Matter, PGW explains that Complainant filed a Formal Complaint against PGW at Docket No. F-2015-2471533, attached to the New Matter as appendix “A”, wherein the Complainant alleged, *inter alia*, that there were incorrect or high charges on her PGW bills from 2009 and prior. On July 27, 2015, the presiding officer, Administrative Law Judge Darlene Heep (ALJ Heep), issued an Initial Decision at Docket No. F-2015-2471533 dismissing the Complaint, finding that: (a) the Complainant’s claims relating to bills from and before 2009 were barred by the statute of limitations; and (b) the Complainant failed to establish a prima facie case for any such claims after 2009. PGW avers that Complainant did not file Exceptions to the Initial Decision at Docket No. F-2015-2471533. By Final Order entered on October 2, 2015, the Commission informed the parties that, in accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. §332(h), the Initial Decision at Docket No. F-2015-2471533 had become final without further Commission action. PGW notes that the Commission’s Final Order at Docket No. F-2015-2471533 has not been set aside, annulled, or otherwise overturned.

PGW further avers that, on August 21, 2023, Complainant filed a Formal Complaint against PGW at Docket No. C-2023-3042340, attached to the New Matter as appendix “B”, wherein Complainant also alleged that there were incorrect or high charges on her PGW bills from the past. On March 8, 2024, the presiding officer, Administrative Law Judge Arlene Ashton (ALJ Ashton), issued an Initial Decision at Docket No. C-2023-3042340, attached to the New Matter as appendix “C”, wherein she upheld ALJ Heep’s decision regarding the statute of limitations regarding the bills from 2009 and prior as well as dismissing the Complaint regarding any incorrect or high bills since the filing of the Complaint at Docket No. F-2015-2471533 as the Complaint failed to meet her burden of proof regarding that issue. The Complainant did not file Exceptions to the Initial Decision at Docket No. C-2023-3042340. By Final Order entered on April 10, 2024, attached to the New Matter as appendix “D”, the Commission informed the parties that, in accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. §332(h), the Initial Decision at Docket No. C-2023-3042340 had become final without further Commission action. PGW explains that the Commission’s Final Order at Docket No. C-2023-3042340 has not been set aside, annulled, or otherwise overturned.

PGW argues that the statute of limitations at 66 Pa.C.S. § 3314 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 avers that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. To the extent that the instant Complaint raises issues pertaining to the accuracy of PGW bills issued to the Complainant prior to August 21, 2023, PGW submits that those issues have been previously decided in a prior proceeding at Docket No. C-2023-3042340 where the parties had an opportunity to appear and be heard and are thereby barred by the doctrine of *res judicata*.

The New Matter was accompanied by a Notice to Plead, directing Complainant to file a response to the New Matter within 20 days of service. This Notice further advised, “Failure to file a timely reply to new matter may result in relevant facts stated in the new matter being deemed admitted.” Complainant did not file a response to the New Matter.

In its Preliminary Objection, PGW argues Complainant is alleging incorrect bills were issued prior to 2009, which is beyond the statute of limitations at 66 Pa.C.S. § 3314. Additionally, PCW argues that any allegations regarding incorrect bills issued prior to August 21, 2023, have been previously decided in a prior proceeding at Docket No. C-2023-3042340 and are thereby barred by the doctrine of *res judicata*.

The Preliminary Objection included a Notice to Plead, advising Complainant of her right to file a response within ten days of service. Complainant did not file a response to the Preliminary Objection.

It is now appropriate to rule on the Preliminary Objection.

## Discussion

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (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. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff'd per curiam*, 924 A.2d 1203 (Pa. 2007). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

Section 5.101(a)(1) of the Commission's regulations permits a party to file a preliminary objection based on the lack of Commission jurisdiction. To act on the Complaint, the Commission must have jurisdiction. The Commission, as a creation of the General Assembly, only has the powers and authority granted to it by the General Assembly and contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order (May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within and cannot exceed, its jurisdiction. *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945). Jurisdiction may not be conferred by the parties where not exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

The statute of limitations at 66 Pa.C.S. § 3314 is a jurisdictional issue. It requires that any complaint seeking relief under the Public Utility Code be brought within three years from the date at which the liability therefor arose. As a jurisdictional issue, the statute of

limitations and the Commission's lack of jurisdiction may be raised at any time. *See, e.g., Application of Laurel Pipe Line Company*, Docket No. A-2016-2575829 (Order entered July 12, 2018) and *Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203 (Final Order entered January 27, 2015).

The Complainant filed the instant Complaint on May 29, 2024. Complainant is alleging that her bills prior to 2009 were incorrect. All allegations and claims regarding the accuracy of bills issued prior to May 29, 2021, fall outside the applicable statutory period of limitation and are barred under 66 Pa.C.S. § 3314.

Regarding the accuracy of bills issued *after* May 29, 2021, PGW argues the issue of the accuracy of bills issued prior to August 21, 2023, have been previously decided in a prior proceeding at Docket No. C-2023-3042340 where the parties had an opportunity to appear and be heard and are thereby barred by the doctrine of *res judicata*.

The doctrine of *res judicata* was recently discussed in a different case before the Commission. *See Howell v. Philadelphia Gas Works (Howell)*, Docket No. C-2016-2568426 (Final Order May 2, 2017). The Commission explained, the doctrine of “. . . *res judicata*, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies.” *Hopewell Estates, Inc. v. Kent*, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994). This principle was explained by Administrative Law Judge Wayne Weisman in the case of *Pa. Publ. Util. Comm'n Schuylkill Twp. v. Borough of Phoenixville*, 1993 Pa. PUC LEXIS 78 as follows:

The terms *res judicata* and collateral estoppel have been replaced in recent years in an effort to clarify the difference between the two (collateral estoppel was frequently called “broad *res judicata*” while *res judicata* was described as “technical” or “strict *res judicata*” when distinguishing it from broad *res judicata*). The current terms (adopted by the drafters of the Restatement (Second) of Judgments) are claim preclusion and issue preclusion.

**Claim preclusion**, formerly technical or strict *res judicata*, is the term used to describe the effects of merger and bar a prior judgment will have in a later action. Matters which were actually litigated and also matters which should have been litigated in prior actions as part of the same cause of action will not be allowed to be re-litigated in a subsequent action.

**Issue preclusion**, formerly collateral estoppel, prevents the re-litigation of an issue of fact or law which was actually litigated in a prior proceeding and was necessary to the original judgment.

Claim preclusion applies only when four conditions all exist: (1) identity of the subject matter; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality or capacity (legal status) of the parties suing or being sued.

Issue preclusion does not require an identity of the parties, but does require: (1) the issue(s) decided by a prior final judgment is identical with the one(s) presented in the later action; (2) the issue(s) was actually litigated; (3) the party against whom issue preclusion is asserted was a party or in privity with a party to the prior litigation; and (4) the determination of the issue(s) was essential to the prior final judgment.

*Howell* at 7.

In *Howell*, the Commission also discussed Section 316 of the Code, 66 Pa. C.S. § 316. That section provides, in pertinent part, that:

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.

*Id.*

As noted by the Commission, Section 316 of the Code precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Id.*

In *Howell*, the ALJ granted a Motion to Dismiss on the basis of *res judicata*, but upon review, the Commission upheld the ALJ's decision on the basis of Section 316. The Commission wrote,

On consideration of the record in this matter, we conclude that the line of analysis concerning the doctrine of *res judicata* is unnecessary to resolve this case.

The purpose of the doctrine of *res judicata* is to “minimize the judicial energy devoted to individual cases, establish certainty and respect for court judgments, and protect the party relying on the prior adjudication from vexatious litigation.” *Mintz v. Carlton House Partners, Ltd.*, 595 A.2d 1240, 1245 (Pa. Super. 1991), quoting *Lebeau v. Lebeau*, 393 A.2d 480, 492 (Pa. Super. 1978). The goal of Section 316 of the Code appears to be the same.

Importantly, whether or not to dismiss a complaint brought on the same allegations as a complaint which was already dismissed with prejudice is answered by the Code, Section 316. The Commission Order dismissing the first complaint of Ms. Howell remains as a bar to subsequent litigation unless set aside by this Commission or modified on judicial review. Here, the order dismissing Ms. Howell's prior complaint, with prejudice (Final Order entered May 11, 2016), was not set aside by the Commission or by the courts and thus, has conclusive effect. This means that Ms. Howell is barred by Section 316 from re-litigating the issues raised in her prior complaint.

*Id.* at 9-10.

The Commission's analysis in *Howell* is applicable to the instant case. In the Preliminary Objection, as well as the New Matter, the Company argues Complainant has previously raised the issue of inaccurate bills at in prior complaints. Complainant did not file a response to either of the Company's filings. Notably, failure 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).

In a 2015 Complaint, Complainant alleged, *inter alia*, that there were incorrect or high charges on her PGW bills from 2009 and prior. On July 27, 2015, ALJ Heep issued an

Initial Decision at Docket No. F-2015-2471533 dismissing the Complaint, finding that: (a) the Complainant's claims relating to bills from and before 2009 were barred by the statute of limitations; and (b) the Complainant failed to establish a prima facie case for any such claims after 2009. ALJ Heep's decision was subsequently adopted by the Commission and has not set aside, annulled, or otherwise overturned.

On August 21, 2023, Complainant filed another filed another complaint again alleging inaccurate bills. On March 8, 2024, ALJ Ashton issued an Initial Decision at Docket No. C-2023-3042340, upholding ALJ Heep's decision regarding the statute of limitations regarding the bills from 2009 and prior as well as dismissing the Complaint regarding any incorrect or high bills since the filing of the Complaint at Docket No. F-2015-2471533 as the Complaint failed to meet her burden of proof regarding that issue. By Final Order entered on April 10, 2024, the adopted ALJ Ashton's decision. ALJ Ashton's decision was subsequently adopted by the Commission and has not set aside, annulled, or otherwise overturned.

Complainant's claim that her bills issued prior to May 29, 2021, are dismissed because they are barred by the statute of limitations. Furthermore, the accuracy of bills issued between May 29, 2021, and August 21, 2023, are dismissed under 66 Pa. C.S. § 316. Therefore, with regards to the accuracy of Complainant's bills, the only bills at issue in this case are the bills issued after August 21, 2023.

Therefore, it is appropriate to move forward to an evidentiary hearing in this matter. At the evidentiary hearing, Complainant will bear the burden to present substantial evidence that the Company violated some statute, regulation, order, or tariff provision. Specifically, she must present substantial evidence that the bills issued after August 21, 2023, are incorrect and that she is entitled to a payment arrangement.



**C-2024-3049293 - TERRIA WILKS v. PHILADELPHIA GAS WORKS**

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