

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

HASSAN GAMBLE

v.

PHILADELPHIA GAS WORKS

**PUBLIC MEETING OF SEPT. 26, 2024
3044777-ALJ
DOCKET NO. F-2023-3044777**

STATEMENT OF CHAIRMAN STEPHEN M. DeFRANK

Before the Commission today is the Initial Decision of the Administrative Law Judge dismissing the complaint filed by Hassan Gamble wherein Mr. Gamble was seeking to have his gas service reconnected and a payment plan established for the past due balance. The ALJ dismissed the complaint because the matter is prohibited by the statute of limitations and by Section 316 of the Public Utility Code.

I agree that the complaint should be dismissed because it was filed beyond the statute of limitations. I do not agree, however, that the complaint should be dismissed because it violates Section 316.

Section 316 of the Public Utility Code provides in relevant 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.”¹

Section 316 is similar, but different, than the concepts of res judicata and collateral estoppel. Those concepts prohibit the relitigation of a matter decided by a court of competent jurisdiction based on several conditions being satisfied.² Section 316 is different, however, because it makes prior Commission decisions conclusive upon all parties “*unless set aside, annulled or modified on judicial review.*” Res judicata and collateral estoppel do not have such an exclusion.

Therefore, it was an error for the ALJ to dismiss Mr. Gamble’s complaint on the basis of Section 316 of the Public Utility Code because the Commission’s Bureau of Consumer Services (BCS) had previously disposed of a prior informal complaint filed by Mr.

¹ 66 Pa.C.S. § 316.

² See, e.g., *Township of McCandless v. McCarthy*, 7 Pa.Cmwlth. 611, 300 A.2d 815 (1973); *Martin v. Poole*, 232 Pa.Super. 263, 336 A.2d 363 (1975).

Gamble. To the extent necessary, Section 316 allows the Commission to set aside, annul or modify that BCS determination on judicial review, which was precisely what Mr. Gamble sought to do when he filed the instant complaint.

In addition, the ALJ in this matter failed to dispose of the preliminary objection in this matter on a timely basis or on the correct basis. Section 5.101(g) of the Commission's regulations provides that, "a preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer."³ Also, as the ALJ correctly noted in the Initial Decision, in deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible.⁴

Here, the ALJ specifically stated during the hearing held in this matter that he had not ruled on the preliminary objection, "because [he] wanted to have the record and establish some facts on the evidence before I ruled on them."⁵ The ALJ, therefore, acted contrary to Commission regulation and precedent by failing to dispose of the preliminary objections on a timely basis⁶ and considering more than just the well-pleaded factual averments of the complaint.

Nonetheless, because the facts pleaded in this case, even when accepted as true for purposes of disposing of the preliminary objection, demonstrate that the most recent action by the company was in 2017, I agree that Mr. Gamble's complaint should be dismissed because the complaint was filed beyond the statute of limitations.⁷ I will vote to adopt the Initial Decision on that basis.

September 26, 2024
Date



Stephen M. DeFrank
Chairman

³ 52 Pa. Code § 5.101(g).

⁴ See e.g., *Dept. of Auditor Gen. v. State Emp's Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003).

⁵ Tr. 5.

⁶ The preliminary objection was filed on January 3, 2024 and the hearing notice was issued on February 8, 2024. The Initial Decision disposed of preliminary objection on July 22, 2024.

⁷ 66 Pa.C.S. § 3314(a).