

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Quanesha Sims

v.

Philadelphia Gas Works

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C-2024-3049238

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On May 24, 2024, Quanesha Sims (Complainant or Ms. Sims) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, the Complainant stated that PGW is charging her for unauthorized usage at a property where the lease was not in her name. The Complainant also states that she is seeking a payment arrangement to pay the outstanding unauthorized usage charge.

On June 13, 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 is holding the Complainant responsible for theft charges at a property with the address of 1425 South 28th Street, Philadelphia, PA (1425 S. 28th St.).

In its New Matter, PGW averred that: the Complainant previously resided at 1425 S. 28th St.; on March 2, 2011, PGW terminated the gas service to 1425 S. 28th St. due to theft; PGW subsequently held the Complainant responsible for the theft charges; on May 23, 2011, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Docket No. 2835509, wherein she disputed the determination regarding her liability and the theft charges; on August 6, 2011, the BCS issued a decision at BCS Docket No. 2835509, wherein it held that the Complainant was responsible for the charges; and the Complainant did not appeal the BCS decision. Thus, PGW averred that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because it was brought more than three years from the date the liability arose.

The Complainant's Answer to PGW's New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainant did not file an Answer to PGW's New Matter.

Also on June 13, 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 statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because the alleged liability, *i.e.* theft charges, occurred more than three years ago. Thus, PGW requests the case be dismissed.

The Complainant's Answer to PGW's Preliminary Objection was due within ten days of the date of service of the Preliminary Objection. 52 Pa. Code § 5.101. The Complainant did not file an Answer to PGW's Preliminary Objection.

By Motion Judge Assignment Notice dated July 25, 2024, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

PGW's Preliminary Objection is now ready to be ruled upon. For the reasons discussed below, the Preliminary Objection will be granted, and the case will be dismissed.

FINDINGS OF FACT

1. The Complainant is Quanesha Sims.
2. The Respondent is Philadelphia Gas Works.
3. On May 24, 2024, Quanesha Sims filed a Formal Complaint against PGW.
4. On June 13, 2024, PGW filed an Answer with New Matter along with a Notice to Plead.
5. The Complainant did not file an Answer to PGW's New Matter.
6. On June 13, 2024, PGW filed a Preliminary Objection to the Complaint along with a Notice to Plead.

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

8. The Complainant previously resided at 1425 South 28th Street, Philadelphia, PA. PGW New Matter, ¶ 8.

9. On March 2, 2011, PGW terminated the gas service to 1425 South 28th Street, Philadelphia, PA due to theft. PGW New Matter, ¶ 9.

10. PGW held the Complainant responsible for the theft charges incurred at 1425 South 28th Street, Philadelphia, PA. PGW New Matter, ¶ 10.

11. On May 23, 2011, the Complainant filed an informal complaint with the BCS at BCS Docket No. 2835509, wherein she disputed the determination regarding her liability and the theft charges. PGW New Matter, ¶ 11.

12. On August 6, 2011, the BCS issued a decision at BCS Docket No. 2835509, wherein it held that the Complainant was responsible for the theft charges. PGW New Matter, ¶ 12.

13. The Complainant did not appeal the August 6, 2011, BCS decision at BCS Docket No. 2835509. PGW New Matter, ¶ 13.

DISCUSSION

In this case, PGW filed a Preliminary Objection 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 Comm'n*, 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 alleges that PGW is charging her for unauthorized usage at a previous property, as well as, seeking a payment arrangement to pay the outstanding unauthorized usage charge. However, in 2011, the Complainant filed an informal complaint against PGW with the BCS (BCS Case No. 2835509) regarding this very same issue. On August 6, 2011, the BCS issued a decision dismissing the complaint and holding the Complainant responsible for the unauthorized usage charges. BCS Case No. 2835509. 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 Mar. 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, the Complainant's current Complaint is brought on the same allegations as her prior 2011 BCS complaint that was already decided. The decision issued at BCS Case No. 2835509 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 the prior complaint. 66 Pa.C.S. § 316. Accordingly, the Complainant'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 respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). PGW averred in its Preliminary Objection that the Commission lacks jurisdiction over the claims raised in the Complaint. 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., et al v. State. Emps. Ret. Sys.*, 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 (Ms. Sims) 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 Emps. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). Finally, 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 this case, the Complainant alleges that PGW is charging her for unauthorized usage at a previous property, as well as, seeking a payment arrangement to pay the outstanding unauthorized usage charge. 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 terminated on March 2, 2011, for theft of service. Consequently, on May 23, 2011, the Complainant filed an informal complaint with the BCS. On August 6, 2011, BCS issued a decision dismissing the complaint and holding the Complainant responsible for the unauthorized usage charges. Therefore, the Complainant had until September 5, 2011, to file an appeal of the BCS decision. 52 Pa. Code § 56.172(a). In the alternative,

Complainant had until August 6, 2014 to file a formal complaint in the matter. 52 Pa. Code § 56.172(e); 66 Pa.C.S. § 3314(a). Here the Complainant did not timely file an appeal of the BCS decision by September 5, 2011. Instead, the Complainant filed a Formal Complaint in 2024 – thirteen years after the alleged liability arose. As a result, Section 3314(a) divests the Commission of jurisdiction to hear the Complainant's action.¹ Accordingly, PGW's Preliminary Objection shall be granted, and the Complaint shall be dismissed with prejudice.

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 Comm'n*, 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).

¹ Although the Commission does not have jurisdiction, it is noted that the Complainant also seeks a payment arrangement on the outstanding balance in order to reinstate service. However, even if the Commission did have jurisdiction, the Complainant would still not be entitled to any relief. 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 a service address during 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*); *Brockington v. PECO Energy Co.*, Docket No. F-2023-2344242 (*Final Order entered Sept. 29, 2015*). The record in this case indicates the Complainant resided at a service address during theft of service at that address and was charged accordingly. Thus, she is not entitled to a Commission-issued payment arrangement on the outstanding balance in order to reinstate service.

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. A decision issued by the Commission's Bureau of Consumer Services is a final binding decision upon the parties unless formal proceedings are initiated. 52 Pa. Code § 56.163(3).

9. The Complainant is barred from re-litigating the decision issued by the BCS Case No. 2835509 on May 23, 2011. 66 Pa.C.S. § 316.

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

11. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

12. 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., et al v. State. Emps. Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

13. 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 Emps. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

14. 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).

15. 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).

16. 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).

