

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Winston Banks	:	
	:	
v.	:	F-2024-3050882
	:	
Philadelphia Gas Works	:	

ORDER
GRANTING PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On August 6, 2024, Winston Banks (“Mr. Banks”) filed a Formal Complaint against Philadelphia Gas Works (“PGW”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that there were incorrect charges on his bills.¹ Attached to the Complaint is a handwritten note containing payment, usage, and billing information for Mr. Banks’ monthly PGW bills ranging from bills issued in 2020 to bills issued in 2024. Also attached to the Complaint are Mr. Banks’ PGW bills issued on the following dates: December 19, 2020; January 22, 2021; August 19, 2021; September 21, 2021; November 19, 2021; December 21, 2021; January 22, 2022; September 20, 2022; and June 15, 2024.

To summarize Mr. Banks’ argument in his Complaint, Mr. Banks alleges that since 2020 he has made \$14,105.33 worth of payments towards his PGW bills. According to Mr. Banks, his PGW bills during this time period totaled \$15,828.77. Therefore, Mr. Banks argues that he owes PGW \$1,723.44 instead of the \$6,511.57 outstanding on his June 15, 2024, bill. For

¹ The Complaint is a timely appeal of a Decision issued by the Commission’s Bureau of Consumer Services (“BCS”) at BCS No. 3987571, dated July 11, 2024, regarding an Informal Complaint filed by Mr. Banks. The BCS Decision indicates that Mr. Banks’ Informal Complaint was filed on May 16, 2024.

relief, Mr. Banks requests that the Commission review his account and reconcile/adjust the actual usage in regards to the payments made.

The Complaint was served on PGW on August 26, 2024.

On September 16, 2024, PGW filed an Answer with New Matter to the Complaint. The New Matter was properly endorsed with a Notice to Plead. In its Answer, PGW denied that there were incorrect charges on Mr. Banks' bills. In its New Matter, PGW asserted that Mr. Banks is attempting to litigate issues pertaining to the accuracy of PGW bills issued prior to August 6, 2021, and that such issues are barred by the statute of limitations, at Section 3314 of the Public Utility Code ("Code"), 66 Pa.C.S. § 3314.

Also on September 16, 2024, PGW filed Preliminary Objections to the Complaint, properly endorsed with a Notice to Plead. In its Preliminary Objections, PGW asserted that the Commission lacks jurisdiction over portions of the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1), arguing that the Complaint raises issues regarding the accuracy of bills issued prior to August 6, 2021, and that such issues fall outside the applicable statute of limitations and is barred under 66 Pa.C.S. § 3314. PGW concluded its Preliminary Objections by requesting that the Commission dismiss issues raised in the Complaint that are beyond the statute of limitations.

On October 3, 2024, Mr. Banks filed an Answer to PGW's Preliminary Objections. Mr. Banks' Answer is not responsive to the Preliminary Objections but instead contains a list of questions directed to PGW's customer service concerning Mr. Banks' account.

On October 10, 2024, Mr. Banks filed a Reply to PGW's New Matter. In his Reply Mr. Banks argued that he did not raise any challenges to bills more than three years old, but also argued that since December 2020 to July 2024 he has paid \$14,105.33 towards the total billing from PGW of \$15,828.77.

On October 23, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

PGW's Preliminary Objections are procedurally ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be granted.

DISCUSSION

PGW in this matter filed Preliminary Objections to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Here, Respondent's Preliminary Objections assert lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1).

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 ("Code"). *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Thus, 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. Martorano*, 235 A.2d 602 (Pa. 1967). 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).

PGW argued that the Commission lacks jurisdiction over the portions of the Complaint challenging the accuracy of bills issued prior to August 6, 2021, pursuant to Section 3314 of the Code. Section 3314 of the Code provides as follows:

§ 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).

Thus, the statute 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.

Viewing the Complaint in the light most favorable to Mr. Banks, he alleges that PGW has not accurately credited payments that he has made towards his PGW account. Based on the attachments to the Complaint, these miscredited payments begin with payments made in 2020 and continue to payments made in 2024. In sum, Mr. Bank alleges that he has made \$14,105.33 worth of payments towards the total PGW billing of \$15,828.77. Therefore, Mr. Banks alleges that his outstanding PGW account balance is \$1,723.44, instead of the \$6,511.57 outstanding on his June 15, 2024, bill.

PGW is correct in stating that a portion of Mr. Banks' Complaint should be barred by the applicable statute of limitations. The Complaint was filed on August 6, 2024. It is noted, however, that Mr. Banks filed an Informal Complaint with BCS on May 16, 2024. This Formal Complaint is a timely appeal of the Decision of the BCS addressing the Informal Complaint. In this instance, the filing of the Informal Complaint with the Commission tolls the statute of limitations. *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992). As such, pursuant to 66 Pa.C.S. § 3314, Mr. Banks is not entitled to relief as a matter of law for any claims that arose prior to May 16, 2021. Thus, the allegations in the Complaint pertaining to incorrect billing that occurred prior to May 16, 2021, are barred.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Preliminary Objections filed in the matter of Winston Banks v. Philadelphia Gas Works, Docket No. F-2024-3050882, are granted.
2. That the claims in the Complaint regarding incorrect billing that occurred prior to May 16, 2021, are barred by the statute of limitations, 66 Pa.C.S. § 3314.
3. That an evidentiary hearing will be scheduled in this matter concerning all other claims in the Complaint.

Date: October 25, 2024

/s/
Alphonso Arnold III
Administrative Law Judge

F-2024-3050882 - WINSTON BANKS v. PHILADELPHIA GAS WORKS

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