

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debbi Esola	:	Docket No. C-2024-3051193
	:	
	:	
v.	:	
	:	
	:	
Philadelphia Gas Works	:	

**INTERIM ORDER
DENYING PRELIMINARY OBJECTION**

On August 29, 2024, Debbi Esola (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). The Complainant wants to have service restored to 2537 South 8th Street, Philadelphia (Service Address). Ms. Esola alleges that a prior tenant “rigged” the meter, that PGW shut off service, put a bill for six-plus years in her name, and refuses to restore service unless the Complainant pays over \$9,000. The Complaint was served on the Respondent on September 16, 2024.

PGW filed an answer and new matter to the Complaint on October 7, 2024, accompanied by a notice to plead within 20 days. In its new matter, Respondent avers that there has been no gas service to the Service Address since 2018. PGW argues that the Commission does not have jurisdiction to hear the Complaint because it was filed more than three years after the event giving rise to the Complaint occurred, referencing the statute of limitations in 66 Pa.C.S. § 3314. The Respondent also argues that the determination that there was theft of service and Complainant’s responsibility for the theft charges has already been adjudicated by the United States Bankruptcy Court and, under the doctrine of collateral estoppel, cannot be litigated again. In light of its arguments, PGW requested that the Complaint be dismissed.

The Complainant did not file a response to the new matter.

Also on October 7, 2024, the Respondent filed a preliminary objection to the Complaint. In its preliminary objection, similar to its new matter, PGW maintains that any issues regarding the Complainant's gas service more than three years prior to the filing of the Complaint are outside the applicable statutory period of limitation and are barred under 66 Pa.C.S. § 3314. PGW requests that the Commission "dismiss issues raised in the Complaint regarding the balance transfer as beyond the statute of limitations and grant any other relief to PGW that is deemed to be reasonable and appropriate." The Respondent included a notice to plead within 10 days.¹

The Complainant did not file a response to PGW's preliminary objections.

By Motion Judge Assignment Notice dated November 14, 2024, the parties were informed that PGW's preliminary objections had been assigned to me for a ruling.

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections.² The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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.

¹ A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of service of the objection. 52 Pa. Code § 5.101(b).

² *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

- (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.

In deciding the preliminary objection, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.³ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objection.⁴ All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections.⁵ Only those facts specifically admitted may be considered against the non-moving party.⁶

Here, the Respondent makes averments in its new matter and preliminary objection that Ms. Esola's Complaint relates to a termination of service and balance transfer occurring in 2018. That information cannot be ascertained from the face of the Complaint, which does not provide timing for the termination of service or accrual of amounts required to restore service that are the basis for the Complaint. In deciding preliminary objections, it is only proper to consider the facts set forth in the complaint.⁷ Therefore, the facts alleged by PGW in its new matter and preliminary objection are not considered.

³ *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).

⁴ *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

⁵ *Pa. State Lodge, Fraternal Order of Police v. Dept. of Conservation and Nat. Res.*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd per curiam*, 924 A.2d 1203 (Pa. 2007); *see also Glod v. PECO Energy Co.*, Docket No. C-2012-2305158 (Interim Order dated July 2, 2012) (*Glod*).

⁶ *Ridge v. State Emp.s' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

⁷ *Kusturiss v. Columbia Gas of Pa., Inc.*, Docket No. C-2013-2385910 (Order Denying Preliminary Objections and Directing That the Matter be Set for Hearing dated Nov. 5, 2013); *Glod. See also Mayo v. Phila. Gas Works*, Docket No. C-2016-2562263 (Opinion and Order entered Mar. 17, 2017) (denying preliminary objections where facts necessary to make a

Based only on the information in the Complaint, taken in the light most favorable to the Complainant, I cannot find that any or all issues raised by Ms. Esola are time-barred. Accordingly, PGW's preliminary objection will be denied. A hearing will be scheduled at a later date where the Complainant can explain her dispute orally and both parties will have the opportunity to create a factual record on which issues regarding statute of limitations can be raised and considered.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Philadelphia Gas Works in the Formal Complaint of Debbi Esola against Philadelphia Gas Works at Docket No. C-2024-3051193 is denied.
2. That the matter at Docket No. C-2024-3051193 be scheduled for a hearing.

Date: November 27, 2024

/s/
Erin L. Gannon
Administrative Law Judge

conclusive determination whether arrears are within the 3-year statute of limitations have not been entered into the record).

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November 27, 2024

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