

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon	:	
	:	
v.	:	F-2024-3051634
	:	
Philadelphia Gas Works	:	

ORDER
GRANTING IN PART, AND DENYING IN PART
PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On October 7, 2024, Jaycinah Simon (“Ms. Simon” or “Complainant”) filed a Formal Complaint (“Formal Complaint”) against Philadelphia Gas Works (“PGW” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that PGW was threatening to or has already shut off her service, that she would like a payment arrangement, and that there were incorrect charges on her bill.

In her Complaint, Ms. Simon states that her gas service was terminated on September 11, 2024, without notice for an outstanding balance of \$29,444.72. Ms. Simon asserts that a portion of this outstanding balance (\$12,900.27) was discharged pursuant to her Chapter 13 bankruptcy proceeding, filed in May 2019. Thus, she claims that PGW is attempting to collect amounts previously discharged in her bankruptcy case. Ms. Simon further alleges violations of extortion laws, consumer protection laws, title 11 of the United States Code (bankruptcy), the Emergency Banking Act of 1933, and HJR 192, all as it relates to PGW attempts to collect payment for the services it provided to Ms. Simon and to PGW’s termination of her service.

For relief, Ms. Simon requests restoration of her gas service, a full accounting of her gas charges in accordance with GAAP¹ and the statute of limitations, proof under GAAP that her outstanding PGW balance has not been written off, and removal of any unlawfully reinstated charges that were dismissed in her Chapter 13 bankruptcy proceeding. Ms. Simon further seeks a payment arrangement on her lawful charges.

On November 7, 2024, PGW filed an Answer with New Matter to the Complaint, properly endorsed with a Notice to Plead. In its Answer, PGW admits that it terminated service to Ms. Simon on September 11, 2024, but denies that it did so without notice. PGW denies that there are incorrect charges on Ms. Simon's bill. In its New Matter, PGW claims that Ms. Simon raises multiple issues in her Complaint that the Commission lacks jurisdiction over. PGW concludes its Answer with New Matter by requesting dismissal of the Complaint.

Also on November 7, 2024, PGW filed Preliminary Objections to the Complaint, properly endorsed with a Notice to Plead. In its Preliminary Objections, PGW argues that Ms. Simon alleges violations of the Uniform Commercial Code, GAAP, HJR-192, extortion laws, consumer protection laws, bankruptcy laws, and the Emergency Banking Act of 1933 in her Complaint, all issues of which the Commission lacks jurisdiction over. PGW thus seeks dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(1). PGW also seeks dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(2), arguing that the Commission does not have the power to address any of the issues raised in the Complaint, and as such, none of the issues raised are legally recoverable through this action.

Ms. Simon did not file a Reply to PGW's New Matter or an Answer to PGW's Preliminary Objections.

On December 10, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

¹ "GAAP" stands for Generally Accepted Accounting Principles.

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

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).

Commission jurisdiction

PGW argues in its Preliminary Objections that the Commission lacks jurisdiction over the claims in the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1).

The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. 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. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered 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. 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).

When viewing the Complaint in the light most favorable to Ms. Simon, the Complaint alleges violations of extortion laws, consumer protection laws, GAAP, title 11 of the United States Code, the Emergency Banking Act of 1933, and HJR 192. PGW is correct in that the Commission lacks jurisdiction to hear these claims. The Commission only possesses

authority to preside over alleged violations of the Public Utility Code, or any Commission regulation or order. As such, these claims must be dismissed.

Impertinent Matter

PGW also argues in its Preliminary Objections that the Complaint includes impertinent matter, pursuant to 52 Pa. Code § 5.101(a)(2), arguing that the Commission does not have the power to address any of the issues raised in the Complaint, and as such, none of the issues raised are legally recoverable through this action.

As stated above, the Commission cannot administer and make decisions concerning any potential violations of extortion laws, consumer protection laws, GAAP, title 11 of the United States Code, the Emergency Banking Act of 1933, or HJR 192. As such, these claims must be dismissed.

Conclusion

For the reasons stated above, PGW's Preliminary Objections will be granted, and the claims in the Complaint relating to extortion laws, consumer protection laws, GAAP, title 11 of the United States Code, the Emergency Banking Act of 1933, and HJR 192, will be dismissed in the Ordering paragraphs below. However, PGW's Preliminary Objections will be denied to the extent that they seek dismissal of the Complaint in its entirety. This is because there are pertinent matters remaining in the Complaint that the Commission has jurisdiction over (Ms. Simon's request for a payment arrangement, for example).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works's Preliminary Objections filed in the matter of Jaycinah Simon v. Philadelphia Gas Works, Docket No. F-2024-3051634, are granted in part, and denied in part.

2. That the claims in the Formal Complaint that raise impertinent matter and are not within the Commission's jurisdiction to administer are dismissed consistent with the discussion in this Order.

3. That an evidentiary hearing shall be held on the remaining claims in the Formal Complaint.

Date: December 18, 2024

/s/
Alphonso Arnold III
Administrative Law Judge

F-2024-3051634 - JAYCINAH SIMON v. PHILADELPHIA GAS WORKS

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