

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Arnold Bethea	:	
	:	
v.	:	F-2025-3053166
	:	
Philadelphia Gas Works	:	

ORDER
GRANTING IN PART AND DENYING IN PART
PRELIMINARY OBJECTIONS

This Order grants in part and denies in part the Preliminary Objections (POs) of Philadelphia Gas Works (PGW). Because the Pennsylvania Public Utility Commission (Commission) does not have the authority to award monetary damages as a remedy, that portion of the Formal Complaint (Complaint) will be dismissed. However, this Order also directs that a hearing will be scheduled and held on the claims raised in the Complaint.

History of the Proceeding

On January 27, 2025, the Commission’s Secretary’s Bureau received the Complaint filed by Arnold Bethea (Mr. Bethea or Complainant) against the Company. Mr. Bethea checked three boxes on his complaint form: (1) the utility has already shut off my service; (2) incorrect charges are on my bill; and (3) “other” as the reasons for his Complaint. Mr. Bethea avers he owns a residence at 1447 N. Redfield Street, Philadelphia, Pennsylvania, and receives residential gas service from PGW. Mr. Bethea avers that his billing issues with PGW “has been on-going since May 2023.” Complaint at Complainant Page 1.¹ He further avers that on May 25, 2023, he made a telephonic payment to PGW in the intended amount of \$67.50. *Id.* Upon completing the transaction, Mr. Bethea learned an automatic system process error resulted in an actual payment of \$631.56. Mr. Bethea avers that PGW acknowledged this

¹ Mr. Bethea handwrote “see attached” on the Formal Complaint Form and attached, *inter alia*, three typed pages, dated January 23, 2025, hand numbered, beginning at page 1.

mistake and claimed that \$564.06² was returned to the Complainant's bank account. Mr. Bethea alleges that PGW did not return \$564.06 nor did PGW apply the \$564.06 to future bills, and instead, on July 24, 2024, PGW terminated his gas service due to non-payment.

As a result, Mr. Bethea alleges that PGW incorrectly and unreasonably charged him a \$123.23 restoration fee and \$250 to be placed on a payment arrangement following "multiple processing errors." *Id.*

As relief, the Complainant seeks the following: (1) a refund of \$631.56; (2) a refund of the restoration fee (\$123.23); (3) a refund of \$250 for payment arrangement fee; and (4) for the PUC to order PGW to compensate him for their processing errors, to include reimbursement of all "faxing fees, mailing fees and all of my out of pocket expenses," "for causing overwhelming stress," and "to order PGW a total of \$2,636.35 for ALL of my inconveniences." Complaint at Complainant Page 2.

On February 20, 2025, PGW filed an Answer with New Matter and POs. In its Answer, PGW denied the material allegation of incorrect billing and averred PGW processed an electronic return transaction in the amount of \$564.06 on October 13, 2023. Answer ¶ 4. Further, PGW admitted it terminated service, on July 24, 2024, for non-payment. *Id.*

In its POs, the Company requests that the portion of the Complaint pertaining to a request for monetary damages - i.e., the reimbursement of \$2,636.35 the Complainant allegedly incurred for out-of-pocket expenses, be dismissed. PGW avers that under Section 5.101(a)(2) of the Commission's regulations, a request for damages constitutes impertinent matter which should be dismissed because the Commission does not have the authority to award monetary damages. *See*, 52 Pa. Code § 5.101(a)(2). PGW further requests that the Commission dismiss the Complaint in its entirety.

Mr. Bethea did not file an answer to PGW's POs.

² \$631.56 - \$67.50 = \$564.06

On March 27, 2025, a Motion Judge Assignment Notice was issued informing the parties that I was assigned as the Presiding Officer responsible to resolve any issues which may arise during the preliminary phase of the proceeding. PGW's POs are now ready for disposition.

Discussion

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections and provides:

§ 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) (emphasis added).

In ruling on preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible.

Dep't of Auditor General v. SERS, 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 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 Employees' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). Therefore, the primary focus is on whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Id.*

Additionally, as a matter of law, to establish a legally sufficient claim, a Complainant must show that the named utility company is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (Code), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with Section 3301 or other provisions of the Code.

In the instant case, Mr. Bethea alleges in his Complaint that PGW incorrectly and unreasonably charged him a restoration fee and payment arrangement fee, which PGW disputes. These claims of incorrect billing and unreasonable service are cognizable under the Code and Commission Regulations.³ Therefore, since there is a factual dispute as to these allegations, the Complainant should be afforded the opportunity to present evidence on his claims and prove them by a preponderance of the evidence. *See Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*) (holding that, in general, a *pro se*

³ For example, *see* 66 Pa.C.S. § 1501 (providing that every public utility must provide reasonable service); Chapter 56 of the Commission regulations (providing standards and billing practices for residential utility service); *Kossmann v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (holding that a Company's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981) (holding where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably).

Complainant may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe his basic issue and supporting facts).

However, even assuming *arguendo* that Mr. Bethea proves that the Company violated the Code, a Commission regulation or order or a violation of its Commission-approved tariff, the Commission cannot award Mr. Bethea monetary compensation as relief. Although this Commission has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Commission only has the powers and authority granted to it by the General Assembly in the Code. Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (*Feingold*); *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980). Rather, monetary damage payments must be pursued and ordered by a court of competent jurisdiction, such as a county court of common pleas or magisterial district justice, not the Commission. *Feingold*. A finding, if any, that PGW violated a Commission Order, regulation or statute, may result in the imposition of a civil penalty, but does not require it, consistent with Section 3301 or other provision of the Code. Further, it should be noted that a fine, if any, that is imposed on PGW is payable to the Commonwealth of Pennsylvania, not the customer—Mr. Bethea, in this instance. However, this Order also clarifies that the Commission may, within its authority, order a correction of incorrect billing if that claim is proven by the Complainant.

Therefore, to the extent that Mr. Bethea seeks compensatory damages for reimbursement for all his “out of pocket expenses” and “inconveniences,” PGW’s POs will be sustained because the Commission does not have the authority to award monetary damages.

However, viewing the Complaint in the light most favorable to Mr. Bethea as the non-moving party and accepting as true every well-pleaded material fact in the Complaint, as well as every reasonable inference from those facts, Mr. Bethea raised issues of fact as to the validity and calculation of PGW’s electronic billing transactions, and PGW’s termination of his gas service due to non-payment. I find that there is a sufficient basis to proceed to a hearing where Mr. Bethea will have the opportunity to provide testimony and evidence, as he must, to carry his burden of proof in support of his position. *See Carlock*. These issues lie within the

jurisdiction of the Commission and will not be dismissed on POs, but will proceed forward for adjudication.

Thus, a hearing will be scheduled by a separate Hearing Notice on the claims raised in the Complaint and over which the Commission does have jurisdiction. 66 Pa.C.S. §§ 102, 1501.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Philadelphia Gas Works, at Docket No. F-2025-3053166, is hereby granted, in part, and denied, in part, consistent with this Order.

2. That Philadelphia Gas Works' Preliminary Objection which requests that the Complainant's request for monetary damages be stricken from the Complaint for lack of Commission jurisdiction is granted.

3. That Philadelphia Gas Works' Preliminary Objection which requests that the Formal Complaint be dismissed is denied.

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