

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debbi Esola	:	
	:	
v.	:	C-2024-3051193
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Erin L. Gannon  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Debbi Esola against Philadelphia Gas Works because it is barred by the statute of limitations under 66 Pa.C.S. § 3314. As an additional basis for dismissal, the Complainant is not entitled to a payment arrangement for theft charges, her responsibility for which has already been adjudicated and is barred from re-litigation here by the doctrine of collateral estoppel.

**HISTORY OF THE PROCEEDING**

On August 29, 2024, Debbi Esola (Complainant or Ms. Esola) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). Ms. Esola checked the boxes on the Complaint form stating that the utility is threatening to shut off

her service or has already shut off her service and “Other.” Under requested relief, Ms. Esola stated:

I want service restored. The company refuses to restore service without full payment of over \$9,000! I rent this property, before I moved in the previous tenant (sic) “rigged” the meter. I did not even know that was possible. PGW shut service off and put bill for 6 years + in my name. I offered down payment several times but the (sic) repeatedly refuse restoration without over \$9,000!

Complaint ¶ 5. 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 answer, Respondent admitted that it terminated gas service to the address identified in the Complaint but denied the material allegations of the Complaint.

In its new matter, Respondent averred that there has been no gas service to the Service Address since 2018 when it identified unauthorized usage, terminated service, held Ms. Esola responsible for theft charges, and required payment in full for restoration. PGW argued 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 Section 3314 of the Public Utility Code, 66 Pa.C.S. § 3314. The Respondent also argued that the determination that there was theft of service and the Complainant’s responsibility for the theft charges has already been adjudicated by the United States Bankruptcy Court (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.

Also on October 7, 2024, the Respondent filed a preliminary objection to the Complaint. In its preliminary objection, similar to its new matter, PGW maintained

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 limitations and barred under Section 3314. PGW requested 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.<sup>1</sup>

The Complainant did not file a response to PGW’s new matter or preliminary objection.

By Motion Judge Assignment Notice dated November 14, 2024, the parties were informed that PGW’s preliminary objection had been assigned to me for disposition.

On November 26, 2024, I issued an Interim Order Denying Preliminary Objection (Interim Order). Based only on the facts set forth in the Complaint, taken in the light most favorable to the Complainant, I found that the facts necessary to make a conclusive determination that the issues raised by the Complainant (1) relate exclusively to amounts owed for theft charges and (2) are outside the three-year statute of limitations have not been entered into the record. That information cannot be ascertained from the face of the Complaint and I did not consider the facts alleged by PGW in its new matter and preliminary objection.<sup>2</sup> I directed that a hearing would be scheduled, where

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<sup>1</sup> 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).

<sup>2</sup> Interim Order at 3, n.7 (citing *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 v. PECO Energy Co.*, Docket No. C-2012-2305158 (Interim Order dated July 2, 2012); *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 conclusive determination whether

the Complainant could explain her dispute orally and both parties would have the opportunity to create a factual record on which issues regarding the statute of limitations could be raised and considered.

On December 3, 2024, notice was issued setting an initial telephonic hearing for January 28, 2025.

On December 4, 2024, I issued a Prehearing Order which set forth basic procedures to be followed before and during the hearing.

On December 30, 2024, the Respondent filed a Motion for Judgment on the Pleadings (Motion), accompanied by a notice to plead within 20 days.<sup>3</sup> PGW argued that the issues raised by the instant Complaint have already been adjudicated and the Complainant is estopped from relitigating them here. As grounds for moving to dismiss the instant Complaint on the pleadings, with prejudice, PGW contended that there are no disputed issues of fact and it was entitled to judgment as a matter of law on the basis of collateral estoppel.

The Complainant did not file a response to the Motion.

The hearing was held as scheduled on January 28, 2025. Regarding the outstanding Motion, I advised the parties that I had determined to deny the Motion and would provide the basis for denial in a written order. Tr. 7, 33-34. The hearing went forward, with both parties participating and presenting testimony.

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arrears are within the three-year statute of limitations have not been entered into the record).

<sup>3</sup> A motion for judgment on the pleadings must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion. 52 Pa. Code § 5.102(a).

Ms. Esola appeared *pro se*. Graciela Christlieb, Esquire, appeared on behalf of PGW, and presented the testimony of one witness, Jessica Antonetti, a senior customer review officer for PGW. The following exhibits were admitted into the record:

- PGW Exhibit 1: November 16, 2018 Bureau of Consumer Services Decision re: Informal Complaint Docket No. 3664967
- PGW Exhibit 2: PGW's Answer with New Matter to the Complaint
- PGW Exhibit 3: PGW's Preliminary Objections to the Formal Complaint

The record closed on February 20, 2025, which was the date the Commission received the transcript.

On February 26, 2025, I issued an Interim Order Denying Motion for Judgment on the Pleadings (Motion Order). In the Motion Order, I explained my reasons for going forward with the hearing: (1) to provide the Complainant with an opportunity to orally explain her position and the factual basis for her Complaint and (2) to develop a record on which to determine whether the Commission has jurisdiction to consider any issues raised by Ms. Esola's Complaint. Motion Order at 4-5.

### FINDINGS OF FACT

1. The Complainant is Debbi Esola who resides at 2537 South 8th Street, Philadelphia, Pennsylvania (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which formerly provided gas service to the Complainant at the Service Address.
3. The home at the Service Address is a rental property. Tr. 12.
4. Ms. Esola moved into the home in 2012 and lives there now. Tr. 12.

5. The Complainant received gas service at the Service Address from the time she moved into the home in 2012 until October 2018. Tr. 12, 15.

6. Ms. Esola did not have an account with PGW at the Service Address. Tr. 14.

7. Ms. Esola did not pay PGW for gas service received at the Service Address. Tr. 12, 14.

8. In October 2018, PGW identified unauthorized usage and terminated gas service to the Service Address. Tr. 15, 18; New Matter ¶¶ 4, 8, 15.

9. PGW held the Complainant responsible for gas service rendered between Complainant's move-in in 2012 and termination of service in October 2018 (theft charges).<sup>4</sup> Tr. 13, 27-28; Complaint ¶ 5.

10. PGW calculated that Ms. Esola owed \$8,982.03 for theft charges. Tr. 13, 27-28; Complaint ¶ 5.

11. The full amount that PGW required to restore gas service was \$9,607.26, which is the total of: bypass charges of \$8,982.03, a reconnection fee of \$123.23, a fixed fee of \$372.00, and 50 percent of a \$130 security deposit. Tr. 27.

12. PGW has not provided gas service to the Service Address since terminating service in October 2018. Tr. 12-13, 15.

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<sup>4</sup> In PGW's pleadings and exhibits, the \$8,982.03 that PGW calculated as the amount to be billed for the unauthorized gas usage between 2012 and 2018 is referred to as "theft charges," "bypass charges," "unauthorized usage charges," and "balance transfer." For purposes of this Initial Decision, they are interchangeable.

13. On October 31, 2018, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Docket No. 3664967, in which she sought terms for restoration of gas service. Tr. 18-19; PGW Exh. 1 at 2; New Matter ¶ 9.

14. On November 16, 2018, BCS issued a decision dismissing the informal complaint at BCS Docket No. 3664967, holding that the Complainant was responsible for the unauthorized usage and payment of \$9,607.26 was required for restoration. Tr. 19; PGW Exh. 1 at 2, 4; New Matter ¶ 10.

15. A "Request for Formal Complaint Forms (Notification of Intent to Appeal)" was attached to the November 16, 2018 BCS decision with the instruction that the customer must sign and return the form and then file a Formal Complaint to appeal the decision. Tr. 21-22; PGW Exh. 1 at 4.

16. Complainant did not appeal the BCS decision at BCS Docket No. 3664967 by filing a formal complaint with the Commission. Tr. 22; New Matter ¶ 11.

17. On November 24, 2018, the Complainant filed a voluntary petition under Chapter 7 of the Bankruptcy Code, in which she included the theft charges of \$8,982 as debt owed to PGW. PGW Exh. 2 at 20, 22, 48; New Matter ¶¶ 18-19.

18. On October 18, 2019, a trial was held in the United States Bankruptcy Court for the Eastern District of Pennsylvania. PGW Exh. 2 at 105 (*In re Esola*, 606 B.R. 647, 651 (Bankr. E.D. Pa. 2019) (*Esola*)); New Matter ¶ 21.

19. At trial before the Bankruptcy Court, Ms. Esola was represented by counsel and presented testimony and evidence. PGW Exh. 2 at 105, 106 (*Esola* at 651); New Matter ¶¶ 21, 22.

20. On October 29, 2019, the Bankruptcy Court deemed the \$8,982.03 debt to PGW to be “nondischargeable” because it arose from Ms. Esola’s theft of service. PGW Exh. 2 at 111 (*Esola*, 606 B.R. at 653); New Matter ¶ 24.

21. On December 11, 2019, Complainant filed an informal complaint with the Commission at BCS Docket No. 3753313, in which she sought terms for restoration of gas service. PGW Exh. 2 at 14-15, 17-18; New Matter ¶ 12.

22. On December 17, 2019, BCS dismissed the informal complaint at BCS Docket No. 3753313, stating that the matter had already been addressed by BCS and would not be addressed again at the informal level. PGW Exh. 2 at 17; New Matter ¶ 13.

23. In its December 17, 2019 decision, BCS stated that the Complainant must file a formal complaint. PGW Exh. 2 at 17; New Matter ¶ 13.

24. The Complainant did not appeal the BCS decision at BCS Docket No. 3753313 by filing a formal complaint with the Commission. Tr. 22; New Matter ¶ 14.

25. On February 7, 2020, the Bankruptcy Court issued an order discharging the Complainant’s bankruptcy and closing the docket. PGW Exh. 2 at 114; New Matter ¶ 25.

26. The Complainant did not file a formal complaint with the Commission prior to filing the instant Complaint on August 29, 2024. Tr. 11, 22.

## DISCUSSION

In its new matter, preliminary objection, and Motion for Judgment on the Pleadings, PGW raised arguments that the Complaint was barred by the statute of limitations, 66 Pa.C.S. § 3314, and the doctrine of collateral estoppel. I declined to dismiss the Complaint without a hearing and, as discussed above, a hearing was held where the Complainant was afforded the opportunity to orally explain her position and the factual basis for her Complaint. Further, the Complainant had the opportunity to orally address her prior informal complaints and the inclusion of the bypass charges in a 2018 bankruptcy filing. Tr. 9-14, 27, 29.

With the benefit of the fuller record developed during the hearing,<sup>5</sup> it is clear that the issues raised by the Complainant relate exclusively to amounts owed for theft of service between 2012 and 2018. As she explained, the basis for Ms. Esola's dispute is that PGW will not accept less than full payment of those amounts to restore service. Tr. 8-9, 11-12, 30-31. She seeks a payment arrangement to get service restored with a smaller down payment than \$9,607.26. Tr. 30.

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

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<sup>5</sup> 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). Ms. Esola did not file a reply to the new matter. Further, the documents attached to PGW's new matter were also introduced as hearing exhibits and the Complainant did not object to their admission into evidence. Tr. 29. These documents included BCS decisions on the informal complaints Ms. Esola filed with the Commission in 2018 and 2019, her bankruptcy filing and the Bankruptcy Court's opinion and order regarding the debt to PGW for theft of service. PGW Exhs. 1-3.

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).

### Statute of Limitations

I find that the Commission lacks jurisdiction over the claims raised in the Complaint because those claims are barred by the statute of limitations. Section 3314 of the Public Utility 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. Pennsylvania-Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

Here, the date at which the liability arose is older than three years and, thus, barred by the statute of limitations. The Complainant’s gas service was terminated in October 2018 for theft of service. Consequently, on October 31, 2018, Ms. Esola filed an informal complaint with the Commission (BCS Docket No. 3664967) seeking a payment arrangement. On November 16, 2018, BCS issued a decision dismissing the complaint, holding the Complainant responsible for tampered meter bypass charges in the amount of \$8,982.03 and denying a payment arrangement on the basis that “[t]he company and the

PUC do not provide terms when unauthorized usage has been determined at the residence.” PGW Exh. 2 at 97. The Complainant had until December 6, 2018, to initiate an appeal of the BCS decision. 52 Pa. Code § 56.172(a). In the alternative, Ms. Esola had three years from the BCS decision to file a formal complaint in the matter. 66 Pa.C.S. § 3314(a); 52 Pa. Code § 56.172(e). The Complainant did not timely file an appeal of the BCS decision by November 2021.<sup>6</sup> Ms. Esola did not file a formal complaint until 2024 – more than five years after PGW terminated service, imposed the theft charges and required payment in full to restore gas service, and BCS denied a Commission-issued payment arrangement. As a result, Section 3314 divests the Commission of jurisdiction to hear the Complainant’s action. For this reason, the Complaint will be dismissed.

#### Collateral Estoppel and Eligibility for Payment Arrangement

In its new matter and Motion for Judgement on the Pleadings, PGW also argued that the Complaint is barred under the doctrine of collateral estoppel, to the extent that it raises issues regarding PGW’s determination of theft of service and responsibility for the debt. Although I have already found that the instant complaint is barred by the statute of limitations, for the sake of completeness, I have also examined the applicability of collateral estoppel.

The doctrine of collateral estoppel, often referred to as “issue preclusion,” bars re-litigation of a question of law or an issue of fact that was finally litigated in a prior action between the same parties. *Baker v. Pa. Human Rels. Comm’n*, 462 A.2d 881 (Pa. Cmwlth. 1983). The four conditions that must be met for this doctrine to apply are:

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<sup>6</sup> The Complainant also did not appeal the BCS decision issued on December 14, 2019 (BCS Docket No. 3753313), which dismissed her complaint because it had already been decided “at the informal level” and advised Ms. Esola to file a formal complaint. PGW Exh. 2 at 17; New Matter ¶ 13.

(1) identity of issues, (2) a final judgment on the merits, (3) identity of the party against whom the plea is asserted, and (4) a full and fair opportunity to litigate the issue. *See Day v. Volkswagonwerk*, 464 A.2d 1313 (Pa. Super. 1983).

In its new matter and Motion, PGW argued that the “prior action” was the trial before the Bankruptcy Court where a full hearing was held and the Complainant was represented by counsel. Motion ¶ 26; New Matter ¶ 22. I find that the four elements of collateral estoppel are met regarding PGW’s determination to hold the Complainant responsible for theft charges.

First, the issue decided in the prior adjudication is identical with the one presented in the later action. As stated, the bankruptcy proceeding adjudicated PGW’s determination to hold the Complainant responsible for theft charges in the amount of \$8,982.03. PGW Exh. 2 at 110-11 (*Esola*, 606 B.R. at 653); New Matter ¶ 24. Second, there was a final judgment on the merits. The Bankruptcy Court’s opinion and order on the merits was followed by an order by the Bankruptcy Court closing the case. PGW Exh. 2 at 114; New Matter ¶¶ 24, 25. Third, the party against whom the plea is asserted, Ms. Esola, was a party to the bankruptcy proceeding. PGW Exh. 2 at 100 (*Esola*, 606 B.R. at 647); New Matter ¶ 22.

Fourth, Ms. Esola has had a full and fair opportunity to litigate the issue in question in a prior action. Ms. Esola litigated her responsibility to pay PGW for theft charges before the Bankruptcy Court, where the Complainant was represented by counsel and had the opportunity to present evidence at trial, and did in fact do so. PGW Exh. 2 at 105, 106 (*Esola*, 606 B.R. at 651); New Matter ¶ 21, 22.

Accordingly, I find that the four elements of collateral estoppel are met and the question of the Complainant’s responsibility for the theft charges is barred from re-litigation here.

As there is no dispute that the amount PGW is demanding as a pre-condition to restoration of service relates exclusively to theft charges imposed in 2018, the only remaining issue is a legal one - whether Ms. Esola is entitled to a Commission-issued payment arrangement on theft of service charges.

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-2013-2344242 (Final Order entered Sept. 29, 2015); *Sims v. Phila. Gas Works*, Docket No. C-2024-3049238 (Final Order entered Nov. 4, 2024). The Complainant acknowledges that she resided at a service address during theft of service. Tr. 12, 15. Thus, Ms. Esola is not entitled to a Commission-issued payment arrangement on the \$8,982.03 (plus fees and deposit) that PGW is demanding to restore service.

### Disposition

Consistent with the foregoing discussion, I find that the instant Complaint is barred by the statute of limitations in Section 3314, 66 Pa.C.S. § 3314. As such, the Complaint will be dismissed. I also find the issue of the Complainant's responsibility to pay for the theft charges is barred by the doctrine of collateral estoppel and that she is not entitled to any relief in the form of a Commission-issued payment arrangement for the theft charges.

It remains, however, that Ms. Esola has been living in a home without gas service for six years. At the same time, Ms. Esola has never paid any amount toward her debt. I encourage the parties to make efforts to find a path forward.

## CONCLUSIONS OF LAW

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. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

2. 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).

3. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

4. 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).

5. 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).

6. 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).

7. The Complaint is barred by the statute of limitations. 66 Pa.C.S. § 3314(a).

8. The doctrine of collateral estoppel applies to preclude re-litigation of a question of law or an issue of fact that was finally litigated in a prior action between

the same parties. *Baker v. Pa. Human Relations Comm'n*, 462 A.2d 881 (Pa. Cmwlth. 1983).

9. For the doctrine of collateral estoppel to apply, four conditions must be met: (1) identity of issues, (2) a final judgment on the merits, (3) identity of the party against whom the plea is asserted, and (4) a full and fair opportunity to litigate the issue. *See Day v. Volkswagonwerk*, 464 A.2d 1313 (Pa. Super. 1983).

10. The issue of the Complainant's responsibility for the theft charges is barred by the doctrine of collateral estoppel.

11. 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-2013-2344242 (Final Order entered Sept. 29, 2015); *Sims v. Phila. Gas Works*, Docket No. C-2024-3049238 (Final Order entered Nov. 4, 2024).

12. The Complainant is not entitled to a Commission-issued payment arrangement for the theft charges.

13. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Debbi Esola against Philadelphia Gas Works, at Docket No. C-2024-3051193, is dismissed.
2. That Docket No. C-2024-3051193 shall be marked closed.

Date: May 19, 2025

\_\_\_\_\_/s/  
Erin L. Gannon  
Administrative Law Judge