

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Jennie Carter Harris
v.
Philadelphia Gas Works

Public Meeting: December 19, 2013
2367030-ALJ
Docket Number: F-2013-2367030

JOINT DISSENTING STATEMENT
OF COMMISSIONERS CAWLEY AND BROWN

Jennie Carter Harris (Complainant or Ms. Harris) believed that she properly enrolled in Philadelphia Gas Works' (PGW) Landlord Cooperation Program (LCP), only to find out later that she was not enrolled at all. As a result of not being enrolled in the LCP, the overdue bills of Ms. Harris' tenant became the subject of a municipal lien on her property. Complainant requested that the lien be removed and that PGW be required to transfer the payment responsibility for the gas bill to the tenant.

Administrative Law Judge Joel H. Cheskis (ALJ), in his Initial Decision (ID), dismissed Ms. Harris' Complaint on the Preliminary Objections of PGW which explained that Complainant created an account with the LCP but that she failed to register her rental property. By registering her rental property, Ms. Harris could have protected her property from the imposition of a lien placed upon it to satisfy her tenant's unpaid gas service debt. Because she failed to register the property, the obligation to pay her tenant's debt fell to Ms. Harris.

The ALJ recognized that this Commission lacks subject matter jurisdiction over municipal liens. ID at p. 6. The ALJ further acknowledged, however, that in situations where the Commission has underlying jurisdiction over issues ancillary to a municipal lien, the Commission may retain jurisdiction over those underlying issues. *Id.* There is no disagreement about these two conclusions.

Citing *Cheryl Fisher v. Philadelphia Gas Works*, Docket No. F-2010-2215047 (July 31, 2012), and *Boris Ovrutsky v. Philadelphia Gas Works*, Docket No. C-2012-2321385 (December 19, 2012), the ALJ concluded that the LCP is essentially a contract for private services that supplement the public utility services provided by PGW and, therefore, the Commission has no jurisdiction over the LCP. *Id.* at pp. 6-7.

We respectfully disagree with this conclusion. The Legislature purposefully included customer service issues within the jurisdiction of the Commission when it enacted § 1501. If the Commission does not entertain these issues, then to whom does a customer like Ms. Harris complain for redress of utility service related grievances?

We believe that the LCP, although voluntarily provided by PGW, falls within the ambit of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, which requires public utilities to provide reasonable service. PGW offers the LCP to residential rental property owners (landlords), after designing it with substantial input from

landlords and landlord association groups, such as the Homeowner's Association of Philadelphia and the Greater Philadelphia Association of Realtors. The program assists residential rental property owners to avoid the imposition of gas liens on their registered properties, to help PGW with necessary meter access “for any reason, including but not limited to shutoff or turn-on of service, meter maintenance, performance of a leak survey, or for other safety or operational reasons,” http://www.pgworks.com/files/pdfs/LCP_TermsConditions.pdf, and to assist PGW in the timely collection of payment for its services. See <http://www.pgworks.com/lcp>.

Although not tariffed and a voluntary program, the LCP and many of its features relating to failure to pay accounts, access to meters, meter maintenance, and leak survey access are inextricably intertwined with the provision of PGW's utility service.

This Commission has held many times that customer service should be construed broadly and involves all acts done by a public utility. As recently as 2011, we concluded that:

[T]he ALJ correctly determined that Duquesne Light provided unreasonable service to the Complainant when she attempted to put in a claim for damages to her appliances. Every utility is required to furnish reasonable service to its customers. 66 Pa. C.S. § 1501. The term “service” is used in its broadest and most inclusive sense and includes all acts done by a public utility. 66 Pa. C.S. § 102. Moreover, “[i]nappropriate and unreasonable treatment to customers can be interpreted as inadequate service....” See, *Edward T. O’Toole v. Metropolitan Edison Company*, Docket No. C-20030854 (Order entered May 9, 2005). Duquesne Light argues that the Commission has no jurisdiction over its claims process because the Commission has no authority to award damages. While it is true that the Commission cannot award damages, customer service falls squarely within our jurisdiction.

Barbara R. Lolly v. Duquesne Light Co., C-2010-2167824 (May 9, 2011).

As with the claim for damages in *Lolly*, the Commission lacks jurisdiction over the imposition of a property lien, but it does have jurisdiction over ancillary customer service issues. Despite creating an LCP account, Ms. Harris did not register her property in the LCP in December of 2011. Failing to complete the registration process is what caused her property to be subject to a lien when her tenant defaulted on payment to PGW. E-mails submitted into evidence by the Complainant, between Ms. Harris and PGW's LCP managers, show that Ms. Harris was informed by PGW that her property was not successfully registered on December 9, 2011. On December 14th, 2011 Ms. Harris acknowledged that she “[d]idn’t get that far and I am not sure why. I am still trying but am unsuccessful. Please call ...” and she provided her phone number.

According to PGW, the property was not registered until February 25, 2013 – ten days after the lien process was begun by PGW. It appears from company records submitted into evidence that a PGW employee helped Ms. Harris ultimately *enroll*

in the program, but it is not clear whether PGW assisted her in *registering* her rental property. A lien notification letter was ultimately issued on March 18, 2013.

E-mails between Ms. Harris and PGW's LCP managers show that Ms. Harris was having trouble navigating the PGW/LCP website. She clearly asked to have the manager call her and provided her call back number. There is no evidence that anyone from PGW returned Ms. Harris' call. She obviously wanted to enroll in the LCP so that she could register her property to secure the protections afforded by the LCP. There was no other purpose in enrolling. She succeeded in the first but failed in the second via the PGW website, which she alleged was not customer friendly.

Because the case was dismissed on preliminary objections, a complete record was not developed to determine whether or not reasonable customer service was provided to this customer within the meaning of § 1501. Consequently, we believe the matter should be remanded for a determination of the reasonableness of the customer service provided by PGW.*

We cannot help but wonder why this matter was pursued by PGW, and why the company did not simply acknowledge that Ms. Harris plainly meant to register her property and, but for the apparent difficulty of doing so, would have succeeded, *especially if the company had answered her request for assistance*. Of course, it is not too late for PGW to make amends.



James H. Cawley
Commissioner



Gladys M. Brown
Commissioner

December 19, 2013

* Upon remand, Ms. Harris would have to understand that this Commission cannot order the lien to be removed, because only the Philadelphia Municipal Court can do that, perhaps at the instigation of PGW.