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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Wanda O. Johnson :
: Docket No.
v. :
: F-01231082
Philadelphia Gas Works :

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PREHEARING ORDER

Procedural History

On August 27 2001, Wanda O. Johnson (Johnson, Complainant or Customer) filed this complaint against the Philadelphia Gas Works (PGW, Company or Utility). Johnson avers that she received a bill for more than \$2,000.00 from PGW. She alleges that she was never notified of having a faulty meter by PGW until she received a bill for more than \$2,000.00. She was billed monthly, and she paid her current charges in full each month. She received this bill after four (4) years of occupancy at 7671 Brentwood Road, Philadelphia, PA 19151.

She wants the PUC to have PGW waive all charges billed due to them having the knowledge of the meter being faulty and failing to address this issue upon a settlement time or after her four (4) years of occupancy at her present address. Also, she alleges that a PGW employee told her she never got a bill at this address until she received "the current bill statement" for over \$2,000.00. She avers that this statement is false, and she can prove it with "current check receipts".

The Office of Administrative Law Judge (OALJ) undertook mediation review of this case: an Interim Order dated December 31, 2002, was served; and, a report

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was submitted to the Mediation Unit pursuant to that Order. A memo was sent to the Document Folder stating this on February 24, 2003.

On December 23, 2002, PGW filed its Answer to the Complaint. PGW denies the averments as to the error in billing, and other averments that are conclusions in Paragraph 3. PGW admits that it was not able to read Complainant's meter for the 24-month (sic) period between December 1998 and August 2002. PGW avers that the meter was working properly, but a remote device malfunctioned. PGW further avers that its records indicate that an automated reader (AMR) was installed on August 6, 2002, at which time a removed index of 2220 was obtained, and thereafter, it sent the Complainant a make-up billing. The account was rebilled to reflect the rate changes occurring during the period of inaccurate meter and estimated meter readings. PGW does not attach any exhibits to its Answer. PGW avers that the Bureau of Consumer Services (BCS) issued a decision dated October 24, 2002 that provided Johnson some relief in the waiver of late fees and reducing the arrearage by \$443.00, and also set a repayment agreement consisting of payment of current bills plus \$40.00 per month on arrears.

On March 17, 2003, OALJ issued a hearing notice scheduling an Initial In-Person Hearing to be held on this case in the Philadelphia State Office Building on Monday, June 9, 2003, at 10:00 a. m. The hearing had previously been scheduled to be held telephonically, but at the request of the Complainant, it was rescheduled to be held in person. The case was assigned to Administrative Law Judge Allison K. Turner (ALJ) for hearing and decision.

Discussion

The legislature passed the Natural Gas Choice and Competition Act, codified at 66 Pa. C. S. §§ 2201-2212, which became effective on July 1, 1999, to provide for the restructuring of the natural gas industry in Pennsylvania. As part of the

restructuring process, the legislature directed the Commission to take jurisdiction over the Philadelphia Gas Works as of July 1, 2000, although certain preexisting items, such as the tariff, would be allowed to continue until the completion of PGW's restructuring case, which was filed July 1, 2002, and completed by Commission review and Opinion and Order of April 1, 2003. 66 Pa. C. S. §2212(d), (g)

At the time the complaint was filed, PGW's tariff was the primary source of authority on its customer relations, but the Commission's regulations on Residential Service for gas, electric and water utilities found at Chapter 56 of Title 52 of the Pennsylvania Code come into play where PGW's tariff was silent. Thus, both the PGW tariff and Commission's regulations must be examined in relation to this case. PGW's own tariff required that it get an actual customer read at least every 6 months.

The Commission clearly has jurisdiction to hear this complaint because it was filed in November 21, 2002, almost 18 months after the effective date of the legislative provisions that created the Commission's authority over PGW. The question is what power can be exercised with regard to events that occurred prior to July 1, 2000. The Commission's statute of limitations is 3 years from the date at which liability arose. 66 Pa.C.S. §3314(a). Other statutes of limitations are codified in Pennsylvania law. The Commission can assess civil penalties of up to \$1000.00 per violation for violations of the Public Utility Code and its regulations. 66 Pa. C. S. §3301

Recently, PGW litigated a rate increase request before the Commission at PUC, et al. v PGW, R-00006042, et seq. Evidence submitted for the record in that case may provide some relevant background for this case and other cases, namely, A Stratified Management and Operations Audit of Philadelphia Gas Works, admitted to the record as Administrative Counsel Exhibit 1 (Admin. Cnsl. 1). In July 1999, PGW implemented a new Billing Collection and Customer Service (BCCS) computer based program, which the audit report characterizes as "flawed" and "disastrous", "which resulted in...loss of

integrity of customer records, and poor customer service..." "In the fall of 2000, personnel were still trying to correct over 10,000 customer billing exceptions created by the BCCS conversion." Admin. Cnsl. 1 at VIII-1, VIII-14 – VIII-15XI-1, XI-5 – XI-9. It appears that some of the billing activity in this case, including many of the estimates, took place during this time period.

Johnson alleges that the billings based on a faulty meter occurred over the four (4) year period from 1998 to 2002 when she resided at 7671 Brentwood Avenue in Philadelphia, PA.

Among the many unresolved factual issues raised by these pleadings are: what are the correct beginning date and ending dates of the period of billings based on a faulty meter or of low estimates; did the make-up bill include only make-up amounts for estimated bills, or were other unpaid bills included in that amount; and, what is the balance now and what is the composition of the balance? These facts should be made clear by the parties at the hearing.

The amount in dispute is large enough to be significant for both Johnson and PGW. I recommend that the parties attempt a settlement of this dispute in order to save their time and resources.

As the complainant, Johnson has the burden of proof to show that her allegations are correct and that she is entitled to the relief she seeks. The bill about which Johnson complains was "over \$2,000.00". She has not stated a more specific amount of a credit or refund she seeks as relief from PGW. At the hearing, Johnson should be prepared to specify the amount of any credit/refund she seeks. She should also be prepared to present evidence about her usage such as number in household, appliances, etc., in the disputed period versus other time periods.

I have set forth in the following Order some of the kinds of evidence each party should produce at the hearing. Another purpose of this Order is to establish basic procedures to be followed before and during the hearing, including a settlement discussion before the hearing. Accordingly, the parties are hereby directed to comply with the following requirements.

ORDER

1. If for any reason any party cannot appear at this initial hearing as scheduled, that party should request a continuance. Continuances are only granted if good cause is presented. Any request for a change of the scheduled date for the initial hearing **must** be sent to the Office of Administrative Law Judge Scheduling Staff, to the presiding officer, and to the opposing party or parties. The mailing address for the Scheduling Staff is: PA PUC, P.O. Box 3265, Harrisburg, PA 17105-3265, and the phone number is (717) 787-1399. The scheduling officer for your case is Judy Weaver. The mailing address for the Philadelphia Administrative Law Judges is: PA PUC, Room 1302 Philadelphia State Office Building, 1400 W. Spring Garden Street, Philadelphia, PA 19130. The phone number for this office is (215) 560-2105. The presiding officer on your case is Judge Allison K. Turner, and she is responsible to grant or deny continuances.

2. **Unless you have gotten a continuance, you may lose this case if you do not take part in the initial hearing, and present evidence on the issues raised.**

3. **ALTHOUGH THIS IS AN ADMINISTRATIVE HEARING, IT IS A FORMAL HEARING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE. TESTIMONY WILL BE TAKEN UNDER OATH, AND BE SUBJECT TO CROSS-EXAMINATION, ETC.**

4. Johnson, as the complainant, has the burden of proof to show that her allegations are true, and that she is entitled to the relief she requests. Johnson will present her evidence first because as the complainant she has the burden of proof. She will also have the opportunity to give any closing testimony. If Johnson makes out a *prima facie* case, PGW will have the burden of moving forward with rebuttal evidence.

5. As an individual, Johnson may represent herself, or she may choose to be represented by an attorney. If Johnson intends to be represented by counsel, she should retain an attorney as soon as possible, and he or she should enter an appearance with the Commission as soon as possible. If Johnson does not retain an attorney, we will proceed with Johnson representing herself. As a corporation, the Company must be represented by counsel.

6. The utility must prepare the following for submission to the record: (a) an account statement for Johnson from the initiation of service on her account until the present, or for the past four (4) years whichever is longer; (b) copies of any reports made about contacts made with the customer of record at the service address, and of any notices and/or records of contacts with Johnson about her complaints of billing based on a faulty meter; and, (c) a copy of the BCS decision to which it refers in its Answer. PGW must submit four (4) copies of these documents at the hearing, marked as exhibits: two for the court reporter, one for Johnson, and one for the ALJ.

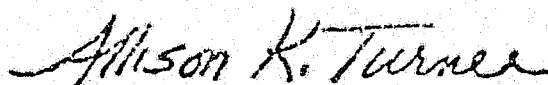
7. Johnson is hereby directed to submit for the record copies of any notices or correspondence that she received from PGW about her estimated bills and high make-up bill complaint, and copies of as many of her estimated bills as she has. She shall bring four (4) copies of these to the hearing, prepared as exhibits: one for PGW, one for the ALJ, and two for the court reporter.

8. Any other documents the parties wish to submit should be marked as exhibits and four (4) copies should be submitted as in §§6 & 7.

9. Commission policy is to encourage settlements. 52 Pa. Code §5.231(a). Therefore, Johnson and PGW are urged to **discuss informally between themselves the possible settlement of this case, and to notify the ALJ and or the Scheduling Office by Thursday, June 5, 2003, if agreement is reached, and the hearing is not necessary.**

10. If you are unable to completely settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

11. The parties should exchange lists of their proposed witnesses at least three days before the hearing



Allison K. Turner
Administrative Law Judge

Date: April 22, 2003

