

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joanne Ingram	:	
	:	
v.	:	C-2017-2628533
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the statute of limitations precludes the claim of the Complainant that 18-year-old bills are incorrect and also finds that there was no evidence to support a claim of incorrect charges on her bills at any time. The Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On October 6, 2017, Ms. Joanne Ingram (Complainant or Ms. Ingram) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW). This is an untimely appeal of the Bureau of Consumer Services (BCS) decision at case No. 3523290.

In the Complaint, Ms. Ingram checked the statements that, "The utility is threatening to shut off my service or has already shut it off" and "Incorrect charges are on my bill." She further states that she received a past due bill and a shut off notice for an address where she has not lived for 17 years and she would like PGW to remove those charges from her

account. She also states that she is a senior citizen and that this incorrect bill is preventing her from receiving assistance with her bill.

PGW filed an Answer stating that the Complainant had service at 5008 Chestnut Street from September 23, 1999, to January 31, 2001, and then established service at her current Ogontz Avenue address on November 8, 2003. PGW also stated in its Answer that BCS set up a payment arrangement on June 25, 2012, requiring a monthly payment of \$205, beginning in August of 2012. PGW also states that the Complainant was enrolled in the PGW Customer Responsibility Program (CRP), on November 1, 2012, with a beginning balance of \$5,370.59 and a required monthly payment of \$114.44.

PGW continued in its Answer that on January 9, 2016, the Complainant recertified income eligibility and her monthly CRP payment was changed to \$142.90. On March 1, 2017, the Complainant's CRP agreement was suspended with an ending balance of \$6,011.10, which included \$2,607.77 in CRP arrears. On September 20, 2017, PGW issued a shut off notice to the Complainant. The gas service was terminated on October 5, 2017.

A Hearing Notice dated December 1, 2017, advised the parties that an initial hearing was scheduled for Monday, February 5, 2018, at 10:00 a.m.

A Prehearing Order was issued on December 5, 2017, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The initial hearing convened as scheduled. Ms. Ingram appeared *pro se* and testified in support of the Complaint. Three exhibits were offered by the Complainant.

PGW was represented by Laureto A. Farinas, Esq. Four exhibits were offered on behalf of PGW. PGW also presented the testimony of one witness, Patricia Bernard, PGW Customer Review Officer.

All exhibits were admitted into the record. The record closed on March 5, 2018.

FINDINGS OF FACT

1. The Complainant is Joanne Ingram, who resides at 7213 Ogontz Avenue, Philadelphia, PA, where she received gas service from PGW. (Tr. 7).

2. The Respondent is Philadelphia Gas Works.

3. Ms. Ingram previously resided at 5008 Chestnut Street from September 23, 1999 to January 31, 2001, where she received PGW service and was the PGW customer of record. (Tr. 7).

4. The Complainant received two credit denial letters from PGW, dated October 26, 2017 and January 2, 2018, which had both addresses listed and indicated that she had an outstanding balance of \$6,336. (Complainant Exhibit 2, Complainant Exhibit 3).

5. The Complainant's PGW account statement shows that in January of 2014, the Complainant had a balance of \$844.02 at Ogontz Avenue. (PGW Exhibit 2).

6. When Ms. Ingram contacted PGW in 2003 to begin gas service at her current address, she was informed that she had an outstanding balance from her Chestnut Street residence. (Tr. 10-11).

7. Ms. Ingram filed an informal Complaint with BCS in 2003 and was awarded a payment arrangement on the total outstanding amount. (Tr. 11-12).

8. The balance from Chestnut Street was paid off on January 8, 2007. (Tr. 61, 67, 71,72).

9. The instant Complaint was filed on October 16, 2017.

10. The Complainant entered into a Customer Responsibility Program (CRP) agreement with PGW on November 1, 2012. (Tr. 36, PGW Exhibit 2).

11. When a customer enters into a CRP agreement, the outstanding amount is set aside and is gradually reduced to zero if the customer makes payments on time and in full. (Tr. 37).

12. The Complainant's CRP agreement was broken on March 1, 2017. (Tr. 36, PGW Exhibit 2.).

13. When the agreement was broken, the set aside balance of \$2,840.71 was placed back on the Complainant's account. (Tr. 36).

14. The outstanding balance on the active account at the time of the CRP agreement default was \$3,170.39. (Tr. 44; PGW Exhibit 2).

15. The total amount owed on the account from the current address was \$2,840.71 CRP set aside plus \$3,170.39 for a total of \$6,011.10 at the time of the hearing. (Tr. 36).

DISCUSSION

Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a).

In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the

Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Ms. Ingram would like PGW to remove any charges that pertain to a residence on Chestnut Street she lived in about 17 or 18 years ago. She believes that those charges are preventing her, a senior citizen, from enrollment in an assistance program.¹

Ms. Ingram testified that she currently lives on Ogontz Avenue in Philadelphia. She previously lived at 5008 Chestnut Street in Philadelphia until 2001. (Tr. 7). She testified that she is contesting a bill of approximately \$5,000 that she believes is from the Chestnut Street address, where she lived 18 years ago. (Tr. 8). She testified that she first received notice of this

¹ Ms. Ingram did not request a payment arrangement in her Complaint and stated during the hearing that she did not want a payment arrangement. (Tr. 25). Given that, a payment arrangement will not be discussed here and can be addressed if Ms. Ingram seeks a payment arrangement in the future.

outstanding amount from Chestnut Street in 2003 when she contacted PGW to turn on gas at her current address. (Tr. 10-11).

In support of her claim that the bill at issue was 18 years old and for the Chestnut Street address, she presented a January 2, 2018, PGW credit denial letter that she received in the mail. On the document was the Chestnut Street address and the Ogontz Avenue address showing a balance of \$6,336. (Complainant Exhibit 3). She also presented another credit denial letter that she received, dated October 26, 2017, which states that \$6,336 was the balance from Ogontz Avenue and Chestnut Street. She is asking that PGW not hold her liable for a bill that is for an address where she lived about 18 years ago. (Tr. 25). She suspects that after she moved out, someone else moved into the Chestnut Street address and used the gas in her name. (Tr. 12).

PGW Customer Review Officer Patricia Bernard testified to explain the two credit denial letters. Ms. Bernard testified that the two credit denial letters reflected "a history of the addresses where she did have service", that "there's one service agreement" and that it "just basically tells you where the customer did have gas [service]." (Tr. 62-63). She further stated, based on her review of PGW records, that any outstanding balance from Chestnut Street was paid off in 2007. (Tr.61).

The two credit denial letters contain both addresses and the same account numbers, supporting the testimony of Ms. Bernard. Also supporting the claim that none of the remaining balance was from Chestnut Street is the account statement from Ogontz Avenue, the Complainant's current address. The account statement shows that in January of 2014, the Complainant had a balance of \$844.02 at Ogontz Avenue and that due to missed payments, the outstanding balance grew to over \$3,000. (PGW Exhibit 2). In any event, the evidence and the Code do not support the Complainant's claim.

First, the Complainant became aware of the outstanding balance from Chestnut Street in 2003. Ms. Ingram contends that these charges were incurred between approximately 1996 and 2001. She initially contested the charges by filing an informal complaint with BCS in

2003 but ultimately accepted the amount as due and owing and entered into a payment arrangement that year with PGW.

Pursuant to Section 3314 of the Code:

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 therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). This provision provides a general limitation period of three years for any action under the Code, except as otherwise provided. See, *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370 (Pa.Cmwlth. 1992).

An informal complaint may toll the statute of limitations. See *Id.* at 383. However, the current action was filed in 2017, approximately 16 years after she moved out of the Chestnut Street address and 14 years after she filed the informal complaint with BCS. The claim contesting these charges is barred by the statute of limitations.

Additionally, PGW presented evidence showing that the current outstanding charges are for usage at the Complainant's current address on Ogontz Avenue. PGW Customer Review Officer Patricia Bernard testified that Ms. Ingram entered into a CRP agreement on November 1, 2012. When a customer and PGW enter into a CRP agreement, the outstanding balance is set aside, or "frozen." (Tr. 37). If the customer pays the amount due in full and on time, the frozen amount is eventually reduced to zero. If the CRP agreement is broken, the remaining frozen balance is placed back into the customer's account as due and owing. *Id.*

The Complainant did not make all required payments and the CRP agreement was broken on March 1, 2017. When the agreement was broken, the Complainant's balance on the frozen portion, \$2,840.71, was placed back on the Complainant's account. That amount unfrozen

plus the current amount outstanding, \$3,170.39, totaled \$6,011.10 at the time of the hearing. (Tr. 36). Ms. Ingram presented no evidence to suggest that these outstanding amounts were incorrect or that there were incorrect charges for her current residence.

As far as Ms. Ingram's concern that her outstanding balance prevented her from receiving assistance with her gas bill, Ms. Bernard testified that assistance was probably denied because the amount owed was too high. (Tr. 54). Ms. Ingram concurred with this assessment, stating that is what she was told by an assistance program representative. *Id.* None of this support finding a violation of the Code, regulations or a Commission Order.

The preponderance of the evidence does not support the Complainant's claims. Therefore, the Complainant cannot prevail².

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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 therefor arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314.

3. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

4. Complainant did not present a preponderance of evidence in response to the PGW rebuttal evidence of her claims of incorrect charges. *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

² There have been some recent changes in the Complainant's income and household information. (Tr.18, 41). Ms. Ingram should again meet with PGW to determine whether she is eligible for assistance.

