

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynette Townsend	:	
	:	
v.	:	C-2018-3006418
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision grants the Respondent’s, Philadelphia Gas Works’, Motion to Dismiss and dismisses the Complaint of the Complainant, Lynette Townsend, on the basis that the Complaint was filed beyond the three-year statute of limitations with regard to her allegations of incorrect billing. This decision also denies the Complainant’s request for a payment arrangement because she did not satisfy her burden to demonstrate that she is eligible for a payment arrangement under the Public Utility Code.

**HISTORY OF THE PROCEEDING**

On December 1, 2018, Lynette Townsend (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW or Respondent) alleging that there were incorrect charges on her bill and also that the utility was threatening to shut off her service. The Complainant requested a reduction in the amount of her outstanding balance and a payment arrangement.

On December 27, 2018, PGW filed its Answer, denying the material allegations of the Complaint.

On December 31, 2018, a Hearing Notice was issued for an initial hearing date of Wednesday, February 6, 2019, at 10:00 a.m. and the case was assigned to me. I issued a Prehearing Order on January 8, 2019.

The hearing convened as scheduled on February 6, 2019. The Complainant represented herself and PGW was represented by counsel, Graciela Christlieb, Esquire. At the hearing, counsel for PGW made an oral Motion to Dismiss for Lack of Jurisdiction the portion of the Complaint beyond the statute of limitations under 66 Pa.C.S. § 3314. PGW also presented the testimony of Tiffany Jones, a Senior Customer Review Officer, and offered ten exhibits which were entered into the record.

The record closed on March 8, 2019, when I received my copy of the 54-page hearing transcript.

#### FINDINGS OF FACT

1. Complainant is Lynette Townsend, whose mailing address is 6026 Larchwood Avenue, Apartment C1, Philadelphia, Pennsylvania 19143. Tr. 11.
2. Respondent is Philadelphia Gas Works.
3. The Service Address at issue is 5407 Walnut Street, 2<sup>nd</sup> Floor, Philadelphia, Pennsylvania 19139. Tr. 11.
4. Complainant filed her Formal Complaint on December 1, 2018.
5. Complainant alleged that Respondent incorrectly billed her for service from August 2012 to August 2014. Tr. 11.

6. PGW filed an Answer on December 27, 2018.

7. The Complainant had service at the 5407 Walnut Street address from July 31, 2012 to July 31, 2014. Tr. 33; PGW Exh. 5.

8. On July 24, 2014, the Complainant contacted PGW to request her service be terminated at 5407 Walnut Street address on July 31, 2014. Tr. 33-34; PGW Exh. 6.

9. On August 21, 2014, PGW issued a final bill to the Complainant for the 5407 Walnut Street address in the amount of \$4,079.14 with a due date of September 15, 2014. Tr. 34-35; PGW Exh 7.

10. On February 6, 2019, PGW made an oral Motion to Dismiss seeking to dismiss the Complaint on the basis that 66 Pa.C.S. § 3314(a) divests the Commission of jurisdiction of claims that are beyond the three-year statute of limitations.

11. The Complainant works full time for the federal government. Tr. 14-15.

12. The Complainant is a salaried employee who earns \$54,000.00 per year. Tr. 15.

13. The Complainant is the only person in her household. Tr. 16.

14. The Complainant has no other sources of income. Tr. 16.

15. The Complainant's current household income of \$4,500.00<sup>1</sup> per month with one household member places the household at 432% of the Federal Poverty guidelines.<sup>2</sup>

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<sup>1</sup> Monthly income is calculated as follows: \$54,000.00 per year / 12 months = \$4,500.00 per month.

<sup>2</sup> *Federal Register*, Vol. 84, No. 22, February 1, 2019, pp. 1167-1168. See <http://aspe.hhs.gov/poverty>.

16. The Complainant had a prior Commission payment arrangement, issued on May 21, 2013, which the Complainant defaulted. Tr. 25; PGW Exh. 2.

17. Based on an informal complaint to the Bureau of Consumer Services (BCS) at Case No. 3076195, the BCS issued the Complainant a Level 3 payment arrangement based on a household income of \$3,500.00 per month with a two-person household. Tr. 26-28; PGW Exh. 3.

18. The Complainant filed an informal complaint with the BCS on September 24, 2018 at Case No. 3654702 in which she disputed the charges from 5407 Walnut Street and requested a new payment arrangement. PGW Exh. 4.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment*

*Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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).

#### Motion to Dismiss Billing Error Allegation

Before a case is considered on the merits, parties may file preliminary objections or motions, seeking to dismiss the other party's case summarily. *See*, 52 Pa.Code §§ 5.101-5.103. The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlth. 1988). The Commission must view the Complaint in this case in the light most favorable to Ms. Townsend and should dismiss the Complaint only if it appears that Ms. Townsend would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In this case, PGW made a motion to dismiss seeking to dismiss the claims for billing errors because they are beyond the statute of limitations. The Public Utility Code has a

statute of limitations for the actions seeking penalties from utilities. Specifically, Section 3314 of the Code states as follows:

- (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 therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a).

The statute of limitations at 66 Pa.C.S. § 3314 is non-waivable. *Tobin v. St. Clair Borough*, Docket No. F-02020339 (Initial Decision dated July 20, 2006). The statute at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three years from the date the liability arose. This is a non-waivable statute of limitations since it terminates the right to bring an action as well as any remedy. The statute of limitations at 66 Pa. C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. Since the statute of limitations at 66 Pa.C.S. § 3314 is non-waivable, it may be raised at any time.

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. *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. 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 none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993). Since the statute at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose, it is appropriate to apply the statute of limitations to this proceeding.

PGW contends that the liability arose when it issued the final bill for the Complainant's account on August 21, 2014. The Complainant testified that the alleged billing errors dates back from 2012 to 2014. The Complainant filed her informal complaint on September 24, 2018 and her formal Complaint on December 1, 2018.

In this matter, the last day for filing a complaint related to the issues at the Service Address would have been in August 2017. The Complainant failed to take action until her informal complaint in September 2018, which is over a year after the filing deadline. Accordingly, the Complaint was not filed within the applicable three-year statute of limitations under 66 Pa.C.S. § 3314(a). Therefore, I will grant the Respondent's Motion to Dismiss the incorrect billing portion of the Complaint.

#### Payment Arrangement

The Complainant requests a payment arrangement in this matter. PGW argues that the Complainant is not entitled to a Commission-issued payment arrangement.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

#### **§ 1405. Payment arrangements.**

**(a) General rule.--** The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Act prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a previous payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level, or a decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

The Complainant works full time for the federal government. Tr. 14-15. The Complainant is a salaried employee who earns \$54,000.00 per year. Tr. 15. The Complainant is the only person in her household. Tr. 16. The Complainant has no other sources of income. Tr. 16. The Complainant’s current household income of \$4,500.00 per month with one household member places the household at 432% of the Federal Poverty guidelines.<sup>3</sup> This would make the Complainant a Level 4 customer. *See* 66 Pa.C.S. § 1405(b)(4).<sup>4</sup>

However, in this instance, the Complainant had a prior Commission issued payment arrangement from May 21, 2013, which she defaulted. Tr. 25; PGW Exh. 2. The BCS issued a Level 3 payment arrangement based on a household income of \$3,500.00 per month with a two-person household. Tr. 26-28; PGW Exh. 3. Since the last payment arrangement, the Complainant’s income has increased from \$3,500.00 per month to \$4,500.00 per month and her household size has decreased by one. The Complainant does not meet the “change of income” criteria set out in Section 1403 of the Act as her household income has not decreased 20% or more and the household income level is above 200% (432%) of the Federal poverty level. 66 Pa.C.S. § 1403.

Alternatively, the Commission may reinstate and extend a payment arrangement where the customer has defaulted in limited circumstances. The statute at 66 Pa. C.S. § 1405(e) states as follows:

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<sup>3</sup> *Federal Register*, Vol. 84, No. 22, February 1, 2019, pp. 1167-1168. *See* <http://aspe.hhs.gov/poverty>.

<sup>4</sup> Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(e) **Extension of payment arrangements.** – If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

The statute at 66 Pa. C.S. § 1403 defines “Significant change in circumstance” as follows:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer’s household income.
- (2) Catastrophic damage to the customer’s residence resulting in a significant net cost to the customer’s household.
- (3) Loss of the customer’s residence.
- (4) Increase in the customer’s number of dependents in the household.

The Complainant did not testify, and the evidence does not reflect, that Complainant has experienced a significant change in circumstance as that phrase is defined and applied in the Public Utility Code. Further, the Complainant’s household income (432%) places her above 300% of the Federal Poverty Guidelines. Therefore, the Commission may not reinstate the payment arrangement established at BCS Case Number 3076195.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this case. 66 Pa.C.S. §§ 102, 701, 1501.

2. Parties may make motions seeking to dismiss the other party's case summarily. 52 Pa. Code §§ 5.101-5.103.

3. The Commission must view the Complaint in this case in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

4. No action for the recovery of any penalties or forfeitures incurred under the provisions of the law, and no prosecutions on account of any matter or thing mentioned, shall be maintained unless brought within three years from the date at which the liability arose. 66 Pa.C.S. § 3314(a).

5. The statute of limitations at 66 Pa.C.S. § 3314 is non-waivable. *Tobin v. St. Clair Borough*, Docket No. F-02020339 (Initial Decision dated July 20, 2006).

6. Since the statute of limitations at 66 Pa.C.S. § 3314 is non-waivable, it may be raised at any time.

7. 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. *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

8. 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 none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

9. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside of the three-year statute of limitations. 66 Pa.C.S. § 3314(a).

10. The Complainant's Complaint related to the incorrect charges which occurred in 2012 to 2014 was filed outside the three-year statute of limitations.

11. The Complainant has not met her burden of demonstrating that she is entitled to relief for the billing error allegations.

12. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

13. The Commission is without authority to issue a second or subsequent payment arrangement, absent a change in income, if a customer has defaulted on a previous payment arrangement. 66 Pa.C.S. § 1405(d).

14. The Commission may reinstate a prior payment arrangement and extend the remaining term for a six month period if there is a "significant change in circumstance" which means that the customer meets any of the following criteria when verified by the public utility and with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. §§ 1405(e), 1403

15. The Complainant has failed to meet her burden to establish that she is eligible for a Commission payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral Motion to Dismiss related to the billing error allegations and statute of limitations submitted by Philadelphia Gas Works at Docket No. C-2018-3006418, is granted.

2. That the Complaint filed with the Pennsylvania Public Utility Commission on December 1, 2018, by Lynette Townsend, at Docket No. C-2018-3006418, is dismissed in its entirety.

3. That the docket at Docket No. C-2018-3006418 be closed.

Dated: May 31, 2019

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/s/  
Marta Guhl  
Administrative Law Judge