

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Julia Cheripko

v.

Philadelphia Gas Works

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F-2019-3011779

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her former gas utility alleging that she was being billed for an outstanding account balance that did not belong to her. This decision sustains the complaint as the customer has shown that the utility's attempt to hold her responsible for this balance six years after she resided at the service address is not reasonable. The company will be directed to remove this outstanding balance from the customer's account and all associated collection activities from the customer's credit history.

HISTORY OF THE PROCEEDING

On July 22, 2019, Julia Cheripko (Complainant), filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) alleging that Philadelphia Gas Works (PGW or Respondent) was attempting to collect an outstanding account balance that did not belong to her.

On August 15, 2019, Respondent filed an answer to the complaint. This answer denied the various averments of the complaint. The Respondent, however, specifically denied that the Complainant was being charged for an outstanding account balance that did not belong to her. Respondent further asserted that this outstanding balance was associated with an account which had been opened in the Complainant's name in August 2009 and remained in her name through April 2017.

A hearing notice was issued on August 19, 2019, scheduling this matter for a telephonic hearing on September 23, 2019, at 10:00 a.m. A prehearing order was also issued on August 19, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The initial hearing was conducted as scheduled on September 23, 2019. The Complainant appeared *pro se* and testified. Attorney Laureto Farinas represented the Respondent which presented one witness who sponsored three exhibits which were admitted into the record. The initial hearing resulted in a transcript of 34 pages. The record closed on September 23, 2019, at the conclusion of the hearing. For the reasons set forth below, the complaint will be sustained.

FINDINGS OF FACT

1. The Complainant in this case is Julia Cheripko.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant's service address was 316 South Street, 3rd Floor, Philadelphia, Pennsylvania. N.T. 8, 23.
4. The Complainant had two roommates at the service address but the lease to the premises was solely in the Complainant's name. N.T. 10.

5. The Complainant established utility service with the Respondent at the service address solely in her name in August 2009. N.T. 11, 24.

6. The Complainant resided at the service address until August 2011 at which time she ended the lease to the premises and returned to her hometown to begin a new teaching position. N.T. 9.

7. At the time she was ending her lease and relocating, the Complainant also contacted her various utilities including Respondent and ended her services. N.T. 15, 17.

8. The account for the service address, however, continued to remain in the Complainant's name after August 2011. N.T. 12-14, 26-27; PGW Ex. 2.

9. From August 2011 through September 21, 2015 the account continued to be active and paid. N.T. 30.

10. Neither the Complainant nor the Respondent know who was making payments on this account from August 2011 through September 21, 2015. N.T. 14, 16, 25.

11. The last payment made on the account was in the amount of \$25 on September 21, 2015 and left an outstanding account balance of \$8.25. N.T. 25, 30; PGW Ex. 1.

12. After the last payment in September 2015, the account continued to accrue gas usage and late fees. N.T. 23; PGW Ex. 1.

13. The total outstanding account balance was \$475.50 as of April 12, 2017. N.T. 24-25.

14. The Respondent stopped billing the account on April 12, 2017 and referred the outstanding balance to a collection agency. N.T. 12, 25.

15. The Complainant was contacted by a collection agency and then contacted Respondent to dispute this account balance. N.T. 13, 26.

16. The Respondent issued a response letter to the Complainant's billing dispute on May 12, 2017. N.T. 26.

17. The response letter stated that Respondent's records did not indicate that it had received a request to cancel service at the Complainant's South Street address in 2011 and that she was therefore being held responsible for the outstanding balance of the account. N.T. 26; PGW Ex. 2.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

Here, the Complainant has alleged that PGW is attempting to hold her responsible for an outstanding account balance which does not belong to her. The Complainant has argued that the entire outstanding balance accrued more than four years after she had cancelled her account and vacated the service address and that PGW's attempts to collect this balance approximately six years after moving from the service address is not reasonable. By way of relief, the Complainant asks that the Commission find she is not responsible for this balance and that it be waived by PGW.

The Public Utility Code at 66 Pa. C.S. § 1501 addresses the nature and quality of service a utility is required to provide to customers.

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay

The Commission has original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977), aff'd, 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968). As the party with the burden of proof, it is the responsibility of the Complainant to show that Respondent's attempts to collect this outstanding account balance from the Complainant are unreasonable.

In Davis v. Columbia Gas of Pa., Docket No. F-00165721 (Order entered September 17, 1993) (Davis), the Commission addressed matters where a customer's account has been referred to collection by a utility. The Commission found that it shares concurrent jurisdiction with the Courts over the collection of delinquent utility debts. Id. at 6; citing, The Bell Telephone Company of Pennsylvania v. Philadelphia Warwick Company, 355 Pa. 637, 50 A.2d 684 (1947). The Commission further explained,

While we may not prevent the utility from pursuing civil remedies, we retain authority to evaluate the reasonableness of utility service pursuant to Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501. Part of this obligation includes handling the terms of payment for utility service.

Davis at 6.

In Davis, the Commission further held that,

[T]o the extent that the decision to finalize a customer's bill and refer it for collection may be challenged by a customer in a Commission proceeding, we retain authority to determine as to whether the utility's action was reasonable. If found to be unreasonable, we have the authority to order the utility to undo what it has done ... This is true even if such a decision means a utility could not pursue civil collection of the debt. This is true because the underlying action giving rise to the debt referred for civil collection is within the Commission's authority to review.

Id. at 6-7.

Here, there are several undisputed facts. The Complainant ended her apartment lease and left Philadelphia to return to her hometown in August 2011. N.T. 9. The gas utility account with Respondent for the apartment continued to remain in Complainant's name. N.T. 12-14, 26-27; PGW Ex. 2. From August 2011 through September 21, 2015 this account continued to be active and paid. N.T. 30. Neither the Complainant nor the Respondent know who was making payments on this account from August 2011 through September 2015. N.T. 14, 16, 25. The last payment made on the account was on September 21, 2015 in the amount of \$25 which left an outstanding account balance of \$8.25. N.T. 25, 30; PGW Ex. 1. After the last payment in September 2015, the account continued to accrue gas usage and late fees. N.T. 23; PGW Ex. 1. The account balance continued to accrue through April 12, 2017 at which time the Respondent finalized the account and referred the outstanding balance of \$475.50 to a collection agency. N.T. 12, 24-25. The Complainant was contacted by the collection agency and it was only then that she became aware of this outstanding balance. N.T. 13, 26.

In short, the Complainant credibly testified that she left the service address in Philadelphia in August of 2011 and notified Respondent of this move. Six years later, in April of 2017, she was contacted by a collection agency. She was informed that an outstanding balance for the gas utility at her former apartment had accrued in her name between September 2015 and April 2017 - more than four years after she had last lived in this apartment. The Respondent's

only explanation for these circumstances was that its records did not indicate that the Respondent had received a request to cancel the Complainant's service in 2011. N.T. 26.

Given the lengthy timeframe involved in this matter between the Complainant vacating the service address in relation to the accrual of this balance and Respondent's subsequent referral of the account to a collection agency, this does not evidence reasonable action on the behalf of the Respondent. This is particularly true of the Respondent's actions after the Complainant made contact with Respondent in April 2017 to dispute the outstanding balance and informed the Respondent that she had not lived at the service address since August 2011. Complainant argued that she should not be made responsible for an outstanding account balance that she was completely unaware had accrued more than four years after she had lived at the service address - and which was now only being brought to her attention an additional two years later. When this information was brought to the Respondent's attention, the Respondent simply indicated that it did not have a record of a request to cancel the Complainant's service in August 2011 and ended its inquiry there.

Respondent has cited to 52 Pa. Code § 59.25 which requires a customer who is about to vacate a premises or discontinue service to provide the utility with at least a 24-hour notice specifying the date the service is to be discontinued. Under this section, in the absence of such notice, the customer remains responsible for services rendered. While this reliance is understandable, it fails to recognize the question of reasonableness as contemplated by the Commission in Davis. Under Respondent's argument, a customer could be held responsible for an outstanding utility balance which, unknown to the customer, accrued as the result of other individuals 15 or even 20 years after the customer had moved from a service address. It would not be reasonable to hold such a customer, or the Complainant here, responsible for such a balance – even if the customer initially failed to discontinue their service as the Respondent has alleged.

The Complainant has credibly testified that she cancelled her lease and utility services for the service address in August 2011 and left the service address. Six years later the Complainant received information from a collection agency that an outstanding balance had

accrued in her name between September 2015 and April 2017. The Commission retains authority in such instances to determine whether the utility's action was reasonable. Here it was not. Despite being informed by the Complainant that she had not been living at the service address for a period of four years before the outstanding balance began to accrue, this did not raise any concerns for the Respondent or cause Respondent to seriously question whether the Complainant was in fact legitimately responsible for this balance.¹ Instead, the Respondent's only explanation was that it did not have a record of Complainant cancelling her service in 2011. The Respondent thereafter allowed this balance to remain in collection and be pursued against the Complainant. It was reasonable for the Respondent to initially hold the Complainant responsible for this outstanding balance at the time it was referred for collection. However, it was not reasonable to do so after the Complainant made contact and alerted the Respondent that she had not resided at the service address for more than six years.

The Commission has the authority to order the utility to undo what it has done, even if such a decision means the utility cannot pursue civil collection of the debt. This is true because the underlying action giving rise to the debt referred for civil collection is within the Commission's authority to review. Davis at 6-7. The complaint in this matter will therefore be sustained.² The outstanding balance associated with the service address, 316 South Street, 3rd Floor, Philadelphia, Pennsylvania, and which the Respondent has attributed to the Complainant, will be removed from the account. The Respondent will also act to have this outstanding debt and collection efforts removed from the Complainant's credit history as described and directed below.

¹ Concerns such as potential identity theft or theft of services would have been reasonable.

² While the complaint will be sustained because the Complainant has demonstrated that Respondent's handling of the outstanding account balance and collection attempts were unreasonable after the Respondent was informed she had not resided at the service address for six years, these circumstances do not rise to the level of a violation of the Public Utility Code which would warrant the consideration or imposition of a civil penalty. 66 Pa.C.S. § 3301.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).
4. The Complainant has demonstrated by a preponderance of the evidence, and evidence more convincing than the evidence presented by the Respondent, that the Respondent’s actions were not reasonable and she has therefore met her burden of proof. 66 Pa.C.S. § 332(a); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).
5. The Commission has original jurisdiction over the reasonableness and adequacy of public utility service. 66 Pa. C.S. § 1501; Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977), aff’d, 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968).
6. While the Commission may not prevent a utility from pursuing civil remedies, it retains authority to evaluate the reasonableness of utility service pursuant to Section 1501 of the Public Utility Code, which includes the handling of the terms of payment for utility service. 66 Pa. C.S. § 1501; Davis v. Columbia Gas of Pa., Docket No. F-00165721 (Order entered September 17, 1993).
7. The Commission retains authority to determine whether a utility’s action to finalize a customer’s bill and refer it for collection was reasonable. Davis v. Columbia Gas of Pa., Docket No. F-00165721 (Order entered September 17, 1993).

8. If found unreasonable, the Commission has the authority to order the utility to undo what it has done, even if such a decision means a utility cannot pursue civil collection of the debt. Davis v. Columbia Gas of Pa, Docket No. F-00165721 (Order entered September 17, 1993).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Julia Cheripko against Philadelphia Gas Works at Docket No. F-2019-3011779 is sustained.

2. That the outstanding balance of \$475.50 which the Respondent has attributed to the Complainant's former account for service address 316 South Street, 3rd Floor, Philadelphia, Pennsylvania shall be removed from the account.

3. That within thirty (30) days of entry of a final order in this matter, the Respondent will contact the relevant collection and credit reporting agencies and provide the information necessary for those agencies to remove this outstanding debt, and all associated collection activities, from the Complainant's credit history.

4. That within thirty (30) days of the entry of a final order in this matter, the Respondent will provide the Complainant documentation and confirmation that the Respondent has contacted the relevant collection and credit reporting agencies and provided the information necessary to have this outstanding debt, and all associated collection activities, removed from the Complainant's credit history.

5. That within ninety (90) days of the entry of a final order in this matter, the Respondent will provide the Complainant with documentation and confirmation that this outstanding debt, and all associated collection activities, have been successfully and fully removed from the Complainant's credit history.

6. That the docket at Docket No. F-2019-3011779 is marked closed.

Date: January 2, 2020

/s/
Benjamin J. Myers
Administrative Law Judge