

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynette Townsend	:	
	:	
v.	:	C-2019-3012879
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint, finding that she is not eligible for a second Commission-issued payment arrangement or to a reinstatement and extension of her prior Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 12, 2019, Lynette Townsend (Complainant or Ms. Townsend) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking an affordable payment arrangement. Additionally, Ms. Townsend stated the following: “if there is additional evidence that I find that this bill is not accurate, this will be attached.” Complaint ¶ 5.

On October 3, 2019, PGW filed an Answer to the Complaint. PGW admitted or denied the averments in the Complaint and requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on October 8, 2019, the Commission scheduled this matter for a telephonic hearing on December 4, 2019 and assigned the case to me.

A Prehearing Order, served upon the parties on November 1, 2019, addressed, inter alia, the procedures applicable to the hearing.

The December 4, 2019, the hearing was held as scheduled. Ms. Townsend was present for the hearing and testified in support of her Complaint, including testimony regarding alleged billing inaccuracies. Ms. Townsend sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW, who sponsored the following three exhibits which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Negotiated Payment Arrangements
- PGW Exhibit 3 – BCS Decision

During the hearing, PGW made an oral Motion to Dismiss the portion of Ms. Townsend's Complaint relating to the accuracy of her bills, alleging that the action is time-barred by the statute of limitations. PGW's Motion was granted orally on the record.¹ The record closed at the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be denied.

FINDINGS OF FACT

1. The Complainant is Lynette Townsend.
2. The Respondent is Philadelphia Gas Works.

¹ The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

3. Ms. Townsend receives gas service from PGW at 6026 Larchwood Avenue, Apt C1, Philadelphia, Pennsylvania (service address).

4. Ms. Townsend lives alone at the service address.

5. Ms. Townsend's gross monthly household income is \$4,250.²

6. On March 29, 2013, Ms. Townsend filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3076195 seeking a payment arrangement and seeking Commission review of her bills from the 2012-2013 winter months. (PGW Exhibit 3, p. 1).

7. On May 23, 2013, the BCS issued its decision at BCS No. 3076195, granting Ms. Townsend a payment arrangement and concluding that the bills issued to Ms. Townsend were correct as rendered. (PGW Exhibit 3, pp. 2, 3).

8. The payment arrangement issued at BCS No. 3076195 was based on a gross monthly household income of \$3,500 for a household of two. (PGW Exhibit 3, p. 1).

9. Ms. Townsend defaulted on the payment arrangement issued at BCS No. 3076195. (PGW Exhibit 2).

10. Ms. Townsend's outstanding account balance as of the day of the hearing was \$4,071.53. (PGW Exhibit 1, pp. 2, 3).

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in

² Ms. Townsend testified that she made \$51,000 per year. ($\$51,000 / 12 \text{ months} = \$4,250 \text{ per month}$).

violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Townsend challenged the accuracy of her gas bills and made a request for a Commission-issued payment arrangement. These issues will be addressed below.

Billing inaccuracies

As noted, Ms. Townsend challenged the accuracy of her gas bills. Specifically, she testified that bills issued to her in the winter months of 2012-2013 while she lived at a prior service address of 5407 Walnut Street, 2nd Floor, Philadelphia, Pennsylvania were too high. PGW made a Motion to Dismiss this portion of Ms. Townsend's Complaint, alleging that this high billing action is time-barred by the statute of limitations. The relevant Section of the Code concerning the statute of limitations reads as follows:

§ 3314. Limitation of actions and cumulation of remedies

(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.A. § 3314(a).

Ms. Townsend filed the present Formal Complaint on September 12, 2019. Therefore, PGW is correct in that the portion of Ms. Townsend's Complaint regarding her bills from the 2012-2013 winter months are time-barred by the three-year statute of limitations. The Commission cannot waive the statute of limitations or make a determination that the three-year statute of limitations does not apply to Ms. Townsend in this case. Section 3314(a) of the Code is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order. Daria Kovarikova v. Pennsylvania-American Water Company, Docket No. C-2017-2592131 (Opinion and Order entered August 23, 2018).

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). In summary, Section 3314(a) divests the Commission of jurisdiction to hear Ms. Townsend's action brought more than three years from the date the alleged liability arose. Therefore, PGW's Motion was properly granted on the hearing record, and the portion of Ms. Townsend's Complaint regarding her high billing allegations will not be reviewed in this Initial Decision.

Payment Arrangement

Ms. Townsend also made a request for a payment arrangement. Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

§ 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.

(b) Length of payment arrangements.--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. §§ 1405(a)-(b). “Household income” is defined as the following:

§ 1403. Definitions

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

(d) Number of payment arrangements.--Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

§ 1403. Definitions

“Change in income.” A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or 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.

66 Pa.C.S. § 1403.

Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(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.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

§ 1403. Definitions

“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.

66 Pa.C.S. § 1403.

A previous Commission-issued payment arrangement was established for Ms. Townsend by the BCS at BCS No. 3076195. The payment arrangement established through this BCS decision became a Commission-issued payment arrangement once Ms. Townsend failed to timely appeal the decision through filing a Formal Complaint. 52 Pa. Code § 56.163(3); DiOrazio v. North East Heat and Light Company, Docket No. F-2008-2052918 (Opinion and Order entered June 15, 2009). Ms. Townsend defaulted upon this Commission-issued payment arrangement. Given her default on this prior Commission-issued payment arrangement, Ms. Townsend in this present Formal Complaint is seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for Ms.

Townsend only if she has experienced a change in income since the prior Commission-issued payment arrangement was issued and became final. 66 Pa.C.S. § 1405(d).

Ms. Townsend testified that her gross monthly household income is \$4,250 for a household of one. Ms. Townsend's gross monthly household income reported at BCS No. 3076195 was \$3,500 for a household of two. Thus, Ms. Townsend's income has increased following the issuance of her prior Commission-issued payment arrangement. "Change in income" is defined as having experienced a decrease in income, not an increase in income. 66 Pa.C.S. § 1403. As a result, Ms. Townsend has not experienced the change in income necessary to be issued a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Townsend, the Commission-issued payment arrangement at BCS No. 3076195 can be reinstated and extended if Ms. Townsend defaulted on the Commission-issued payment arrangement as a result of a significant change in circumstance. However, only customers with household income less than 300% of the Federal poverty level are eligible for reinstatement and extension of a prior Commission-issued payment arrangement. 66 Pa.C.S. § 1403. Ms. Townsend's household income of \$4,250 for a household of one place her above 300% of the Federal poverty level.³ As a result, Ms. Townsend is not eligible for reinstatement and extension of her Commission-issued payment arrangement.

In conclusion, Ms. Townsend is not eligible for a second Commission-issued payment arrangement or to a reinstatement and extension of her prior Commission-issued payment arrangement.

³ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 300% of the Federal poverty level for a household of one is \$3,123 per month).

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. 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.A. § 3314(a).
4. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.
5. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).
6. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).
7. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer. 66 Pa.C.S. § 1405(d).
8. If a customer defaults on a Commission-issued payment arrangement 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. 66 Pa.C.S. § 1405(e).

9. Significant change in circumstance is any one of four criteria experienced by customers without household income less than 300% of the Federal poverty level. 66 Pa.C.S. § 1403.

10. The Complainant has not met her burden of proving that she is eligible for a second Commission-issued payment arrangement, or to reinstatement and extension of her prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Lynette Townsend against Philadelphia Gas Works at Docket No. C-2019-3012879 is denied.

2. That the docket at Docket No. C-2019-3012879 is marked closed.

Date: January 6, 2020

/s/
Alphonso Arnold III
Special Agent