

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ravin Harding	:	
	:	
v.	:	C-2019-3014816
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the formal Complaint (Complaint) is untimely and barred by the Pennsylvania Public Utility Commission’s (Commission’s or PUC’s) statute of limitations. Therefore, this decision dismisses the Complaint. This decision also finds actions by the Respondent in violation of Commission statute and regulations. This decision also directs that a copy of this decision be served on the Commission’s Bureau of Investigation and Enforcement for their review of the action by the Respondent.

HISTORY OF THE PROCEEDING

On December 5, 2019, Ravin Harding (Complainant) filed a Complaint with the Commission against Philadelphia Gas Works (PGW, Respondent or Company). The Complainant received a bill for gas service from 2015, which alleged she did not contact the Respondent to let them know that she moved. The Complainant disputed that the Respondent did not have notice of her move. The Complainant requests the amount of \$989.98 removed from her account alleging that she did not accrue the charges.

The Complaint was served electronically (eService) by the Commission's Secretary on December 6, 2019, per the audit history of the docket.

Laureto Farinas, Esquire, filed an Answer on December 23, 2019, on behalf of the Respondent. The Respondent admitted that it issued a shut off notice for gas service at 6014 Nassau Road, Philadelphia, Pennsylvania (service address). PGW records showed that the Complainant previously had gas service at 5774 Hunter Street, Philadelphia, Pennsylvania (previous address) from January 23, 2013 to June 1, 2015.

On December 26, 2018, the Complainant contacted PGW to initiate service at the service address. PGW informed the Complainant of an outstanding balance in the amount of \$989.98 but she denied that she had service at the previous address.

On January 17, 2019, the Complainant contacted PGW because she had received a three-day shut off notice at the service address. On January 18, 2019, the Complainant was at a PGW service center and PGW turned on service at the service address. PGW advised the Complainant that the final bill for the previous address would be on the first bill issued at the service address.

On January 23, 2019, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3676066 disputing the final bill at the previous address. On September 26, 2019, BCS dismissed the informal complaint finding against the Complainant and closed the case.

On November 25, 2019, a BCS complaint was filed requesting a payment arrangement at BCS Case No. 3751568. On November 27, 2019, the BCS by written decision concluded that the Complainant be given a payment arrangement of \$86.00 monthly budget billing plus \$86.00 per month towards her arrears for a total monthly payment of \$172.00 ($\$86.00 + \$86.00 = \172.00) to begin January 2020.

The Respondent requests that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated December 24, 2019, this Complaint was scheduled for an initial in-person hearing for Monday, February 2, 2020, at 10:00 a.m. The matter was assigned to the undersigned ALJ Angela T. Jones.

By Prehearing Order dated December 30, 2019, the undersigned provided the procedural rules for this proceeding.

A corrected Hearing Notice dated January 27, 2020, rescheduled the initial in-person hearing for February 10, 2020 at 10:00 a.m. because the date previously scheduled was not a date for business in the Commonwealth of Pennsylvania.

The in-person hearing convened as scheduled. The Complainant was present and represented herself. The Complainant did not sponsor any exhibits or any other witness. The Respondent was represented by Attorney Farinas and sponsored one witness, Joyshalyn Moore. The Respondent identified the following exhibits:

PGW Exhibit 1 – Customer Contacts;
PGW Exhibit 2 – Utility Service Agreement;
PGW Exhibit 3 – Payment Arrangement History;
PGW Exhibit 4 – Account Statement;
PGW Exhibit 5 – Informal Complaints; and
PGW Exhibit 6 – PGW Final Bill dated June 13, 2015.

All six exhibits were admitted into the record without objection.

An Interim Order dated February 11, 2020, was issued requesting the following two issues be addressed by the parties:

- (1) Whether 66 Pa.C.S. §§ 1312(a) and 3314(a) and *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370 (Pa.Cmwlth. 1992) are applicable to this proceeding, and the result of any applicability (statute of limitations); and
- (2) Under what authority or policy does the Respondent accredit the disputed outstanding balance over the undisputed amount due for usage.

The Interim Order directed the Respondent to address the issues by February 24, 2020 and for the Complainant to respond by March 2, 2020. The Respondent addressed the above issues by legal memorandum dated February 24, 2020 consistent with the Interim Order. To date, the Complainant has not addressed the issues of the Interim Order.

A transcript consisting of 93 pages of testimony was generated from the February 10, 2020 hearing. The record closed on March 9, 2020, when the transcript of the hearing was received by the undersigned.

Pursuant to 52 Pa.Code § 5.408, by Order dated April 15, 2020, the undersigned reopened the record and provided notice to the parties that the undersigned presiding officer intended to take official notice of the U.S. Postal Service's procedure to forward residential mail referencing the U.S. Postal Service's website, <https://www.usps.com/manage/forward.htm>. The April 15, 2020 Order ordered the record to close on April 22, 2020, if there were no objections or additional issues raised regarding the official notice. To date, no objections or other communications have been received by the undersigned. Pursuant to the April 15, 2020 Order, the record closed on April 22, 2020.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Ravin Harding.

2. The Respondent is Philadelphia Gas Works, a municipally-owned utility that supplies and distributes gas service in Philadelphia, Pennsylvania.

3. The Complainant currently resides at 6014 Nassau Road, Philadelphia, Pennsylvania (current service address) where she is a PGW customer for gas service. Tr. 12, 13-14.

4. The Complainant previously received gas service at 5774 Hunter Street, Philadelphia, Pennsylvania (previous service address) from PGW from April 2013 to March 2015. Tr. 12-13, 42, PGW Exhibit 1.

5. The Complainant was electronically billed (ebilled) at her previous service address by the Respondent. Tr. 16.

6. In April 2015 the Complainant forwarded all her mail from the previous service address to 1529 N. 20th Street in Philadelphia. Tr. 32.

7. The Complainant received mail at 1529 N. 20th Street when she was there. Tr. 33.

8. After June 1, 2015, the Complainant was not billed for gas service and her account was finalized for gas service as of June 1, 2015. Tr. 57.

9. The final bill for the Complainant's gas usage at the previous service address was issued on June 13, 2015. Tr. 49, PGW Exhibit 6.

10. PGW records of communication between it and the Complainant do not show any contact from the Complainant during March 2015; rather, there are payments on February 18, 2015, and April 7, 2015, with no other contacts in 2015. Tr. 50, PGW Exhibit 1.

11. On October 5, 2015, the Complainant's unpaid balance went into write-off status. Tr. 57, PGW Exhibit 1.

12. On December 26, 2018, when the Complainant applied for service at her current service address, she was told that she had an outstanding balance of \$989.98. Tr. 43, PGW Exhibit 1.

13. The Complainant did not receive mailed gas bills from the Respondent when she first moved into the current service address. Tr. 16.

14. The Respondent sent bills by email because of how the bills were sent for the Complainant's previous service address. Tr. 16-17.

15. The Complainant changed her email address to h.ravin30@gmail.com in 2017 from the email address, ravin_harding@yahoo.com, which is what she had when she received bills from the Respondent at the previous service address. Tr. 17-18.

16. On January 17, 2019, the Complainant contacted the Respondent by phone about a three-day termination notice she received and inquired about why she had not received any bills for usage from the Respondent. Tr. 15, 22, 44, PGW Exhibit 1.

17. During the phone conversation on January 17, 2019, the Respondent told the Complainant that she had to go to a PGW district office with two forms of identification and proof of ownership for her current address and that she had an outstanding balance of \$989.98 from her previous service address. Tr. 44, PGW Exhibit 1.

18. On January 18, 2019, the Complainant set up the account for her current service address at the PGW district office in Frankford and brought her mortgage and other documents to show she owned the service address. Tr. 20-21, 44-45, PGW Exhibit 1.

19. The gas at her current service address was on when the Complainant went to the PGW's district office in Frankford. Tr. 45, PGW Exhibit 1.

20. At the Complainant's visit to the district office on January 18, 2019, she was given a copy of her final bill and was informed the amount was due upon receipt of her first bill at her current service address. Tr. 45, PGW Exhibit 1.

21. When the Complainant was at the Frankford district office of the Respondent the Complainant was not asked about ebilling or asked to confirm her email address. Tr. 21.

22. Joyshalyn Moore is employed by the Respondent as a customer review officer that investigates informal and formal complaints filed by PGW customers with the Commission. Tr. 36.

23. Ms. Moore has been a customer review officer for six years and has been employed by the Respondent for 12 years. Tr. 36.

24. Before Ms. Moore was a customer review officer, she was a customer service representative, who interacted with customers face-to-face at the PGW district offices. Tr. 37.

25. The Respondent has no information of whether the final bill was sent by the U.S. post office or by email. Tr. 50.

26. If the final bill was sent by email, then it would have gone to the email address on file with the previous service address. Tr. 50.

27. If the final bill was sent by hard copy, then it was addressed to the Complainant at the previous service address. Tr. 51.

28. On January 23, 2019, the Complainant filed an informal complaint at BCS Case No. 3676066 disputing responsibility for the back-billed amount of \$989.98 for gas service at the previous service address. Tr. 52, 59, PGW Exhibits 1 and 5.

29. On March 20, 2019, the Respondent told the Complainant that she was enrolled in ebilling in response to why she was not receiving bills for her gas usage. Tr. 52, PGW Exhibit 1.

30. On March 20, 2019, the Respondent advised the Complainant:
- a. to enter her username and password on her account;
 - b. that there was no shut off scheduled by the Company; and
 - c. to make payments to her account.

Tr. 52, PGW Exhibit 1.

31. On September 26, 2019, BCS dismissed the informal complaint at Case No. 3676066 finding the Complainant did not contact the Respondent to cancel service. Tr. 53, 59-60, PGW Exhibits 1 and 5.

32. On November 25, 2019, the Complainant filed an informal complaint at BCS Case No. 3751568 requesting a payment arrangement. Tr. 53, 61, PGW Exhibits 1 and 5.

33. On November 27, 2019, BCS rendered a decision at Case No. 3751568 granting the Complainant a payment arrangement with the following three terms:

- (1) \$86.00 monthly budget billing plus;
- (2) \$86.00 monthly payment towards arrears for a total monthly payment of \$172.00 (\$86.00 budget bill + \$86.00 arrears = \$172.00); and
- (3) to begin on the January 2020 due date.

Tr. 53, 61, PGW Exhibits 1 and 5.

34. The Commission-issued payment arrangement from the BCS Case No. 3751568 is not in default status. Tr. 55.

35. If the Complainant did discontinue service in March 2015, the Respondent is owed \$769.30 (\$989.98 - \$220.68 (charges from April 2015 to June 2015 including late payment charges) = \$769.30) for gas service at the previous service address. Tr. 61-62.

36. The Respondent attributes any payments made by the Complainant toward the outstanding balance, with any amounts left toward her current balance. Tr. 64.

37. The Respondent has one account with two different service agreements; therefore, the Respondent is deducting current payments toward one account, with the older service agreement being accredited with any payment until that amount goes to zero. Tr. 64-67.

38. While the Complaint is pending, the Respondent has put a hold on the Complainant's account to prohibit termination of gas service to the Complainant. Tr. 68-69.

39. The account will be eligible for termination only after the outcome of the Complaint, if appropriate, or once the hold is removed from the account. Tr. 69

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order or seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 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*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

If the Complainant presents 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 her 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).

II. Whether the Complainant's Complaint was Timely Filed

a. Applicable Statute

The Respondent contends that the Complainant's claims are barred by the Commission's statute of limitations at Section 3314(a) of the Public Utility Code (Code), which states,

§ 3314. Limitation of actions and cumulation of remedies.

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) (Emphasis added).

The Respondent states that 66 Pa.C.S. § 1312(a)¹ is not applicable because it is instructive regarding refunds to a ratepayer. PGW Legal Memorandum at 5-6. The Respondent states that this Complaint does not seek any refunds of amounts paid. *Id.*, at 6. This Complaint disputes whether the Complainant is responsible for the back-billed amount of \$989.98 accrued at the previous service address. As such, the Complaint does not raise whether a tariffed rate was applied incorrectly or in violation of Commission orders, statutes or precedent. Therefore, Section 1312(a) of the Code is not applicable. 66 Pa.C.S. § 1312(a).

I agree with the Respondent. The applicable statute to this Complaint is Section 3314(a) of the Code. 66 Pa.C.S. § 3314(a).

b. Whether Complainant Discontinued Service at Previous Service Address

The Complainant testified that she discontinued service with the Respondent by telephone in March 2015. Tr. 13, 26. The Complainant testified that she discontinued service because she moved from the previous service address to her mother's address, 1529 N. 20th Street, Philadelphia, Pennsylvania at the end of March 2015. Tr. 31-32.

¹ Section 1312(a) of the Code states, in relevant part,

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four year prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment.

The Respondent rebuts the premise that Complainant discontinued service in March 2015, by offering evidence that the Complainant did not contact the Respondent in March. In fact, the Complainant only contacted the Respondent twice in 2015, on February 18, 2015, and April 7, 2015. Tr. 50, PGW Exhibit 1.

Pursuant to Commission regulation at 52 Pa.Code § 59.25,

§ 59.25. Notice of desire to have service discontinued.

A customer who is about to vacate premises supplied with service by a public utility, or who wishes to have service discontinued, shall give at least 24-hour notice to the utility, specifying the date on which it is desired that service be discontinued. In the absence of notice, the customer shall be responsible for services rendered.

I find the substantiated evidence provided by the Respondent compelling. I find that the Complainant did not comply with 52 Pa.Code § 59.25 and failed to discontinue service at the previous service address in March 2015.

c. Whether Statute of Limitations Was Tolloed by Complaint

The Respondent argues that the Complainant received the final bill issued on June 13, 2015 by regular mail. PGW Exhibits 4, 6, PGW Legal Memorandum at 4. The Complainant first complained about her responsibility for the final bill for gas service at her previous service address by informal complaint to the Commission on January 23, 2019. PGW Legal Memorandum at 4. The time period from June 13, 2015, to January 23, 2019, is 1,320 days or 3.62 years (1,320 days x 1 year/365 days = 3.62 years). The Respondent stated that this time period is beyond the three years permitted by 66 Pa.C.S. § 3314(a); and thus, the Complaint filed by the Complainant is out-of-time and barred by the statute. *Id.*, at 5.

The Complainant was ebilled when she received gas service at her previous service address. Tr. 16. Consequently, the Complainant received communication from the Respondent electronically. The Complainant testified that she changed her email address from

that which she had when she was at the previous service address from ravin_harding@yahoo.com to h.ravin30@gmail.com in 2017. Tr. 17-18. The Complainant did forward her mail from her previous address to the address she moved to with her mother, which is 1529 N. 20th Street, Philadelphia, Pennsylvania. Tr. 32-33.

The Complainant stated that she did receive forwarded U.S. mail at the mother's address that was addressed to her at the previous service address through the forward mail service of the U.S. post office. The Complainant testified that she did not receive forwarded mail from PGW at her mother's address. Tr. 33.

Although the Respondent argues the Complainant received the final bill on June 13, 2015, the Respondent provided no evidence of whether the final bill was sent to the Complainant by regular U.S. mail or by email. Tr. 50. If the final bill was delivered to the Complainant by U.S. mail, it went to her previous service address. PGW Exhibit 6. The Complainant testified that she had her mail forwarded from her previous service address to her mother's address. Tr. 32. U.S. mail forwarding service is for six months and a person can receive an extension for another six months.² If the final bill was delivered by U.S. mail, the Complainant should have received it through the U.S. post office's forwarding service as six months from March 2015 is September 2015. Therefore, June 13, 2015, when the final bill was issued, is well within the time frame for the forwarding service to be operable for the Complainant.

The Complainant testified that she did not receive mail from the Respondent while she was at her mother's address. Tr. 33. The Respondent did not provide evidence of how or by what means the final bill was sent to the Complainant. The Respondent did not provide a certificate of receipt of the final bill or any type of confirmation that the final bill was indeed delivered to the Complainant.

² See <https://www.usps.com/manage/forward.htm>.

The Complainant's account was set up for ebilling. Consequently, the Respondent through its normal course of business communicated with the Complainant by email. The Respondent continued communication through email even initially with the current service address. Tr. 16-17. The Complainant testified that she didn't change her email address until 2017, which is well after June 13, 2015 when the final notice was communicated. Tr. 18. I find based on the record evidence that the Respondent sent the final bill through email to the Complainant.

As I have found that the final bill was delivered by email to the Complainant, the bill was received by the Complainant at her old email address on the date it was sent because she did not change her email address until 2017. Tr. 47, PGW Exhibit 6. Thus, I find that the Complainant received the final bill that was issued on June 13, 2015.

In *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370 (Pa.Cmwlth. 1992), the filing of the informal complaint with the Commission tolled the period for statute of limitations until the informal complaint was decided. The removal of the time that the informal complaint was pending, caused the matter that was disputed to be within the period for the statute of limitations to have run. Thus, the statute of limitations was not a bar to the disputed matter.

In contrast, the Complainant in this proceeding filed an informal complaint after the three-year period that the statute of limitation ran. Here, the filing of the informal complaint failed to toll the running of the statute of limitations.

Based on the substantiated record evidence, I find that the Complainant's Complaint is not timely filed. I agree with the Respondent. The statute of limitations at Section 3314(a) of the Code has expired. 66 Pa.C.S. § 3314(a). The Complaint is barred, and therefore, will be dismissed by the ordering paragraphs below.

III. Whether the Respondent Complies with Commission Regulations by Accrediting Payments to Disputed Outstanding Balance

The Respondent argued that the Commission statute at Section 1410(2) of the Code states,

Pending the outcome of a formal or informal complaint filed with the commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

66 Pa.C.S. § 1410(2). PGW Legal Memorandum at 6.

Additionally, the Respondent referenced 52 Pa.Code § 56.181, which states,

§ 56.181 – Duties of parties, disputing party’s duty to pay undisputed portion of bills; public utility’s duty to pay interest whenever overpayment found.

Pending resolution of a dispute, including a termination dispute, the disputing party shall be required to pay the undisputed portion of bills, as described in this section.

- (1) *Pending informal complaint.* Pending the outcome of an informal complaint, the disputing party shall be obligated to pay that portion of a bill which is not honestly disputed. An amount ultimately determined, by the parties or the Commission, to have been validly due but not paid may be paid with interest at the tariff rate filed under § 56.22 (relating to the accrual of late payment charges) except when interest charges have been reduced or eliminated by the parties of the Commission to facilitate payment by the disputing party.
- (2) *Pending formal complaint.* Prior to the hearing on a formal complaint or prior to the issuance of a Commission order when no hearing is to be held in a formal complaint proceeding, the customer shall be required to pay that amount which the consumer services representative determines is not disputed.
- (3) *Overpayments reimbursed with interest.* An amount ultimately determined to have been overpaid by the disputing party shall be reimbursed with interest at the tariff rate filed under § 56.22.

(4) *Effect of offer of payment.* An offer by a customer to pay all or any portion of a bill may not be deemed a waiver of a right to reimbursement for amounts subsequently deemed, by the parties or the Commission, to have been overpaid.

(5) *Effect of acceptance of partial payment.* The acceptance of a public utility of a partial payment for a bill pending final outcome of a dispute may not be deemed an accord and satisfaction or waiver of the right of the public utility to payment in full as subsequently agreed to by the parties or decided by the Commission.

Thus, PGW argues that the Complainant has a duty to pay her bills that are not in dispute. PGW Legal Memorandum at 6-7. PGW buttresses this point by referencing the Prehearing Order dated December 30, 2019, at this docket which referenced 52 Pa.Code § 56.181 and admonished the Complainant that failure to comply may result in termination of utility services. *Id.*, at 7.

I agree with the Respondent that 66 Pa.C.S. § 1410(2) and 52 Pa.Code § 56.181(2), *supra*, is applicable in this proceeding. Specifically, in regards to 52 Pa.Code § 56.181(2), “[T]he customer shall be required to pay that amount which the consumer services representative determines is not disputed.” However, the converse is also applicable. In the case of 66 Pa.C.S. § 1410(2), “Pending the outcome of a formal or informal complaint filed with the commission, the customer shall [**not**] be obligated to pay that portion of the bill which is [~~not~~] in dispute and subsequent bills which are ~~not~~ in dispute.”(emphasis added). Similarly, regarding 52 Pa.Code § 56.181(2), “[T]he customer shall [**not**] be required to pay that amount which the consumer services representative determines is [~~not~~] in dispute.” (emphasis added). Similarly, the Commission’s regulations state at 52 Pa.Code § 56.141(2),

(2) *Termination stayed.* Except as otherwise provided in this chapter, when a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint. **However, the disputing party shall pay undisputed portions of the bill.**

(emphasis added). Similarly, the converse of the highlighted portion of the regulation is that the disputing party shall not pay disputed portions of the bill.

However, the Respondent's witness testified,

Q. And it has total amount due of \$372.41?

A. Correct.

Q. That amount is from the previous [service agreement]?

A. That is correct.

Q. So I am now confused, because the previous [service agreement], I thought the amount was \$989.98.

A. Right. So Ms. Harding – the way our payments are set up, Ms. Harding has been making payments on the account. So the payments that she made get distributed to the oldest money and then it gets distributed to the current money. So remaining of the \$989 [sic] that she once owed, \$372.41 is what's left of that.

Q. Okay. But PGW knows that she's disputing that amount. Correct?

A. Yes.

Q. So why is PGW taking money that she's paying currently and deducting from the amount that she's disputing, because that's what you just told me.

A. Okay. So it's all under the one account number.

* * *

A. Well, they're not account numbers. That the service agreement number.

Q. Okay. All right. So you're saying everything is under this account number?

A. Correct.

* * *

Q. So again, why is PGW taking the money that she's paying to deduct it from an amount that she is disputing?

A. Okay. So I would have to look into that to see if that – how it was being distributed. I don't have the information in front of me.

Q. Okay. PGW Exhibit 1, page three of six,...the date is January 23, 2019.

A. Yes.

Q. So that again shows the company that Ms. Harding is disputing, has a dispute out regarding the \$989.98 figure. Correct?

A. Yes.

Q. So PGW even acknowledges in its own exhibits that it has notice of that. Correct?
A. Correct.

Tr. 64-67. This testimony shows that the Respondent has taken the Complainant's payments and has accredited her payments to the back-billed or disputed outstanding balance of \$989.98 rather than accrediting her payments to her current undisputed bills.

The Respondent argues, "The utility is not obligated to isolate a disputed amount from the account." PGW Legal Memorandum at 8. However, the Respondent provides no statute, regulation or Commission precedent for this statement. Rather, the Respondent states that 66 Pa.C.S. § 1410(2) and 52 Pa.Code § 56.181(3) provide a customer with the right to refrain from the payment of the disputed amount without penalty by the utility. *Id.*

I find the current practice by the Respondent to accredit the payments by the Complainant toward the oldest amount due, the \$989.98 disputed amount, problematic. The practice of the Respondent in the instant Complaint goes against the Commission statute and regulations in that the payments that Complainant makes get distributed to the oldest money due or the disputed outstanding balance of \$989.98.

The Respondent contends the safeguard is that PGW does not assess late payment charges on any balance or terminate the service of an account in dispute. *Id.* While this statement may be true, if it is determined that the disputed amount is in fact due and payable by the Complainant, does the Complainant now face late payments on the amounts that are pending that otherwise would have been accredited by the payments made by the Complainant while the Complaint was pending? According to Commission regulations such a result would not be prohibited. However, it is only because of the treatment of the payments by the Respondent that this result would ever manifest. If the payments by the Complainant were only accredited to those amounts that are not in dispute, such a result would not occur.

I find that the practice of the Respondent to accredit payments to the older money when the older money is an amount disputed by the customer, is not in compliance with Commission statute and regulations.

IV. Consequence of Respondent's Violation of Commission Statute and Regulations

The Public Utility Code Section 3301(a) states, in relevant part,

If any public utility ... shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission, ... such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person, or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.

52 Pa.Code § 69.1201(a) states,

The Commission will consider specific factors in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.

52 Pa.Code § 69.1201(c) goes further to list the factors and standards to be considered; they are:

(1) Whether the conduct at issue was of a serious nature... such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

- (2) Whether the resulting consequences of the conduct at issue were of a serious nature...such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty of fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

I do not believe the record evidence is sufficient to determine whether a civil penalty is to be levied against the Respondent. For example, it is indeterminant the number of customers affected by the Respondent's policy and corresponding conduct. See 52 Pa.Code § 69.1201(c)(5). Because it appears from the record that this is a policy used by the Respondent during its normal course of business, I find that the instant Complaint is inadequate to address the behavior. I will also direct that a copy of this Initial Decision and Order be served on the Commission's Bureau of Investigation and Enforcement for their review of the action by the Respondent regarding its policy of accrediting payments when a customer has an outstanding disputed balance.

V. Conclusion

Based on the substantial record evidence, I find that the Complainant knew or should have known about the outstanding balance due for service at her previous service address on June 13, 2015. The statute of limitations of three years applies to this Complaint. 66 Pa.C.S. § 3314(a). The Complainant failed to toll the statute of limitations for the back-billed balance of \$989.98 by filing a timely Complaint. The statute of limitations has run. The Complaint regarding the outstanding balance of \$989.98 is out of time and prohibited.

The Respondent has a policy of accrediting payments to the oldest amount due first (“FIFO” meaning “first in, first out”). The Respondent applies its policy even when it has notice that the oldest amount due is disputed by the customer. In the instance of applying the Respondent’s policy when it has notice that the amount is disputed, it is against the Commission’s statute and regulations. The Respondent applied its policy in the instant Complaint and had notice that the amount due was disputed. Therefore, the Respondent’s actions violated the Commission’s statute and regulations. As reflected in the ordering paragraphs below, a copy of this decision is to be served on the Commission’s Bureau Director of Investigation and Enforcement for their review.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant, Ravin Harding, bears the burden of proof. 66 Pa.C.S. § 332(a).
3. The Complainant, Ravin Harding, failed to bring a timely Complaint within three years of the action aggrieved. 66 Pa.C.S. § 3314(a).

4. Pending the outcome of a formal or informal complaint filed with the Commission, the customer shall be not obligated to pay that portion of the bill which is in dispute and subsequent bills which are in dispute. 66 Pa.C.S. § 1410(2), 52 Pa,Code § 56.181(2) (converse).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Ravin Harding against Philadelphia Gas Works at Docket No. C-2019-3014816 is denied and dismissed.
2. That a copy of this Initial Decision and Order be served on the Bureau Director of the Commission's Bureau of Investigation and Enforcement.
3. That the Secretary's Bureau mark this docket closed.

Date: May 4, 2020

/s/
Angela T. Jones
Administrative Law Judge