

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wykeeta Stephens	:	
	:	
v.	:	F-2019-3013478
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants an oral motion to dismiss the Formal Complaint because the cause of action arose in 2012 and the Commission cannot entertain the Complaint and grant the requested relief. The Complaint is time barred by the applicable statute of limitations.

HISTORY OF PROCEEDING

On October 10, 2019, Wykeeta Stephens (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), alleging that an account for gas service was established in her name on December 19, 2009, without her authorization and that she did not move into Apartment B until December 30, 2009.¹ She further alleges that there was a meter switch and that she was billed for the usage of Apartment A. She alleges that she was charged over \$5,000 and that she is not

¹ Complainant timely appealed a decision by the Commission's Bureau of Consumer Services (BCS) on her informal complaint at BCS Case No. 3730583.

responsible for this bill. As relief, Complainant requests that the bill be removed from her account and that she be refunded for bills she paid that were not her responsibility.

On October 31, 2019, PGW filed an Answer and New Matter with a Notice to Plead. PGW admits that there was a meter switch at the service address and avers that service to the Complainant was terminated at her request on July 18, 2019. In New Matter, PGW avers that the meter switch occurred in 2012, more than seven years prior to the filing of the instant complaint. PGW further avers in New Matter that Complainant filed an informal complaint regarding the meter switch issue in 2012 at BCS Case No. 2980205 wherein the BCS determined that the bill was correct on or about September 27, 2012. PGW requests that the Complaint be dismissed.

Complainant did not file a response to the New Matter.

On December 5, 2019, a Call-In Telephone Hearing Notice was issued scheduling an initial telephone hearing for January 27, 2020. On December 9, 2019, a Prehearing Order was issued advising the Parties of the date and time of the scheduled hearing, and of the applicable procedural rules.

On January 27, 2020, the telephone hearing convened as scheduled and Complainant's request for a continuance was granted on the record.

On March 12, 2020, a Further Call-In Hearing Notice was mailed to the parties scheduling a further telephonic hearing for April 28, 2020.

On April 24, 2020, a Cancellation/Reschedule Notice was sent to the parties rescheduling the further telephonic hearing for June 4, 2020. On April 30, 2020, a Prehearing Order for Telephonic Hearing was issued.

On June 4, 2020, the further telephonic hearing convened and Complainant's request for a 60-day continuance request for the purpose of obtaining legal counsel was granted on the record. Also, on June 4, 2020, a First Interim Order was issued granting the continuance.

On August 7, 2020, a Further Telephonic Hearing Notice was sent to the parties scheduling a further hearing for September 17, 2020. The further hearing convened as scheduled. Complainant appeared *pro se* and testified on her own behalf. She did not offer any hearing exhibits. PGW was represented at the further hearing by Laureto Farinas, Esquire. Mr. Farinas presented one witness, Adrian Pinkney. Counsel also offered PGW Exhibits 1-3 that were admitted into evidence. The record closed by interim order on October 30, 2020.

FINDINGS OF FACT

1. Complainant, Wykeeta Stephens, resides at 1201 Solomon Street, Building 7, Johnstown, Pennsylvania 15902 (Tr. 23).
2. Respondent, Philadelphia Gas Works, provided gas utility service to Complainant at 2309 North Tenth Street, Apartment B, Philadelphia, Pennsylvania 19133 from December 19, 2009 until July 18, 2019 (service address) (Tr. 23, 51; PGW Exhibit 3).
3. On May 29, 2012, PGW rectified a meter switch at the service address and canceled all of Complainant's bills and re-billed her for the correct meter usage. Complainant's corrected bill was \$6,225 (Tr. 45-46).
4. On November 7, 2012, Complainant enrolled in PGW's Customer Responsibility Program (CRP) (Tr. 46-48).

DISCUSSION

As the party seeking affirmative relief from this Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). Complainant bears the burden of proving by a preponderance of the evidence that Respondent has violated the Public Utility Code or a regulation or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Complainant must show that the utility is responsible or accountable for the problem described in the complaint. *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

In addition to determining whether Complainant has satisfied his burden of proof, care must be exercised to ensure that the Commission's decision is supported by substantial evidence. 2 Pa.C.S. § 704. Various Pennsylvania courts have defined the term "substantial evidence" as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more 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*, 489 Pa.109, 413 A. 2d 1037 (1980); *Murphy v. Pa. Dept. of Pub. Welfare*, 480 A.2d 382 (Pa.Cmwlth. 1984).

At the conclusion of the presentment of Complainant's case, counsel for PGW moved to dismiss the complaint. Tr. 40. Complainant orally responded to the motion to dismiss. Tr. 40.

Section 1312 of the Public Utility Code, 66 Pa.C.S. § 1312, permits ratepayers to seek rate refunds when certain findings are made up to a four-year past period measured from the date that the improper billing was discovered. Section 1312(a) of the Public Utility Code, 66 Pa.C.S. § 1312(a), provides that the Commission has 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 years prior to the date of the filing of the complaint."

In addition, Section 56.35(a) of the Commission's regulations, 52 Pa.Code 56.35(a), (regarding payment of outstanding balance) reads as follows:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

PGW's motion to dismiss the instant complaint is granted. The Complaint regarding billing issues that were discovered and addressed in 2012 is time barred. Such claims are well beyond the 4-year statute of limitations. Complainant is not entitled to relief as a matter

of law. Accordingly, the Complaint is dismissed with prejudice in the ordering paragraphs to follow.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on Complainant.

3. Complainant has not met her burden of proving that she is entitled to relief. 66 Pa.C.S. § 332(a).

4. The Commission has 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 years prior to the date of the filing of the complaint. 66 Pa.C.S. § 1312(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the Formal Complaint of Wykeeta Stephens against Philadelphia Gas Works at Docket No. F-2019-3013478 is granted and the Complaint is dismissed with prejudice.

