

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charlotte Oliphant-Johns	:	
	:	
v.	:	F-2020-3019943
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Charlotte Oliphant-Johns’ formal Complaint against Philadelphia Gas Works upon finding that the Complainant failed to carry her burden of proving that the utility improperly removed her from its Customer Responsibility Program.

HISTORY OF THE PROCEEDING

On March 19, 2020, Charlotte Oliphant-Johns (Ms. Oliphant-Johns or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent, or the Company) alleging that the Company improperly removed her from its Customer Responsibility Program (CRP) after she failed to schedule a home energy assessment with the Company. As relief, Ms. Oliphant-Johns requests that the Commission order PGW to reinstate her into its CRP.

This formal Complaint is a timely appeal to a decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 3755746.

On July 2, 2020, PGW filed an Answer¹ denying the material allegations of the Complaint.

A Hearing Notice dated July 6, 2020, notified the parties that an initial call-in hearing was scheduled for Tuesday, August 18, 2020, at 10:00 a.m.

A Prehearing Order was issued on July 13, 2020, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On August 6, 2020, Ms. Oliphant-Johns contacted the Commission requesting the continuance of the evidentiary hearing scheduled for August 18, 2020. As reason for requesting the continuance, Ms. Oliphant-Johns cited poor health and difficulty thinking clearly.

By e-mail dated August 8, 2020, I informed PGW's counsel of Ms. Oliphant-Johns' request. On August 11, 2020, counsel for PGW, Graciela Christlieb, Esq., informed me that Respondent had no objections to the Complainant's request for a continuance of the hearing.

On August 12, 2020, I issued an Order granting the Complainant's request for a continuance of the scheduled hearing.

A Hearing Cancellation/Reschedule Notice dated August 13, 2020, notified the parties that the initial hearing was rescheduled for Thursday, October 8, 2020, at 10:00 a.m.

A second Prehearing Order was issued on September 8, 2020, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

¹ The Commission's electronic records indicate that the Complaint was served on the Respondent on May 27, 2020.

The hearing convened as scheduled. Ms. Oliphant-Johns appeared *pro se* and testified on behalf of the Complainant. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Jessica Glace, who is a Senior Customer Review Officer with PGW in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored three exhibits, which were admitted into the record.

During the hearing, Ms. Christlieb requested permission to submit, as a late-filed exhibit, a copy of the Company's standard application/recertification form for its CRP. Tr. 16. I granted her request and instructed the Complainant to file any written objections to the late-filed exhibit by October 30, 2020. Tr. 61-62.

On October 8, 2020, Ms. Christlieb submitted PGW late-filed Exhibit 4. As of the date of this Initial Decision, Ms. Oliphant-Johns has not filed objections to the admission of that exhibit into the record.

The record in this matter closed 30 days after the evidentiary hearing, on November 8, 2020.

FINDINGS OF FACT

1. The Complainant resides at 7459 North 20th Street in Philadelphia, Pennsylvania 19138 (Service Address). Tr. 6.

2. The Respondent is Philadelphia Gas Works.

3. Ms. Oliphant-John participated in PGW's CRP until June 24, 2019. Tr. 23, PGW Exhibit 2.

4. The last time Ms. Oliphant-Johns recertified into CRP was on April 21, 2018. Tr. 28, PGW Exhibit 2.

5. Every PGW customer, who participates in the Company's CRP, is required to accept the free services offered by PGW's conservation program. Tr. 22, PGW late-filed Exhibit 4.

6. The requirement concerning the acceptance of the free services offered by PGW's conservation program is stated in the application and recertification form for the CRP. Tr. 22, PGW late-filed Exhibit 4.

7. By signing the CRP application of recertification form, a PGW customer is accepting the free services offered by PGW's conservation program. Tr. 49.

8. A CRP application or recertification form that does not carry the customer's signature is denied. Tr. 23.

9. When PGW selects a CRP customer for the home comfort weatherization services, the customer is notified via mail. Tr. 23.

10. A letter dated January 22, 2019, informed Ms. Oliphant-Johns that she was selected as a potential candidate for the weatherization program. Tr. 23, PGW Exhibit-1.

11. The January 22, 2019 letter explained that, if the Complainant wished to remain in CRP, she had to accept the home comfort weatherization services. Tr. 24, PGW Exhibit-1.

12. The January 22, 2019 letter gave the Complainant instructions for scheduling her home energy assessment. Tr. 24, PGW Exhibit 1.

13. A second letter dated May 24, 2019, outlined the Complainant's obligations under the CRP and instructed her again to contact PGW's contractor to schedule an appointment for a weatherization evaluation. Tr. 26, PGW Exhibit 2.

14. On June 3, 2019, PGW issued a Final Notice, instructing the Complainant again to contact Respondent's contractor within the next 10 days to schedule a conservation appointment in order to remain in CRP. Tr. 26-27, PGW Exhibit 1.

15. On June 24, 2019, PGW issued a Notice of Removal from CRP informing the Complainant that she was removed from CRP because she failed to accept conservation services offered by the Company. Tr. 27, PGW Exhibit 1.

16. The June 24, 2019, Notice informed the Complainant that she could reapply for enrollment in CRP after she accepted the conservation services offered by the Company. Tr. 27, PGW Exhibit 1.

17. Following her removal from CRP, PGW representatives tried on several occasions to explain the benefits and the requirements of PGW's Universal Service and Energy Conservation Programs to Ms. Oliphant-Johns. Tr. 28-29, PGW Exhibit 3.

18. As of the day of the hearing, the Complainant had not accepted the weatherization services. Tr. 27.

DISCUSSION

In her formal Complaint against PGW, Ms. Oliphant-Johns alleged that PGW improperly removed her from its Customer Responsibility Program (CRP) after she failed to schedule a home energy assessment with the Company. As relief, Ms. Oliphant-Johns requests that the Commission order PGW to reinstate her into its CRP.

Ms. Oliphant-Johns, as the proponent of a rule or order, 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, she 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 Tel. Co. of Pa.*, 72 Pa.

PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 to the evidence presented by the Complainant, the Complainant has not satisfied her burden of proof. The Complainant would then 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*, 501 Pa. 433, 461 A.2d 1234 (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).

Ms. Oliphant-John participated in PGW's CRP until June 24, 2019. Tr. 23, PGW Exhibit 2. While the record in this matter does not indicate when she first enrolled in CRP or how long she participated in the program, PGW's business records indicate that she last recertified into CRP on April 21, 2018. Tr. 28, PGW Exhibit 2.

Every PGW customer who participates in the Company's CRP is required to accept the free services offered by PGW's conservation program. Tr. 22, PGW late-filed Exhibit 4. This requirement is stated in the application and recertification form for the CRP. Tr. 22; PGW late-filed Exhibit 4. Every PGW customer, who applies for enrollment or recertification

into the CRP, must sign the form. Tr. 23. An application or recertification form that does not carry the customer's signature is denied. Tr. 23.

When PGW selects a CRP customer for the home comfort weatherization services, the customer is notified via mail. Tr. 23, PGW Exhibit 1. On January 22, 2019, PGW mailed Ms. Oliphant-Johns a letter informing her that she was selected as a potential candidate for the weatherization program. Tr. 23, PGW Exhibit-1. The January 22, 2019, letter explained that, if the Complainant wished to remain in CRP, she had to accept the home comfort weatherization services. Tr. 24, PGW Exhibit-1. The Complainant was provided instructions for contacting PGW's contractor to schedule her home energy assessment. Tr. 24, PGW Exhibit 1.

On May 24, 2019, PGW mailed a second letter to Ms. Oliphant-Johns, outlining the Complainant's obligations under the CRP and instructing her again to schedule an appointment for a weatherization evaluation. Tr. 26, PGW Exhibit 2. On June 3, 2019, PGW issued a Final Notice, instructing the Complainant again to contact Respondent's contractor within the next 10 days to schedule a conservation appointment in order to remain in CRP. Tr. 26-27, PGW Exhibit 1. Ms. Oliphant-Johns did not follow Respondent's instructions. On June 24, 2019, PGW issued a Notice of Removal from CRP informing the Complainant that she was removed from CRP because she failed to accept conservation services offered by the Company. Tr. 27, PGW Exhibit 1. The June 24, 2019 Notice informed the Complainant that she could reapply for enrollment in CRP after she accepted the conservation services offered by the Company. Tr. 27, PGW Exhibit 1. Following her removal from CRP, PGW representatives tried on several occasions to explain the benefits and the requirements of PGW's Universal Service and Energy Conservation Programs to Ms. Oliphant-Johns. Tr. 28-29, PGW Exhibit 3. As of the day of the hearing, the Complainant had not accepted the weatherization services. Tr. 27.

At the hearing, Ms. Oliphant-Johns claimed that PGW had changed the CRP requirements without alerting her. Respondent's witness, Jessica Glace, rebutted this claim by pointing out that the requirement concerning the acceptance of the free services offered by PGW's conservation program is listed in the application and recertification form for the CRP

under “Customer Responsibilities.” Tr. 22, PGW late-filed Exhibit 4. Ms. Oliphant-Johns agreed to the requirement in question when she signed the CRP recertification form on or about April 21, 2018. Tr. 17, 49.

Next, Ms. Oliphant-Johns argued that she does not object to the free conservation services offered by PGW, but she does not need the services. Tr. 8-11, 17-18. In particular, the Complainant argued that she has a thermostat on the wall and that every year she puts strips around her doors and plastic on her windows. Tr. 8-9. In turn, PGW rebutted that, instead of taking the customer’s word on the need for weatherization, the Company will send its contractor to determine whether or not the Service Address needs further weatherization. If the contractor determines that no additional weatherization is needed, it will certify that to PGW and Ms. Oliphant-Johns’ obligation under CRP will be considered fulfilled. Tr. 18.

PGW’s Universal Service and Energy Conservation Programs are part of its Commission-approved tariff. *See* Tr. 30; *see also* Supplement No. 42 to PGW Gas Service Tariff – Pa P.U.C. No. 2, Second Revised Page No. 59, Rule 13. A Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossman v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa.Cmwlt. 1997). The pertinent portion of PGW’s tariff reads:

13.1.B. Requirements. A Participant [of the CRP] must abide by the following provisions. The failure of a Participant to comply with one of the following could result in dismissal from the CRP Program:

13.1.B.5. “Participants [of the CRP] must take the necessary actions to participate in the Conservation Works Program (CWP), the Enhanced Low Income Retrofit Program (ELIRP) or other conservation programs and to abide by established consumption limits.

Supplement No. 42 to PGW Gas Service Tariff – Pa P.U.C. No. 2, Second Revised Page No. 59, Rule 13.

Upon reviewing the evidentiary record created in this matter, I find that PGW complied with the terms of its Commission-approved tariff and Universal Service Program when it removed Ms. Oliphant-Johns from its CRP because of her failure to allow the Company to perform a weatherization evaluation at the Service Address. While Ms. Oliphant-Johns is well within her rights to refuse PGW permission to perform a weatherization evaluation of her home because she believes that she does not need one, Ms. Oliphant-Johns does so forfeiting the assistance offered through PGW's Customer Responsibility Program. In view of the above, I find that Ms. Oliphant-Johns has failed to carry her burden of proving that PGW violated a Commission statute, regulation, or Order by removing her from its CRP. Consequently, the present Complaint is denied in its entirety because the Complainant failed to carry her burden of proof.

Before concluding, I would like to remind Ms. Oliphant-Johns that, if she accepts PGW's home comfort weatherization services, she can re-enroll into CRP. Tr. 27, 36. If she successfully enrolls in CRP, then any outstanding balance on her account with PGW will be set aside or "frozen." A portion of this "frozen" arrearage will be forgiven every time Ms. Oliphant-Johns make a timely and full payment of her bill while on CRP. Tr. 36.

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 party filing the Complaint bears the burden of proving by a preponderance of the evidence that she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

4. 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 & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

5. A Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossman v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa.Cmwlt. 1997).

ORDER

THEREFORE,

IT IS ORDERED:

1. That late-filed PGW Exhibit 4 is admitted into the record in this proceeding.
2. That the formal Complaint filed by Charlotte Oliphant-Johns against Philadelphia Gas Works at Docket No. F-2020-3019943 is denied.
3. That the Secretary mark this docket closed.

Date: February 16, 2021

_____/s/
Eranda Vero
Administrative Law Judge