

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Reuben Tehrani	:	
	:	
v.	:	C-2021-3025071
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the formal Complaint of Reuben Tehrani because he failed to meet his burden of proving that the Respondent’s denials of his Customer Responsibility Program applications were unreasonable or otherwise violated the Public Utility Code, a Commission order, regulation, or its Commission-approved tariff.

HISTORY OF THE PROCEEDING

On March 18, 2021, Reuben Tehrani (Complainant or Mr. Tehrani) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Respondent or Company). In the Complaint, Mr. Tehrani alleged that there are incorrect charges on his bills. Specifically, Mr. Tehrani alleged that he applied for PGW’s Customer Responsibility Program (CRP) in 2017 and was told he makes too much money to qualify. The Complainant indicates that he is entitled to a credit for CRP and that he should have been placed on CRP in 2017 and ongoing. The Complainant also asserts that he has been without gas service since 2018.

On April 28, 2021, PGW filed an Answer and New Matter to the Complaint. In its Answer, the Respondent either admitted or denied the various averments of the Complaint. Specifically, the Respondent denied that the Complainant had been billed incorrectly and admitted that the Complainant's gas service was terminated in 2018. The New Matter indicated that the Complaint was barred by the statute of limitations.

On April 28, 2021, PGW filed Preliminary Objections indicating that the Complaint filed was beyond the statute of limitations and thus, the Commission does not have the jurisdiction to decide the matter.

By Initial Call-In Telephonic Hearing Notice dated May 20, 2021, a telephonic hearing was scheduled for July 1, 2021, at 10:00 a.m., and the matter was assigned to me. A prehearing order dated May 20, 2021, was issued setting forth various procedural rules that would govern the hearing.

On July 1, 2021, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. Counsel for PGW, Graciela Christlieb, Esquire, was present and presented the testimony of Jessica Antonetti, a PGW Customer Review Officer. PGW also presented eight exhibits which were entered into the record at the hearing. The Complainant indicated at the time of the hearing that he had mailed exhibits to the presiding officer's office which was still closed at the time due to the COVID-19 pandemic. I indicated to the parties that once the office reopened the exhibits would be processed and the Respondent would have an opportunity to file written objections to the documents. The Respondent renewed their Preliminary Objections on the jurisdictional issue. I indicated that I wanted to take testimony to determine whether the statute of limitations applies and that we would move forward with the hearing. Tr. 6-7.

The Complainant's packet of documents was processed by my office on August 23, 2021, and I emailed the parties to indicate that PGW had until September 7, 2021, to file written objections to the Complainant's exhibits. PGW did not file any written objections to

the Complainant's exhibits. All of the Complainant's Late-Filed Exhibits are admitted into the record pursuant to the Ordering Paragraphs in this Initial Decision.

The record closed on September 7, 2021, the due date for PGW to submit any written objections to the Complainant's Late-Filed Exhibits.

FINDINGS OF FACTS

1. The Complainant is Reuben Tehrani. Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Service Address is 1820 North 69th Street, Philadelphia, PA 19151.
Tr. 8.
4. The Complainant resides at the Service Address with his wife and twelve-year-old son. Tr. 27.
5. The Complainant does not currently receive gas service from PGW at the Service Address. Tr. 8.
6. The Complainant applied for CRP in 2017 and was denied by the Company because he did not meet income qualifications. Tr. 39-40; PGW Exh. No. 5.
7. The Complainant and Company continued to have contact regarding the Complainant's 2017 CRP application from August 10, 2018 through November 19, 2019. PGW Exh. No. 4.
8. The communications from the Company to the Complainant indicated that they requested a Schedule C tax form from the Complainant related to a rug company that he owns with his two brothers. *See* PGW Exh. No. 4; Tr. 27.

9. The Complainant did not provide any tax information on his business to the Company. Tr. 40-41.

10. The Complainant submitted another CRP application on November 19, 2019. PGW Exh, No. 4.

11. The CRP application was denied. PGW Exh. No. 4.

12. The Complainant received a ten-day shut off notice from PGW on March 20, 2018. Tr. 37, PGW Exh. No. 2.

13. Gas service was disconnected at the Service Address on May 8, 2018, for non-payment. Tr. 10, 38; PGW Exh. No. 3.

14. The Complainant has had two Company-issued payment arrangements (January 13, 2017, and December 19, 2017) and one Commission-issued payment arrangement (December 29, 2015, Bureau of Consumer Services No. 3366027), all of which were broken by the Complainant. Tr. 45; PGW Exh. Nos. 6, 7.

15. The Complainant receives Social Security benefits in the amount of \$1,253.60 per month. Complainant Late Filed Exhibit.

16. The Complainant's wife receives Social Security benefits in the amount of \$481.00 per month. Complainant Late Filed Exhibit.

17. The Complainant's son receives Social Security benefits in the amount of \$481.00 per month. Complainant Late Filed Exhibit.

18. The balance on the Complainant's PGW account is \$8,425.72. Tr. 37; PGW Exh. No. 1.

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 (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Statute of Limitations

PGW asserts that the Complainant's Complaint is barred by the statute of limitations because the Complainant's CRP application was denied in 2017. Specifically, PGW notes that the statute of limitations at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution, may be maintained unless brought within three years from the date the liability arose. The Company contends that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose.

In this instance, while the initial application for CRP was denied in 2017, the Complainant and the Company continued to have contact regarding the Complainant's CRP application from August 10, 2018 through November 19, 2019. PGW Exh. No. 4. Moreover, the Complainant submitted another CRP application on November 19, 2019, which appears to be denied. PGW Exh, No. 4.

Based on the above, it is clear that this issue related to the Complainant's CRP application was an ongoing issue. Therefore, the ongoing CRP application process tolls the statute of limitations. Moreover, the Complainant submitted another application for CRP in November 2019, which is less than the three-year statute of limitations under Section 3314 of the Public Utility Code. As such, the Complaint will not be dismissed due to the statute of limitations. The Commission has jurisdiction to hear the merits of this case.

CRP Application

The Complainant asserts that PGW incorrectly denied his application for the CRP program. Specifically, the Complainant indicates that he should be entitled to a discounted price for gas usage. PGW maintains that the Complainant failed to provide the Company with his complete income information in order to complete his CRP application.

The statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tele. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tele. Co. of Pa.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code does not require perfect service or the best possible service, only reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. PUC 662 (1993).

In addition, a public utility's 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; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tele. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

The Complainant applied for CRP in 2017 and was denied by the Company because he did not meet income qualifications. Tr. 39-40; PGW Exh. No. 5. The Complainant and Company continued to have contact regarding the Complainant's CRP application from August 10, 2018 through November 19, 2019. PGW Exh. No. 4. The communications from the Company to the Complainant indicated that they requested a Schedule C tax form from the Complainant related to a company that he owns. *See* PGW Exh. No. 4. The Complainant submitted another CRP application on November 19, 2019. PGW Exh, No. 4.

The Complainant acknowledged that he owns a rug company with his two brothers. Tr. 27. The Complainant receives Social Security benefits in the amount of \$1,253.60 per month. Complainant Late Filed Exhibit-Medical Assistance Compass Form; PGW Exh. No. 5. The Complainant's wife receives Social Security benefits in the amount of \$481.00 per

month. Complainant Late Filed Exhibit-Medical Assistance Compass Form; PGW Exh. No. 5. The Complainant's son receives Social Security benefits in the amount of \$481.00 per month. PGW Exh. No. 5. The Complainant did not provide any tax information regarding his rug business to PGW. Tr. 40-41. Even a review of the Complainant's Late Filed Exhibits in this case do not contain a Schedule C tax form for the rug company. *See* Complainant's Late Filed Exhibits.¹

The CRP program is part of PGW's tariff. The Commission does not control the specifics of a customer assistance program but have indicated what design elements should be included in a customer assistance program. *See* 52 Pa.Code § 69.265. The Complainant does not challenge the specifics of PGW's CRP program. The Complainant only argues that he should qualify for the CRP program.

However, the Complainant did not present all the evidence necessary for the Company to determine his household income for CRP qualifications. Even though PGW told the Complainant that they needed a copy of a Schedule C tax form for his shared business, the record reflects that he never supplied PGW with the requested and required information. Moreover, the Complainant failed to provide that information in his Late Filed Exhibits.

There is nothing in the record to establish that PGW failed to provide adequate and reasonable service in this case related to the Complainant's CRP application. The Complainant failed to provide all of the income information that the Company requested in order to determine his household's eligibility. There is nothing to indicate that PGW's actions in this matter are unreasonable or otherwise violate the Public Utility Code, a Commission order, regulation, or its Commission-approved tariff.

Accordingly, I find the Complainant has failed to meet his burden and the Complaint will be dismissed.

¹ The Complainant's Late Filed Exhibits include Form 1040 U.S. Individual Income Tax Returns for 2017 and 2018; Form 1040-SR U.S. Tax Return for Seniors for 2019; and a Schedule C-EZ for 2017 for the Complainant's wife's baby-sitting business.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. § 701.
2. The statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose.
3. The Respondent failed to establish that the statute of limitations applies in this matter as there was an ongoing dispute regarding the Complainant's CRP application. 66 Pa.C.S. § 3314.
4. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.
5. Pursuant to 66 Pa. C.S. § 1501, public utilities must provide reasonable and adequate service.
6. A public utility's 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; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tele. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).
7. The burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).
8. A complainant bears the burden of proving by a preponderance of the evidence that the existing rates and charges are unreasonable, unjust or in violation of a Commission regulation or order. 66 Pa.C.S. § 332(a); *Duquesne Light Co. v. Pa. Pub. Util.*

Comm'n, 715 A. 2d 540 (Pa. Cmwlth. 1998); *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A. 2d 189 (Pa. Cmwlth. 1993).

9. The Complainant has failed to satisfy his burden and demonstrate that the Respondent's Commission-approved tariff rates are unreasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

10. The Complainant has failed to satisfy his burden to demonstrate that the Respondent has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That all of the Complainant's Late Filed Exhibits are entered into the record at Docket No. C-2021-3025071;
2. That the Preliminary Objections filed by Philadelphia Gas Works are denied;
3. That the Complaint filed by Reuben Tehrani against Philadelphia Gas Works, at Docket No. C-2021-3025071, is dismissed; and
4. That Docket No. C-2021-3025071 be marked closed.

Date: November 3, 2021

_____/s/
Marta Guhl
Administrative Law Judge