

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss, Statement
John F. Coleman, Jr.

Reuben Tehrani

C-2021-3025071

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Reuben Tehrani (Complainant or Mr. Tehrani), filed on November 22, 2021, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Marta Guhl, issued on November 4, 2021, in the above-captioned proceeding. The Initial Decision denied and dismissed the Formal Complaint (Complaint) filed by Mr. Tehrani on March 18, 2021. Philadelphia Gas Works (PGW or Company) did not file Replies to Mr. Tehrani's Exceptions. For the reasons stated below, we will deny the Complainant's Exceptions and adopt the Initial Decision consistent with and as modified by this Opinion and Order.

I. History of the Proceeding

On March 18, 2021, Mr. Tehrani filed his Complaint with the Commission against PGW. Mr. Tehrani alleged that there are incorrect charges on his bills and that when he applied for PGW's Customer Responsibility Program (CRP) in 2017, he was told he makes too much money to qualify. The Complainant alleged that he is entitled to a credit for CRP and that he should have been placed on CRP in 2017 and continuing to date. The Complainant also asserted that he has been without gas service since 2018.

On April 28, 2021, PGW filed an Answer and New Matter to the Complaint, therein admitting or denying the various averments of the Complaint. The Company denied that the Complainant had been billed incorrectly and admitted that the Complainant's gas service was terminated in 2018 for non-payment. In New Matter, PGW argued that the Complaint was barred by the statute of limitations in Section 3314 of the Public Utility Code (Code), 66 Pa. C.S. § 3314. Also on April 28, 2021, PGW filed Preliminary Objections reiterating its position that the Complaint was filed beyond the applicable statute of limitations and thus, the Commission does not have the jurisdiction to decide the matter.

The telephonic hearing was convened as scheduled on July 1, 2021. The Complainant appeared *pro se* and testified on his own behalf. PGW appeared and presented the testimony of one witness, Jessica Antonetti, a PGW Customer Review Officer, and eight exhibits which were entered into the record. The Complainant noted at the time of the hearing that he had mailed exhibits to the ALJ's office which was still closed at the time due to the COVID-19 pandemic. The ALJ indicated to the Parties that once the Commission's office reopened, the Complainant's exhibits would be processed, and the Company would have an opportunity to file written objections to the documents.

PGW renewed its Preliminary Objections on the jurisdictional issue at the hearing and the ALJ reserved ruling until after the receipt of evidence and issuance of an Initial Decision. Tr. at 6-7. The Complainant's packet of documents was processed by the Commission on August 23, 2021, and the ALJ 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, and thus, all of the Complainant's Late-Filed Exhibits were admitted into the record. The record closed on September 7, 2021 and consists of the fifty-nine-page transcript of the telephonic hearing, the Complainant's Late-Filed Exhibits, and PGW's Exhibits 1-8. I.D. at 2-3.

The Commission issued the ALJ's Initial Decision on November 4, 2021. The Initial Decision denied Mr. Tehrani's Complaint because he failed to meet his burden of proving that the Respondent's denials of his CRP applications were unreasonable or otherwise violated the Code, a Commission Order, Regulation, or PGW's Commission-approved tariff. Mr. Tehrani filed Exceptions to the Initial Decision on November 22, 2021, and included certain purported evidentiary attachments.¹ PGW did not file Replies to Exceptions. This Opinion and Order addresses the Complainant's Exceptions.

II. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied

¹ The Complainant states in his Exceptions: "[t]he Initial Decision denying the Complaint of Reuben Tehrani is based on the lack of Schedule C tax forms being placed into the record. Attached are the Schedule Cs for 2016-2019. Kindly address the merits of this dispute." Exceptions at 1. Our review of the attachments reveals a single Schedule C tax form for the Complainant's wife's business, but no such Schedule C tax forms for the Complainant's rug business.

without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

Section 332(a) of the Public Utility Code (Code) provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

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. PUC*, 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Upon the presentation by a 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 utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

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. PUC*, 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. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

B. ALJ's Initial Decision

The ALJ made eighteen (18) Findings of Fact (Findings) and reached ten (10) Conclusions of Law. I.D. at 3-4, 9-10, ultimately concluding that the Complainant had failed to carry his burden of proving that PGW had violated the Code, a Commission Order or Regulation. Finding the evidence of record lacking with regard to Mr. Tehrani's asserted eligibility for PGW's CRP and with regard to his large payment delinquency resulting in his service being terminated, the ALJ dismissed the Complaint. I.D. at 6-8. The ALJ also addressed and rejected PGW's claim that the Complaint was barred by the three-year statute of limitations set forth in Section 3314 of the Code. I.D. at 6.

The focus of the Initial Decision was on the Complainant's allegation of PGW's purported improper denial of the Complainant's CRP Applications.² PGW's CRP is PGW's customer assistance program, the parameters of which are set forth in its tariff. I.D. at 8.

The ALJ stressed that the Complainant did not present all the evidence necessary for the Company to determine his household income for CRP qualifications.

² The record establishes that the Complainant twice applied for PGW's CRP and, in both instances, he failed to supply the requested Schedule C tax form for his shared rug business with his family members. I.D. at 8, Tr. at 39-40, PGW Exh. 5 and Tr. at 44-45, PGW Exh. 4 and Findings of Fact Nos. 6, 10 and 11. The Schedule C tax form is utilized by PGW to determine income eligibility for the CRP.

This was so 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. I.D. at 8.

The ALJ explained that 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. *Id.* In addition, the Complainant failed to provide all of the income information that the Company requested in order to determine his household's eligibility. Moreover, there is nothing to indicate that PGW's actions in this matter are unreasonable or otherwise violate the Code, a Commission Order, Regulation, or its Commission-approved tariff. *Id.*

The ALJ reasoned:

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.

Id. The ALJ therefore concluded that the Complainant failed to meet his burden and dismissed the Complaint.

C. Exceptions

Mr. Tehrani's Exceptions consist of a single page. He simply states that the Initial Decision denying his Complaint is based on the lack of Schedule C tax forms being placed in the record. He then asserts that the relevant materials are attached to the Exceptions and requests relief in the form of a decision of the merits of the dispute. Exc. at 1. As noted *supra*, the attachments to the Exceptions do not contain the relevant Schedule C tax forms. PGW did not file Replies to the Complainant's Exceptions.

D. Disposition

We begin by noting that PGW asserted before the ALJ that the Complaint is barred by the statute of limitations because the Complainant's CRP application was denied in 2017 and more than three years passed before the March 2021 Complaint was filed with the Commission. Specifically, PGW noted 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 contended 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. The ALJ concluded that a continuing and ongoing discourse between the Complainant and PGW tolled the three-year statute of limitations in Section 3314 and the Complaint was thus not time-barred.

We conclude that the applicable statute of limitations is that set forth in Section 1312 of the Code, 66 Pa. C.S. §1312, which is four years from the events giving rise to the Complaint. As noted in previous orders of the Commission, on its face, this statutory provision pertains to refunds of rates by a utility to a customer. However, it has been our established practice, as a matter within our discretion, to apply the four-year statute of limitations under section 1312 to adjudications of disputes about the amounts owed to utilities by their customers.³ Thus, the ALJ's conclusion that the Complaint is not time-barred is upheld, albeit for different reasons.

Turning to the merits of Mr. Tehrani's Exceptions and his Complaint, our detailed review of the record reveals that the ALJ's Findings of Fact are well-founded and we therefore adopt them in their entirety. Tr. at 36-46; PGW Exhs. 1-8. Likewise, the ALJ's Conclusions of Law, except those regarding the applicable statute of limitations, are also adopted. As discussed in the body of this Opinion and Order, the appropriate statute of limitations within our discretion to employ is that deriving from Section 1312 of the Code, 66 Pa. C.S. § 1312, which is four years from the date of the events giving rise to the Complaint.⁴ Thus, Conclusions of Law Nos. 2 and 3 are modified to reflect the four-year statute of limitations and that the Respondent failed to establish that the Complaint is time-barred.

Additional facts developed on the record are pertinent to our decision today. The Complainant had applied for CRP in 2017 and was denied by the Company because he did not meet income qualifications. Finding of Fact No. 6, I.D. at 3, Tr. at 39-40, PGW Exh. 5. The ALJ noted that the communications from the Company

³ See *Core Communications, Inc v. Verizon, PA, Inc.*, Docket No. C-2011-2253750 (Order entered December 23, 2016) at 112-119; See also, *Core Communications, Inc. v. Verizon PA, Inc.* (Order on Reconsideration entered April 20, 2017).

⁴ See *Core Communications, Inc. v. Verizon Pennsylvania, Inc.*

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. 4; Tr. at 27, I.D. at 3, Finding of Fact No. 8. The ALJ made a Finding of Fact based on the evidence of record that the Complainant did not provide any tax information on his business to the Company. I.D. at 4, Finding of Fact No. 9, Tr. 40-41. In addition, the ALJ found that Mr. Tehrani again applied for the CRP in November, 2019 and that application was likewise denied by PGW. I.D. at 4, Finding of Fact No. 10, PGW Exh. 4.⁵ The Complainant never supplied the requested Schedule C information for his income related to the rug business. I.D. at 4, Finding of Fact No. 9, Tr. at 40-41. 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. 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. 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. 4. The Complainant submitted another CRP application on November 19, 2019. PGW Exh. 4.

The ALJ noted that the Complainant acknowledged that he owns a rug company with his two brothers. I.D. at 7-8 (citing Tr. at 27). Furthermore, the Complainant receives Social Security benefits in the amount of \$1,253.60 per month.

⁵ The Complainant does not raise any issue in his Exceptions about the termination of his gas service in 2018 for non-payment. The ALJ made well-founded Findings of Fact regarding the 10-day Notice of Termination on his account in March 2018, the Complainant's household income, and the outstanding balance of \$8,425.72. I.D. at 4, Findings of Fact Nos. 12-18. We take additional note of the record evidence of Mr. Tehrani's prior account balance with PGW in the amount of \$10,908.93, which was written off for non-payment by PGW. Tr. at 36. This kind of large payment delinquency was precisely the focus of the General Assembly's enactment of Sections 1401-1402 of the Code, 66 Pa. C.S. §§ 1401 and 1402, which set forth a policy of protecting responsible ratepayers from increasing amounts of unpaid utility customer bills.

Complainant Late Filed Exhibit-Medical Assistance Compass Form; PGW Exh. 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. 5. The Complainant's son receives Social Security benefits in the amount of \$481.00 per month. PGW Exh. 5. The Complainant did not provide any tax information regarding his rug business to PGW. Tr. at 40-41. 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.⁶

In considering the Complainant's Exceptions, we emphasize that we are constrained to consider only evidence of record. We find it important to state that, the Complainant had a full and fair opportunity to present evidence in support of his claims and he in fact submitted Late-Filed Exhibits that the ALJ entered into the record. Notably, those Late-Filed Exhibits did not contain the evidence, Schedule C tax forms or otherwise, that the Complainant claimed at hearing would prove his income eligibility for CRP. If the Commission was inclined to treat the Complainant's Exceptions as a Motion to Reopen the Record⁷ and include the new materials attached to his Exceptions in the record, the Complainant's evidence would still be insufficient to carry his burden of proof. Despite his claims to the contrary, Mr. Tehrani continues to avoid supplying the Schedule C tax forms for the rug business he operated with his family members, as they are not a part of the Complainant's attachments to his Exceptions. As such, an adverse inference could be drawn to his distinct disfavor. We,

⁶ The ALJ adeptly pointed out that 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. I.D. at 8, n. 1.

⁷ Mr. Tehrani has not requested that the Commission reopen the record pursuant to 52 Pa. Code §5.571. The standard set forth in that regulation is nevertheless not met here, as there are no allegations of new relevant facts or changes in the law that would weigh in favor of granting such a reopening.

however, limit our ruling to the record developed in this matter and it is lacking on the part of the Complainant. On this basis we find no error on the part of PGW and we adopt the ALJ's cogent reasoning in her Initial Decision detailing the Complainant's failed burden of proof.

The Complainant has repeatedly made claims that are not supported by even a scintilla of evidence. He continues to make such claims through and including the submission of extra-record materials attached to his very brief and meritless Exceptions. In contrast, PGW presented detailed and credible evidence that the Complainant basically refused to supply necessary income information relevant to the CRP application process. We find that PGW's actions were not unreasonable under the circumstances. Section 1501 of the Code, 66 Pa. C.S. § 1501, governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. § 1501, the Commission has jurisdiction over the reasonableness and adequacy of public utility service.⁸ *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 Code nor the Commission's Regulations require public utilities to provide constantly flawless service. The 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. C00015494 (Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa. P.U.C. 662 (1993).

⁸ A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501.

We find no Section 1501 service violation by PGW in its administration of its CRP. We adopt the ALJ's reasoning on the burden of proof issue in its entirety and dismiss the Complaint.

Conclusion

Based upon our review of the record and the applicable law, we shall deny the Exceptions of Mr. Tehrani, and therefore, adopt the ALJ's Initial Decision, as modified and consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Mr. Reuben Tehrani, filed on November 22, 2021, to the Initial Decision of Administrative Law Judge Marta Guhl, issued on November 4, 2021, at this docket, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Marta Guhl, issued on November 4, 2021, at this docket, is adopted, as modified and consistent with this Opinion and Order.
3. That the Formal Complaint of Mr. Reuben Tehrani, filed on March 18, 2021, at this docket, is denied, consistent with this Opinion and Order.

4. That the proceeding at Docket Number C-2021-3025071 shall be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022