

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon	:	
	:	
v.	:	C-2022-3032428
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision holds that Philadelphia Gas Works violated the Public Utility Code when, while the Complainant’s dispute was pending, the company issued shut off notices and terminated the Complainant’s service. A fine of \$300 is imposed.

All other claims against Philadelphia Gas Works are denied and dismissed.

HISTORY OF THE PROCEEDING

On May 6, 2022, Ms. Jaycinah Simon filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Company). On the Formal Complaint form, Ms. Simon checked the boxes indicating that PGW was threatening to shut off her service or had already shut it off and that there are incorrect charges on her bill. Under “Other,” Ms. Simon wrote that she attempted to initiate a billing error dispute resolution pursuant to “15 U.S.C. 1666, C.F.R. 1026.13” and that she received no response or remedy from PGW. She also wrote that while she was attempting to

resolve the matter, PGW terminated her service and that she received another ten-day termination notice dated May 11, 2022. She also asserted in the Complaint that she received a notice from PGW stating that she had an amount due of \$7,632.79 with no explanation of charges and that there is no debt due to PGW and that there is a positive balance, referencing “15 U.S.C. 1692(g).” Ms. Simon disputed the validity of the debt and asked that PGW provide validation and verification of the debt in writing. Ms. Simon also sought damages for what she asserts are violations of her rights.

On June 3, 2022, PGW filed an Answer and New Matter with an attached Notice to Plead that advised the Complainant that she had 20 days to file a Reply. In the Answer, PGW admitted that the company issued a shut off notice to the Complainant. PGW denied that there were incorrect charges and that there was a positive balance or credit on the Complainant’s PGW account. PGW also denied that it is a debt collector under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, 1692a–1692p. and also denied that the company had violated the Fair Credit Billing Act, 15 U.S.C. §§ 1601–1616. or the Truth in Lending Act, 12 C.F.R. § 1026, stating that PGW does not extend credit to customers for the purchase of natural gas. 12 C.F.R. §§ 1026, 1026.1–1026.4.

PGW also stated in the Answer that the Complainant has not made good faith efforts to make payments on her account since establishing service on or about May 2, 2019. PGW also averred that PGW entered an internal billing dispute on Complainant’s behalf when she contacted the company on April 12, 2022 and that due to a system error, PGW terminated the Complainant’s gas service on April 18, 2022. PGW further averred that the Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services at Docket Number 3831657 on April 19, 2022 and that Ms. Simon’s gas service was restored on April 20, 2022. PGW also stated in its Answer that on May 12, 2022, PGW issued the Complainant a letter stating that her bills were correct as issued.

In the New Matter, PGW asserted that the Commission lacks jurisdiction over the Complaint insofar as the issues raised therein arise out of alleged federal violations asserted in the Complaint and that the Commission also lacks jurisdiction to award money damages.

On July 5, 2022, a Motion Judge assignment was issued which assigned the Preliminary Objections to me for a decision.

On July 29, 2022, an Order was issued that dismissed the federal claims and claim for money damages for lack of jurisdiction.

A hearing on the remaining issues - accuracy of the account balance, appropriateness of notices under Commission regulations and the request for account records - was held on September 14, 2022. Ms. Simon represented herself and presented no witnesses. PGW was represented by Graciela Christlieb, Esquire, who presented Jessica Glace, PGW Senior Customer Review Officer, as a witness.

The following exhibits were admitted:

Complainant Exhibit 1- Breakdown of Charges
Complainant Exhibit 2- Bill dates 3/9/2022
Complainant Exhibit 3- Billing letter dated 3/9/2022
Complainant Exhibit 4- How Gas Is Measured Flyer
Complainant Exhibit 5- Shut Off Notice

PGW Exhibit 1- Customer Contract
PGW Exhibit 2- Negotiated Payment Arrangements
PGW Exhibit 3- PGW Response to Dispute
PGW Exhibit 4- Shut Off Notice
PGW Exhibit 5- Screen Shoot of PUC Hold
PGW Exhibit 6B- Statement of Account

The record closed on October 21, 2022 upon receipt of the 73-page transcript.

FINDINGS OF FACT

1. The Complainant is Jaycinah Simon, a PGW customer on West Master Street in Philadelphia, Pennsylvania.

2. The Respondent is Philadelphia Gas Works.

3. On April 11, 2022, Ms. Simon contacted PGW after receiving a bill showing a past due amount of \$7,115.72 to dispute the charges and to obtain an address where she could send a written dispute. Tr. 15,17; PGW Exhibit 2.

4. When Ms. Simon called PGW on April 11, 2022 to dispute the charges, she was told that she would receive a call back. Tr. 15-16.

5. On April 12, 2022, PGW noted in the Complainant's PGW account record that there was a dispute regarding her bill. Tr. 34-35; PGW Exhibit at 2.

6. On April 18, 2022, PGW terminated the Complainant's service. Tr. 16; PGW Exhibit 1 at 3.

7. On April 19, 2022, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services, BCS # 3831657. Tr. 19-20; PGW Exhibit 1 at 4, 5.

8. On April 20, 2022, the Complainant received a call from PGW telling her that her gas service was terminated in error. Tr. 18; PGW Exhibit 1 at 6.

9. PGW records state that the Complainant's gas service was shut off in error. PGW Exhibit 1 at 6.

10. Ms. Simon's PGW service was restored on April 20, 2022. Tr. 17; PGW Exhibit 1 at 8.

11. Ms. Simon had PGW service at the time of the hearing.

12. PGW is required to post a termination notice prior to terminating service to a customer. Tr. 32; Complainant Exhibit 5.

13. Ms. Simon filed a Formal Complaint with the Commission on May 6, 2022.

14. A letter dated May 12, 2022 from PGW to the Complainant acknowledged that the Complainant was disputing the charges on her account and explained the charges and the Complainant's balance. PGW Exhibit 3.

15. The Past Due amount on the bills issued by PGW to the Complainant is an accumulation of billed amounts not paid in full. PGW Exhibit 6B; Tr. 31-32.

DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Pennsylvania Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a preponderance of the evidence 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. 66 Pa.C.S. § 701.

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., 602 A.2d 863 (Pa. 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. Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980). A trace of evidence or a suspicion of the existence of a fact is insufficient. Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with 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 his 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*, 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).

The Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. Betchy v. West Penn Power Co., Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n, 654 A.2d 72 (Pa. Cmwlth. 1995)). “Service” is defined in the Code as follows:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]

66 Pa.C.S. § 102.

When a customer files a termination dispute or complaint, a company is prohibited from terminating the customer's service. 52 Pa. Code § 56.141(2). Additionally, a public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved. 52 Pa. Code § 56.92.

Ms. Simon contends that she received inaccurate billing from PGW, particularly the past due amount of \$7,115.72. Tr. 12, 14; Complainant Exhibits 1, 2. Ms. Simon is also seeking an explanation and accurate accounting of the charges PGW records indicate are past due. Tr. 18. She also questions the appropriateness of the April 18, 2022 termination of her service and shut off notices issued to her, especially a shut off notice that was pinned to her door stating that she did not pay her past due bill. Tr. 19-20.

Accuracy of Billing

The Complainant's assertion that her bill is inaccurate is not supported by the record. The testimony of Jessica Glace, PGW Senior Customer Review Officer, was that the bills as issued to the Complainant were accurate. Tr. 31, 33. Additionally, the Account Statement, PGW Exhibit 6B,¹ is an accounting of the Complainant's charges that the Complainant did not challenge. The Complainant did not dispute any particular charge to her account. There is no basis upon which to find for the Complainant regarding the accuracy of the bills issued by PGW to the Complainant.

Explanation of Billing

Regarding the Complainant's assertion that PGW did not provide her with an explanation of the outstanding amount due on her account, a May 12, 2022 letter from PGW to the Complainant explains the charges. The letter noted that the Complainant was enrolled in the PGW Customer Responsibility Program (CRP) on April 26, 2021:

¹ During the hearing, PGW submitted an update of the Complainant's balance and account record, which is identified herein as PGW Exhibit 6B. This document was admitted instead of PGW Exhibit 6. Tr. 7-8.

with a balance of \$4,962.52. CRP is an income based program and the monthly bills during enrollment in this program are based on a percentage of the monthly gross house hold income and not the actual usage recording on the meter. Your current balance was frozen in anticipation of a monthly forgiveness of \$137.84 being applied to reduce the balance each month with your on-time payment. While you were a participant on the CRP, the balance due was not reduced to zero but was held and you were billed based on the income provided. Once you were removed from the program, you were sent a bill which requested the full account balance of \$5,259.66. Since the bills generated after October 13, 2021, your monthly bills have been based upon usage recorded on the meter

PGW Exhibit 3. Also, prior to the hearing, the Complainant was provided with an Account Statement showing the charges from May 19, 2019 to that date.

PGW did not provide this information explaining the charges until after the Complainant had contacted the Commission and filed a Formal Complaint. Nevertheless, Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that the Respondent provide reasonable and adequate service, not perfect service. Elkin v. Bell Tel. Co., 372 A.2d 1203 (Pa. Super. 1977). Failing to immediately provide an accounting does not rise to the level of a violation.

Termination Notices and Service Termination

However, PGW did not provide adequate, efficient, safe, and reasonable service and also violated 52 Pa. Code § 56.92 when it sent the Complainant shut off notices and posted a shut off notice on her door in April of 2022. PGW records show that PGW was well aware that the Complainant was disputing the charges as the dispute was noted in PGW records and in the May 12, 2022 letter sent to the Complainant explaining the charges. Issuing a termination notice to the Complainant when her pending dispute was well documented in PGW records, particularly posting a shut off notice on her door, was not reasonable service and violated the Code.

Additionally, terminating the Complainant's service while a dispute was pending violated 52 Pa. Code § 56.141(2). Further, PGW admits in its records that the Complainant's gas was shut off in error. There is a violation here.

Penalty

Penalties may be imposed where violations of the Code and Commission Regulations or a Commission Order are found. See 52 Pa. Code § 69.1201; see also Rosi v. Bell-Atlantic Pa., Inc., Docket No. C-00992409 (Order entered Mar. 16, 2000). Here, two acts by PGW violated the Public Utility Code and its regulations. One, by sending the Complainant a shut off notice and posting such on her door after a dispute was pending violated 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.92. Two, by shutting off the Complainant's service while her dispute of the PGW charges was pending, PGW violated 52 Pa. Code § 56.141(2).

The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, 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." *Id.* The violations here were not willful fraud or misrepresentations and therefore a lower penalty is warranted.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). A violation here resulted in the Complainant's gas service being shut off for two days. This supports a higher penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). The violations here are not intentional for purposes of this section. They appear to be the result of miscommunication. Nevertheless, PGW was well aware that the Complainant had filed a dispute and yet her PGW service was terminated while the dispute was pending. The Company also posted a shut off notice on her home while a dispute was pending. This supports a higher penalty.

The fourth factor to be considered is whether PGW made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). PGW admitted its error here and there is no evidence that this is a systemic problem at PGW. This supports a lower penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, one customer was without gas service for two days. This suggests that a higher penalty is not warranted.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that "[a]n isolated incident from an otherwise compliant company may result in a lower penalty." *Id.* PGW generally has a favorable Compliance history, which warrants a lower penalty.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). This factor is not applicable here.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Again, there is no record that termination of service while a dispute is pending is a systemic problem at PGW and therefore this factor suggests a lower penalty.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). No similar situations were found.

Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201 (c)(10). There are no other relevant factors to consider.

A penalty of \$100 for the shut off notices and \$100 per day for the two days that the Complainant's gas service was shut off are appropriate here. PGW will be ordered to pay a total penalty of \$300.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant 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. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A “trace of evidence or a suspicion of the existence of a fact” is insufficient. HIKO Energy, LLC v. Pa. Pub. Util. Comm'n, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017) (quoting Lyft, Inc. v. Pa. Pub. Util. Comm'n, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016)), *aff'd*, 209 A.3d 246 (Pa. 2019).

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and such service and facilities shall be in conformity with the regulations and orders of the commission. 66 Pa.C.S. § 1501.

5. The Complainant did not establish by a preponderance of the evidence that PGW billing was inaccurate or that PGW violated the Public Utility Code, a Commission Order or the regulations by not immediately providing the Complainant with an explanation of the bills that the Company issued to the Complainant. 66 Pa.C.S. § 332(a).

6. The Complainant has established by a preponderance of the evidence that PGW violated 52 Pa. Code § 56.141(2) when it shut off her gas service while a dispute was pending.

7. The Complainant has established by a preponderance of the evidence that PGW violated 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.92 when it issued shut off notices and posted a shut off notice on her door while a dispute was pending.

8. A fine is warranted because the Company violated 52 Pa. Code § 56.141(2), 66 Pa.C.S. § 1501 and 52 Pa. Code § 56.92. 52 Pa. Code § 69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jaycinah Simon v. Philadelphia Gas Works, Docket No. C-2022-3032428 is granted in part and denied in part.

2. That the claim that PGW violated the Public Utility Code by issuing shut off notices to the Complaint while a dispute was pending is granted.

