

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shari A. Palmer	:	
	:	C-2023-3039473
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint filed by Shari A. Palmer against Philadelphia Gas Works because she failed to meet her burden of demonstrating that Philadelphia Gas Works inappropriately terminated her gas service or provided her with inadequate or unreasonable service.

HISTORY OF THE PROCEEDING

On April 3, 2023, Shari Palmer (Complainant) eFiled a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes marked “[t]he utility is threatening to shut off my service or has already shut off my service” and “[o]ther,” next to which the Complainant wrote in the following:

¹ The Complainant utilized the Commission’s eFile service to electronically file her Formal Complaint. When Complainant registered for an eFile account with the Commission, she also registered her email address in order to be served Commission documents via the Commission’s eService process.

I (Shari Palmer) had a court date back in 2020 to finally resolve this issue. I mixed the dates up for this proceeding with the date of my family court hearing and my appointed Judge was away on vacation and I was instructed to try and get it reconvened after the courts reopened to no avail.

Under the “requested relief” section of the Complaint, the Complainant supplied the following statement:

I want the utility to prove the origination of my account and the point of billing where I was first made delinquent to the tune of the thousands of dollars they forced me to try and pay off up until I could no longer pay to date. Since I was forced to assume the incorrect bill once I purchased my home in April of 2018 I would like to be made whole and from here on out pay what I actually owe from my actual usage. On the recorded line in 2015 I initially disputed the billing being incorrect and the associate on the phone stated to me that she could rebill me with the adjusted numbers which they did and I then explained to her that information was also incorrect. I asked why the services weren't turned off prior to the bill be [sic] astronomical and was told by the associate on the line that due to the fact that it's a duplex in the city of Philadelphia they weren't allowed to cut the services. Through my first process I was at the understanding that the Judge agreed that the bill was incorrect and that the gas company was out of their jurisdiction but due to my failure to appear because I mixed my court dates up it wasn't conclusive in my favor. This was the reason the gentleman at the courthouse said to just try and get a reconvene [sic] date once the courts open back up. I haven't been able to reach the proper channels yet. Every office tells me something different. I was also denied LIHEAP. I did the informal complaint back in November sometime and just received an email letting me know that it was received. April 3rd [sic] 2023 my service is scheduled to be shutoff I depleted my savings doing my best to keep up while I worked on resolving my issue. I don't know what else to do and I need my services.

The Complainant attached to her Complaint several documents, including PGW notices, receipts, and documentation related to a prior Formal Complaint at Docket No. F-2019-3013070.

On April 24, 2023, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent admitted that it terminated the gas service at 4526 N. 12th Street, Philadelphia (service address) on April 3, 2023, after proper notification, due to non-payment. The Respondent further answered: that the Complainant established gas service at the service address as of August 5, 2018; that the service is listed as residential heat and domestic appliances; that the property is equipped with an AMR device; and that the billing is based on actual meter readings.

As New Matter, the Respondent averred: that on February 25, 2015, the Complainant contacted PGW to terminate her gas service at 3047 Frankford Avenue, 1F; that on March 4, 2015, PGW issued a final bill to the Complainant for the gas service at 3047 Frankford Avenue, 1F; that on August 2, 2018, the Complainant contacted PGW to establish gas service at the service address as of August 5, 2018; that PGW advised the Complainant that her balance was still outstanding and would appear on the bill for gas service at the service address; that on October 10, 2018, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) wherein she disputed the billing from her prior address as well as the transfer of the balance; that on July 11, 2019, BCS rendered its decision dismissing the informal complaint stating that the billing was correct and the transfer was proper; that on September 13, 2019, the Complainant filed a Formal Complaint at Docket No. F-2019-3013070 disputing her balance and alleging incorrect billing; that on March 2, 2020, the Complainant failed to appear for the evidentiary hearing in the matter at Docket No. F-2019-3013070; that PGW moved to dismiss the Complainant's Formal Complaint; that an Initial Decision at Docket No. F-2019-3013070 was issued on June 25, 2020 granting PGW's Motion to Dismiss the Complaint; that the Final Opinion and Order at Docket No. F-2019-3013070 was issued on August 17, 2020 adopting the Initial Decision granting PGW's Motion to Dismiss the Complaint; that the instant Complaint again raises issues relating to the billing dispute from 2015; 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; 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; and that the Complainant has lost her right to pursue litigation

before the Commission regarding the billing at her Frankford Avenue address as any cause of action falls outside of the statute of limitations. PGW endorsed its Answer and New Matter with a Notice to Plead advising that a response was due within 20 days of service of the Answer and New Matter. The Complainant's response to PGW's New Matter was due on or before May 15, 2023.² The Complainant did not file a reply to PGW's New Matter.

Also on April 24, 2023, PGW filed its Preliminary Objection. In its Preliminary Objection, PGW reiterated its position that any allegations and claims that are beyond the statute of limitations are barred and are outside of the Commission's jurisdiction. PGW endorsed its Preliminary Objection with a Notice to Plead. The Complainant's response to PGW's Preliminary Objection was due on or before May 4, 2023.³ The Complainant did not file a reply to PGW's Preliminary Objection.

By Hearing Notice dated June 7, 2023, an Initial Call-In Telephonic Hearing was scheduled for August 15, 2023, at 10:00 a.m. and the matter, including PGW's outstanding Preliminary Objection, was assigned to me.

I issued a Prehearing Order on June 13, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

By Order dated July 7, 2023, I granted PGW's Preliminary Objection in part and denied it in part. The Order advised that any billing issues the Complainant seeks to address that occurred in 2015 or 2018, which are beyond the three-year statute of limitations set out at 66 Pa.C.S. § 3314 and which, according to the Complainant, were already the subject of a prior Formal Complaint she filed against PGW, are dismissed. The Order further advised that the

² 55 Pa. Code § 5.63(a)

³ 55 Pa. Code § 5.101(f).

hearing set for August 15, 2023 would proceed as scheduled to address any billing claims that arose at the service address on or after April 3, 2020, as well as the service termination issue raised in the Complaint.

The hearing convened as scheduled on August 14, 2023. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Patricia Bernard, a PGW Customer Review Officer. The Respondent submitted five exhibits, all of which were admitted into the record (PGW Exhs. 1 – 5).

The record closed on October 31, 2023, the date the transcript was filed with the Commission.⁴

FINDINGS OF FACT

1. The Complainant in this case is Shari A. Palmer.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 4526 North 12th Street, Philadelphia, PA 19140 (service address). Tr. 11.
4. On March 13, 2013, PGW issued the Complainant a ten-day shut off notice. Tr. 15, 22; PGW Exh. 1.
5. The ten-day shutoff notice advised the Complainant that service could be shut off on April 3, 2023. Tr. 22; PGW Exh. 1.

⁴ The court reporting company originally filed a transcript of the evidentiary hearing on September 13, 2023. However, this transcript contained several errors. The court reporting company filed a corrected copy of the transcript on October 31, 2023.

6. The ten-day shutoff notice also informed the Complainant of how she could avoid termination of service, including:

- Pay your past due amount of \$7,750.55;
- Pay the amount you owe on your most recent payment plan;
- Make a payment arrangement (you may be eligible for a special assistance program); or
- Contact us to dispute the bill.

Tr. 22; PGW Exh. 1.

7. On March 17, 2023, PGW issued a recorded collection call to the Complainant regarding the pending termination. Tr. 23-24; PGW Exh. 2.

8. The recorded collection call provided the same information that was contained in the ten-day shutoff notice. Tr. 23-24.

9. On April 3, 2023, PGW terminated the Complainant's gas service. Tr. 14, 27.

10. The Complainant's gas service was still off as of the date of the hearing. Tr. 17.

11. PGW continued to issue bills to the Complainant after termination due to a system error in which her termination did not register in PGW's system. Tr. 28.

12. Upon discovery of this system error, PGW cancelled the bills and associated late-payment charges that were issued following termination of service. Tr. 28-29; PGW Exh. 3.

13. As of the date of the hearing, the Complainant had not made a payment on her PGW gas account since August 12, 2022. Tr. 25; PGW Exh. 3.

14. The Complainant's outstanding balance as of the time of the evidentiary hearing totaled \$8,250.65. Tr. 24-25; PGW Exh. 3.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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, the Complainant has not satisfied her burden of proof. The Complainant would 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).

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 Complainant challenged PGW's decision to terminate her service. Additionally, the Complainant claimed that PGW continued to bill her for service after it terminated her gas service. The Complainant has raised claims of improper termination of service as well as inadequate and unreasonable service.

Regarding authorized termination of service, Commission regulations provide in pertinent part that “[a] public utility may notify a customer and terminate service provided to a customer after notice as provided in § 56.91–56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . [n]on-payment of an undisputed delinquent account.” 52 Pa. Code § 56.81(1).

Regarding general notice procedures, Commission regulations provide in pertinent part that:

Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

52 Pa. Code § 56.91(a).

Regarding personal contact prior to termination, Commission regulations provide that:

Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance of service; and immediate termination for unauthorized use,

fraud, tampering or tariff violations), a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer's consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. If personal contact by one method is not possible, the public utility is obligated to attempt another method.

52 Pa. Code § 56.93(a).

Additionally, PGW is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code provides, in relevant part:

§1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

Interpreting this provision in *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

West Penn Power, 478 A.2d at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.⁵ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

In the present case, the record demonstrates that PGW terminated the Complainant’s gas service on April 3, 2023 due to non-payment. The record reflects that as of the date of the hearing, the Complainant had not made a payment on her PGW gas account since August 12, 2022. Tr. 25; PGW Exh. 3. PGW issued the Complainant a termination notice 21-days prior to the date of termination. The termination notice outlined the reason for the termination as well as provided steps Complainant could follow to avoid termination. Moreover, PGW called the Complainant on March 17, 2023, more than three days prior to her April 3, 2023 service termination, to again notify her of the pending termination. PGW’s notice and telephone call to the Complainant satisfied the notice requirements provided for in 52 Pa. Code § 56.91 as well as the personal contact requirements set out in 52 Pa. Code § 56.93. Based on the Complainant’s non-payment as well as the steps PGW followed to provide the Complainant notice of termination, I cannot conclude that PGW improperly terminated the Complainant’s gas service.

The record further demonstrates that, as the Complainant alleged, PGW continued to issue bills to her after termination due to a system error in which her termination did not register in PGW’s system. Tr. 28. However, the record also demonstrates that upon discovery of this system error, PGW cancelled the bills and associated late-payment charges that were issued following termination of service. Tr. 28-29; PGW Exh. 3. While PGW should

⁵ “‘**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 . . . 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 (emphasis original).

not have billed the Complainant following termination of her service, PGW ultimately corrected its mistake. Moreover, it is clear from the Complainant's account history that she did not pay anything towards the cancelled bills. Under these circumstances, I cannot conclude that PGW provided the Complainant with inadequate or unreasonable service. Accordingly, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91–56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . [n]on-payment of an undisputed delinquent account.” 52 Pa. Code § 56.81(1).

5. Prior to terminating service for grounds authorized by § 56.81, a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days. 52 Pa. Code § 56.91(a).

6. A public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by

telephone or electronically with the customer's consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. 52 Pa. Code § 56.93(a).

7. The Complainant failed to meet her burden of demonstrating that PGW improperly terminated her gas service. 66 Pa.C.S. § 332(a).

8. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

9. The Complainant failed to meet her burden of demonstrating that PGW provided her with inadequate and unreasonable service. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Shari Palmer at Shari Palmer v. Philadelphia Gas Works at Docket No. C-2023-3039473 is denied;

2. That the docket at Docket No. C-2023-3039473 be marked closed.

Date: January 29, 2023

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge