

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerome C. Smith

v.

Philadelphia Gas Works

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C-2023-3042291

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that the evidence did not establish that PGW committed violations with respect to shut-off notices and bills issued to the Complainant. This decision also awards a three-year, Level 2 payment arrangement to the Complainant.

HISTORY OF THE PROCEEDING

On August 16, 2023, Mr. Jerome C. Smith (Mr. Smith or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW). Mr. Smith checked on the Complaint form that the utility was threatening to, or had shut off, his service and that he would like a payment arrangement. He added in writing that he had not received a bill in two years, that he did not believe that he owed

PGW \$4,000, and he also questioned PGW allowing the bill to reach such a high amount before acting.¹

On September 7, 2023, PGW filed an Answer. In the Answer, PGW admitted that the company issued a shut off notice to the Complainant. PGW also stated in the Answer that PGW bills have been consistently generated for the gas service provided to Mr. Smith.

On September 13, 2023, an Initial Call-In Telephone Hearing Notice was issued, setting the hearing for October 26, 2023. A Prehearing Order dated October 4, 2023 was also issued, which advised that the Complainant has the burden of proof.

The telephonic hearing convened as scheduled on October 26, 2023. Mr. Smith appeared *pro se*. Graciela Christlieb, Esquire appeared on behalf of PGW. David Kauffman, PGW Customer Review Officer, testified on behalf of PGW. Ten PGW Exhibits were admitted into the record during the hearing.

The record closed on November 28, 2023 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Mr. Jerome C. Smith.
2. The Respondent is Philadelphia Gas Works.
3. Since about 2018, Mr. Smith has been a PGW customer on Camac Street (service address) in Philadelphia, Pennsylvania. Tr. 7
4. The Complainant lives with his son.

¹ This is not a traditional high bill dispute. During the hearing, Mr. Smith stated that his meter was working properly and clarified that he was not disputing the charges but challenged receiving such a large bill when he had not received a PGW bill for over two years. Tr. 12-13.

5. The Complainant's son had no income at the time of the hearing. Tr. 14, 16.
6. The monthly income at the service address is \$4,000. Tr. 17.
7. The service address is a two-story, three-bedroom, one-bath home. Tr. 7.
8. The service address has a gas stove, gas water heater, and gas heat. Tr. 8.
9. The Complainant would like to pay for services rendered by PGW. Tr. 15.
10. When Mr. Smith first opened his PGW account, his mailing address was a post office box (P.O. Box). Tr. 17.
11. On an unknown date, Mr. Smith changed his mailing address to his home address, the service address, filing a change of address form with the post office. Tr. 10-12, 17-18.
12. The Complainant did not advise PGW of the change of address until 2023. Tr. 15, 22, 25.
13. On January 21, 2020, Mr. Smith contacted PGW to dispute a high bill that was sent to his P.O. Box. Tr. 22-23, PGW Exhibit 3.
14. A ten-day shut off notice dated May 17, 2023 was sent to Mr. Smith at the P.O. Box. Tr. 23-24.
15. On June 21, 2023, Mr. Smith filed an Informal Complaint with the Pennsylvania Public Utility Commission, Bureau of Consumer Services (BCS) disputing the termination notice and the bill. Tr. 24, PGW Exhibit 5.

16. On July 25, 2023, the Complainant contacted PGW to dispute the amount of his bill and during that call, Mr. Smith's billing address was updated. Tr. 24-28.

17. At the time of the hearing, the Complainant's PGW balance was \$3,784.01. Tr. 20, PGW Exhibit 1.

18. On May 23, 2023, at both 9:55 a.m. and 6:50 p.m., PGW made calls to Mr. Smith to advise him of a potential shut-off. Tr. 37.

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). The Complainant must establish his case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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 Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainants, the Complainants have not satisfied their burden of proof. The Complainants 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).

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*, 413 A.2d 1037 (Pa. 1980).

As a matter of law, to establish a legally sufficient claim, 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. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). 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.

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 Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

In his Complaint, Mr. Smith: 1) asserted that he did not receive a bill for about two years, 2) questioned whether he received sufficient notice of a shut off, and 3) stated that he would like a payment arrangement. Mr. Smith testified during the hearing that he would like to pay PGW for its services. Tr. 38.

Receiving Bills

The Complaint does not believe that he received bills from PGW for a period of at least two years. Complaint, Tr. 11. Under 52 Pa. Code § 56.15, a public utility shall render a bill once every billing period to every residential customer in accordance with approved rate schedules. The PGW tariff states that "PGW shall render a bill once every month to Residential Customers." PGW Gas Service Tariff, P.A. P.U.C. No. 2 Page No. 26.

Mr. Smith stated in his Complaint and during the hearing that he did not receive a bill for more than two years, suggesting that he fell behind on the PGW bills because he did not receive them. In support of his claim, Mr. Smith testified that when he became a customer of PGW, he provided a P.O. Box as his mailing address and that later he closed the P.O. Box and used the street address of the service address to receive mail. He further asserted that he filed a change of address form with the post office and that he began to receive his other mail, including

from various other utilities, at the service address, but not from PGW. Tr. 17. Although he was not certain of the exact date, Mr. Smith testified that he closed his P.O. Box in 2019. Tr. 11.²

In response, PGW presented testimony showing that Mr. Smith should have been aware of his PGW bills since they were sent to and received by him. The Complainant's PGW account statement shows that a bill was issued for every monthly billing period therein. PGW Exhibit 1.

Additionally, in 2019, PGW sent bills to Mr. Smith's P.O. Box. *See* PGW Exhibit 2. PGW continued to send bills to Mr. Smith's P.O. Box in 2020. Tr. 22. On January 21, 2020, Mr. Smith contacted PGW to dispute a high bill that he received. Tr. 23, PGW Exhibit 3. Also, Mr. Smith filed an Informal Complaint with BCS after receiving a shut off notice dated May 17, 2023 sent by PGW to his P.O. Box. Tr. 23-24. These facts support a finding that bills were sent to and received by Mr. Smith.³

Even if one could conclude that for a period Mr. Smith did not receive bills sent to the P.O. Box, the record and law do not establish a violation by PGW or that PGW is responsible or accountable for the problem. The PGW tariff states: "Customer is responsible for providing to the Company continuously updated mailing and electronic addresses." *See* Gas Tariff, Pa. P.U.C. No. 2, Original page No. 112. The Complainant did not update his mailing address by contacting PGW until he called PGW to dispute the 2023 shut off notice. Tr. 27-28. The record does not establish that the PGW tariff provision that requires a customer to provide the company with address updates is unreasonable.

² Section 3314 of the Code divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. 66 Pa.C.S. § 3314(a). This would preclude any claims of Mr. Smith that arose more than three years prior to his filing a Complaint, formal or informal. However, Mr. Smith does not recall exactly when he changed his mailing address and therefore the SOL will not be addressed herein.

³ A notation in PGW records suggests that Mr. Smith sincerely believed that a relative had signed up as customer of record for the PGW account for one period of time. PGW Exhibit 3. However, no PGW records show that occurred.

The Complainant cannot prevail on this issue because he did not meet his burden of proof.

Potential Shut off and Receipt of Shut-off Notice

The Complainant questions whether PGW sufficiently notified him of a possible shut-off of his service. Section 1406(a) of the Public Utility Code (Code) permits a utility company to terminate service under certain conditions. Section 1406, in relevant part, states:

(a) Authorized termination. -- A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

(1) Nonpayment of an undisputed delinquent account.

(2) Failure to comply with material terms of a payment arrangement.

66 Pa.C.S. § 1406(a).

Utilities are required to give notice prior to termination in accordance with 52 Pa. Code § 56.91, which provides:

(a) 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.

Commission regulations also provide as follows:

§ 56.93. Personal contact.

(a) 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.

(1) Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

(2) If contact is attempted in person by a home visit, only one attempt is required. The public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.

52 Pa. Code § 56.93.

The Complainant had an outstanding balance on May 17, 2023, the date of the ten-day shut off notice, and therefore PGW could lawfully shut off the Complainant's service under 66 Pa.C.S. § 1406(a). Tr. 23, PGW Exhibit 4. Additionally, PGW issued written notice to the Complainant and made personal contact with Mr. Smith regarding a possible shut off of service. Mr. Smith acknowledges that he received a shut off notice that was handed to him by a PGW employee. Tr. 33. Also, Mr. Smith received the shut off notice sent to his P.O. Box as he contacted BCS to dispute the amount owed, as discussed above. Furthermore, PGW records establish that on May 23, 2023, at both 9:55 a.m. and 6:50 p.m., the company made calls to Mr. Smith about the potential shut-off.

PGW complied with 66 Pa.C.S. § 1406(a) and 52 Pa. Code § 56.91 and 56.93 with respect to shut-off notices. The Complainant cannot prevail here.

Payment Arrangement

Mr. Smith wants to pay PGW but is seeking a reasonable payment arrangement. The law provides parameters within which the Commission may award a payment arrangement.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complainants alleging inability to pay and requesting a Commission-issued payment arrangement. The Act includes strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

(a) GENERAL RULE.-- The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers. The commission is authorized to establish payment arrangements between a public utility, customers, and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a). However, the terms of the payment arrangement the Commission may award are as follows:

(b) Length of payment arrangements. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(a).

The Complainant lives with his son in a two-person household. Tr. 7. The household income is \$4,000 per month. Tr. 15. The poverty guidelines provide that for a family of two, 100% of the poverty level is \$1,703 per month.⁴ The Complainant's household income is 235% of the Federal Poverty guidelines.

Mr. Smith will be awarded a Level 2 payment arrangement. *See* 66 Pa.C.S. § 1405(a)(2).

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 Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant can meet that burden of proof if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. 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.

⁴ *See* Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>.

5. A PGW customer is responsible for providing to the Company continuously updated mailing and electronic addresses. PGW Gas Tariff, Pa. P.U.C. No. 2, Original page No. 112.

6. Utilities are required to give notice to prior to termination. 52 Pa. Code §§ 56.91, 56.93.

7. The record does not contain substantial evidence to establish that PGW committed a violation with respect to sending bills or issuing shut off notices to the Complainant *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

8. The Responsible Utility Customer Protection Act provides restrictions and guidelines for awarding a Commission-issued payment arrangement. 66 Pa.C.S. §§ 1401-1419.

9. The Complainant may be awarded a Level 2 payment arrangement. 66 Pa.C.S. § 1405(a)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jerome C. Smith against Philadelphia Gas Works at Docket No. C-2023-3042291 is dismissed in part and granted in part.

2. That the Complainant is awarded a Commission-issued payment arrangement of three years on his outstanding balance.

