

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------|---|----------------|
| Michael O'Reilly | : | |
| | : | C-2024-3046433 |
| v. | : | |
| | : | |
| Philadelphia Gas Works | : | |

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses Michael O'Reilly's Formal Complaint as he was not able to meet his burden of proving that PGW failed to provide him with reasonable service or failed to provide him proper notification when it terminated his gas service on September 6, 2023. The Company is encouraged to: 1) explore the use of email, text message or other electronic messaging formats in its termination of service process; 2) reassess its privacy policy with regard to 3-day termination notices provided via telephone when the call is answered by an answering machine; 3) explore all ways it can inform the customer of the need to contact the Company when the call is answered by an answering machine; and 4) take the necessary steps to ensure that all its telephone numbers are appropriately identified by the telephone providers.

HISTORY OF THE PROCEEDING

On February 14, 2024, Michael O'Reilly (Mr. O'Reilly or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging that PGW shut off his gas service without properly notifying him. According to Mr. O'Reilly PGW has "at least 5 different ways to communicate with customers but chose to send a notice via the US Postal System, which was never delivered." Complaint ¶ 4. As relief, the Complainant requests that the Commission instruct PGW to send shut off notices to customers using multiple communication methods. Additionally, the Complainant requests a refund of the \$123.23 shut off charge because PGW did not notify him properly of the impending termination of service.

On March 5, 2024, PGW filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated March 11, 2024, a telephonic hearing was scheduled for April 25, 2024.

On April 10, 2024, I issued a Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on April 25, 2024. Michael O'Reilly appeared *pro se* and testified on his own behalf. Mr. O'Reilly sponsored one exhibit which was admitted into the record. Anita Murray, Esq. represented the Respondent, and presented the testimony of Patricia Bernard, who is a Customer Review Officer for PGW. The Respondent sponsored seven exhibits, which were admitted into the record.

During the hearing, Mr. O'Reilly amended the Complaint withdrawing his request for refund of the reconnection fee.¹

The record in this matter closed upon receipt of my copy of the hearing transcript on June 18, 2024.

FINDINGS OF FACT

1. Complainant is Michael O'Reilly who resides at 1553 East Montgomery Avenue, Philadelphia, PA 19135 (Service Address). Tr. 7.
2. Respondent is Philadelphia Gas Works.
3. Mr. O'Reilly has been a PGW customer for approximately 40 years and during this time has experienced low income. Tr. 8.
4. To maximize his low cash flow, Mr. O'Reilly allows his gas charges to "pile up" and then pays the accumulated balance once he gets a termination notice from PGW, with the help of LIHEAP grants or other means. Tr. 8, 13.
5. Mr. O'Reilly uses the U.S. Postal Service's free scanning service that tells him what mail is coming to his mailbox each day. Tr. 9-10; Complainant Exhibit 1.
6. Through the scanning service, the U.S. Postal Service informs Mr. O'Reilly if the mail for that day includes mail pieces for which the postal service does not have an image. Complainant Exhibit 1.

¹ Tr. 16.

7. Mr. O'Reilly does not answer his phone and lets all calls go to voicemail. Tr. 10; Complainant Exhibit 1.

8. Mr. O'Reilly uses Google Voice system which translates the voicemail to text and sends it to his email. Tr. 10; Complainant Exhibit 1.

9. If no voice messages are left, Google Voice will not send an email to Mr. O'Reilly's email. Tr. 12.

10. Different from a Caller ID, the Google Voice system does not create a record of all calls coming to a phone line. Tr. 12, 18-19.

11. From June 7, 2023, to November 2, 2023, Mr. O'Reilly received no telephone messages from PGW. Tr. 10-11, 12-13; Complainant Exhibit 1.

12. Mr. O'Reilly has an online account with PGW in which he reviews his bills and notifications from the Company. Tr. 13-14, 20-21; Complainant Exhibit 1.

13. Mr. O'Reilly received no notifications about his impending termination through PGW's portal. Tr. 13-14, 45; Complainant Exhibit 1.

14. Termination notices do not appear on a customer's electronic account. Tr. 45.

15. Mr. O'Reilly receives paper bills from PGW, but he can also view his bills through his online account with PGW. Tr. 16.

16. PGW's bills to customers contain no messages regarding any impending termination of service. Tr. 14.

17. PGW issued a 10-day termination notice dated July 13, 2023, which was effective on or before 8 a.m. on July 25, 2023, for the Service Address. Tr. 26; PGW Exhibit 1.

18. The 10-day shut termination notice was sent to Mr. O'Reilly through the U.S. Postal Service. Tr. 26.

19. On July 14, 2023, U.S. Postal Service informed Mr. O'Reilly that "Mail pieces that we do not have an image for are included in today's mail." Tr. 19-20, Complainant Exhibit 1.

20. Following the 10-day termination notice, PGW made two phone calls to Mr. O'Reilly. Tr. 28; PGW Exhibit 2.

21. The first call was made on July 18, 2023, at 9:51 a.m. and was picked up by an answering machine. Tr. 28; PGW Exhibit 2.

22. The second phone call to the Complainant was made on July 19, 2023, at 6:08 p.m. Tr. 29; PGW Exhibit 2.

23. For privacy reasons, it is PGW's policy not to leave a voice message when the phone call is answered by an answering machine. Tr. 28, 29, 38.

24. It is PGW's policy to leave a message only when the call is answered by a person. Tr. 28, 38.

25. When the call is answered by a person who is not the customer, the message asks for the customer to call back the Company. Tr. 28, 38.

26. Both telephone calls to Mr. O'Reilly were answered by an answering machine; PGW did not leave a message. Tr. 28-29; PGW Exhibit 2.

27. The two collection calls to Mr. O'Reilly came from the telephone number (215) 236-0500 which is identified as PGW by Caller ID. Tr. 44.

28. On September 6, 2023, gas service was shut off at the Service Address for nonpayment. Tr. 30; PGW Exhibit 3.

29. On September 6, 2023, PGW left a Post Termination Notice at the Service Address. Tr. 30; PGW Exhibit 3.

30. On September 8, 2023, Mr. O'Reilly contacted PGW and paid the outstanding balance. Tr. 30; PGW Exhibit 4.

31. On September 10, 2023, PGW reconnected gas service at the Service Address and charged him a reconnection fee. Tr. 30; PGW Exhibit 4.

32. Patricia Bernard is a Customer Review Officer for PGW.

33. On April 24, 2024, Mr. O'Reilly received a call from Ms. Bernard that came up as anonymous and out of the area code on his phone. Tr. 11; 35.

34. Mr. O'Reilly only picked up Ms. Bernard's call because he was expecting a phone call from PGW pursuant to the Prehearing Order. Tr. 11.

35. Ms. Bernard called Mr. O'Reilly from a Company cell phone.

Tr. 42.

36. Ms. Bernard's call was not identified as coming from a PGW-related number. Tr. 11, 35.

37. Mr. O'Reilly currently participates in PGW's Customer Responsibility Program. Tr. 33.

DISCUSSION

In his Formal Complaint, Mr. O'Reilly alleged that PGW shut off his gas service without properly notifying him. As relief, the Complainant requested that the Commission instruct PGW to send shut off notices to customers using multiple communication methods. Additionally, the Complainant requested a refund of the \$123.23 shut off charge because PGW did not notify him properly of the impending termination of service.

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.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 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). 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 Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

During the evidentiary hearing, Mr. O'Reilly testified that he has been a PGW customer for approximately 40 years and during this time has experienced low income. To maximize his low cash flow, Mr. O'Reilly has devised a strategy in which he allows his gas charges to "pile up" and then pays the accumulated balance once he gets a termination notice from PGW with the help of LIHEAP grants or other means. Tr. 8, 13. The receipt of termination notices is so important to Mr. O'Reilly's strategy that he has become knowledgeable of the Commission's requirements for utilities to send the 10-day notice via regular mail and the three-day via telephone. Tr. 9. However, he testified that

PGW failed to properly notify him of his impending termination prior to shutting off his service on September 6, 2023. According to Mr. O'Reilly, the first notice he received from PGW was the post termination notice which was placed inside his mailbox. Tr. 15.

In support of his claim of improper notification, Mr. O'Reilly explained that he uses the U.S. Postal Service's free scanning service that tells him what mail is coming to his mailbox. Tr. 9-10; Complainant Exhibit 1. He testified that his notifications from the U.S. Postal Service during the period July 13, 2023, to July 19, 2023, do not contain any mail from PGW regarding the termination of his service. Tr.11, Complainant Exhibit 1.

In addition, Mr. O'Reilly testified that, in order to avoid spam and robocalls, he does not answer his phone and lets all the calls go to voicemail. Tr. 10, 11; Complainant Exhibit 1. Then, his Google Voice system translates the voicemail to text and sends it to his email. Tr. 10; Complainant Exhibit 1. He further explained that, if no voice messages are left, Google Voice will not send an email to him. Tr. 12. Additionally, the Google Voice system does not create a record of all calls on his line as a Caller ID would. Tr. 12, 18-19. Mr. O'Reilly testified that from June 7, 2023, to November 2, 2023, he received no telephone messages from PGW. Tr. 10-11, 12-13; Complainant Exhibit 1.

Next, Mr. O'Reilly testified that he has an online account with PGW in which he reviews his bills and notifications from the Company. Tr. 13-14, 20-21; Complainant Exhibit 1. However, he received no notification from PGW about his impending termination through PGW's portal. Tr. 13-14, 45; Complainant Exhibit 1. Mr. O'Reilly clarified that had he received the 10-day termination notice he would have responded to it on the first day and explained that the purpose behind his testimony and exhibit was to show that he really paid attention to the notifications. Tr. 13.

In response, PGW witness Patricia Bernard testified that PGW issued a 10-day shut off notice dated July 13, 2023, to the Service Address. The 10-day notice was effective on or before 8 a.m. on July 25, 2023, and was sent to Mr. O'Reilly through the United States Postal Service. Tr. 26; PGW Exhibit 1. Following the 10-day termination Notice, PGW made two phone calls to Mr. O'Reilly. Tr. 28; PGW Exhibit 2. The first call was made on July 18, 2023, at 9:51 a.m. and was answered by an answering machine. Tr. 28; PGW Exhibit 2. The second phone call to the Complainant was made on July 19, 2023, at 6:08 p.m. and again was answered by an answering machine.

Ms. Bernard explained that for privacy reasons, it is PGW's policy not to leave a voice message when the phone call is answered by an answering machine. Tr. 28, 29, 38. Rather, it is PGW's policy to leave a message only when the call is answered by a person. Tr. 28, 38. When the person is not the customer, the message asks for the customer to call back the Company. Tr. 28, 38. Consistent with PGW policy, because both telephone calls to Mr. O'Reilly were answered by an answering machine, PGW did not leave a message. Tr. 28-29; PGW Exhibit 2. On September 6, 2023, gas service was shut off at the Service Address for nonpayment. Tr. 30; PGW Exhibit 3. On the same day, PGW left a post termination notice at the Service Address. Tr. 30; PGW Exhibit 3. On September 8, 2023, Mr. O'Reilly contacted PGW and paid the outstanding balance. Tr. 30; PGW Exhibit 4. On September 10, 2023, PGW reconnected gas service at the Service Address and charged him a reconnection fee. Tr. 30; PGW Exhibit 4.

During cross examination, Mr. O'Reilly admitted that on July 14, 2023, the U.S. Postal Service informed him that "Mail pieces that we do not have an image for are included in today's mail." Tr. 19-20, Complainant Exhibit 1. Consequently, PGW argued that the 10-day termination notice, dated July 13, 2023, could have been one of the July 14, 2024 mail pieces that had no scanned image. Tr. 20. Additionally, PGW argued that the 3-day notice was provided to Mr. O'Reilly when PGW made the two telephone calls to his number but left no voice messages because the calls were answered by Mr.

O'Reilly's answering machine. Tr. 19. However, Mr. O'Reilly challenged the reasonableness of PGW's policy of not leaving any messages when the 3-day termination notice is given via telephone and that call is answered by an answering machine. Tr. 38-40. He pointed out that the privacy concerns in this scenario are similar to those when the call is picked up by an adult who is not the customer of record. Tr. 14, 38-40, 50. In the latter case, PGW leaves a message with the person who picked up the phone for the customer to contact PGW. Mr. O'Reilly argued that the same messages could be left with an answering machine without violating the privacy rights of the customer. Tr. 38-40.

Next, Mr. O'Reilly argued that PGW is not providing him with reasonable service because the Company is not communicating termination notices to its customers through electronic means like email or its online platform although such means are available and easily accessible. Tr. 13-14.

Finally, Mr. O'Reilly testified that when Ms. Bernard contacted him prior to the hearing there was no indication that the call came from PGW. Tr. 11; 35. He explained that he only picked up Ms. Bernard's call because he was expecting a phone call from PGW pursuant to the Prehearing Order. Tr. 11. Ms. Bernard responded that the call was made from a PGW cell phone assigned to her. Tr. 42. Ms. Bernard explained that she was not aware that her calls to customers were not identifying as coming from PGW. Tr. 43.

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501. Section 1406 of the Public Utility Code governing the termination of utility service reads in pertinent parts,

§ 1406. Termination of utility service.

(b) *Notice of termination of service.*

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two 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; or

(C) by email, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format, for purpose of termination.

(iii) During the months of December through March, unless personal contact has been made with the customer or responsible adult by personally visiting the customer's residence, the public utility shall, within 48 hours of the scheduled date of termination, post a notice of the proposed termination at the service location.

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

(2) The public utility shall not be required by the commission to take any additional actions prior to termination.

* * *

(2) Upon termination, the public utility shall make a good faith attempt to provide a post termination notice to the customer or a responsible person at the affected premises, and, in the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

66 Pa.C.S. § 1406 (emphasis added).

Upon close review of the evidence collected in this matter, I find that Mr. O'Reilly did not prove by a preponderance of the evidence that PGW failed to provide him with reasonable service or violated the provisions of 66 Pa.C.S. § 1406 when it terminated his gas service on September 6, 2023. However, while PGW's actions strictly complied with the provisions of the statutes, in these days of technological advancements and digital consumption the Company is encouraged to explore the use of email, text message or other electronic messaging formats in its termination of service process, as well as including this information within the customer's online portal. Similarly, the Company is encouraged to reassess its privacy policy with regard to 3-day termination notices provided via telephone when the call is answered by an answering machine. The Company should explore all ways it can inform the customer of the need to contact the Company when the call is answered by an answering machine. Finally, the Company should take the necessary steps to ensure that all its telephone numbers are appropriately identified by the telephone providers.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the complaint bears the burden of proof. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the complaint must demonstrate by the 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. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. 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).

5. 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).

6. 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).

7. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

8. Prior to terminating service under subsection, a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed

termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two 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; or

(C) by email, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format, for purpose of termination.

66 Pa.C.S. § 1406.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Michael O'Reilly in Michael O'Reilly v. Philadelphia Gas Works at Docket No. C-2024-3046433 is denied.

