

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marilyn Carey	:	
	:	
v.	:	C-2019-3012157
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Complaint filed by a Complainant because the Complainant did not meet her burden of proving that she is eligible for a second Commission-issued payment arrangement, or to reinstatement and extension of her first arrangement.

**HISTORY OF THE PROCEEDING**

On August 12, 2019, Marilyn Carey (Ms. Carey or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), seeking a payment arrangement because her service was terminated. Ms. Carey asked for a reasonable payment arrangement that takes into consideration her monthly bills and expenses.

On September 4, 2019, PGW filed an Answer to the Complaint, admitting that it terminated the Complainant's service on May 20, 2019, for non-payment. PGW requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice served to the parties on September 6, 2019, an initial evidentiary telephonic hearing for this case was scheduled for October 15, 2019, and the case was assigned to me.

By Prehearing Order served on September 20, 2019, the parties were informed of the various procedural rules that would govern the hearing.

The hearing was held as scheduled on October 15, 2019. Ms. Carey appeared for the hearing and presented testimony in support of her Complaint. Ms. Carey sponsored no exhibits for the record. Attorney Graciela Christlieb appeared on behalf of PGW and presented the testimony of Jessica Glace, a senior customer review officer employed by PGW, who sponsored the following four exhibits that were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangements
- PGW Exhibit 3 – 10 Day Shut Off Notice
- PGW Exhibit 4 – BCS Complaint and Decision

The record<sup>1</sup> closed following the conclusion of the telephonic hearing. For the reasons explained below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Marilyn Carey.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Carey received gas service from PGW at 238 Durham Street, Philadelphia, Pennsylvania (service address).
4. Ms. Carey lives by herself at the service address.

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<sup>1</sup> The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

5. Ms. Carey has been in and out of the hospital to treat a medical condition that she has had since 2015.

6. Ms. Carey's gross monthly income is \$1,870 from social security benefits.

7. Ms. Carey's gas service was terminated on May 20, 2019. (PGW Exhibit 4, p. 7).

8. On May 11, 2017, Ms. Carey filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3525310 seeking a payment arrangement. (PGW Exhibit 4, p. 1).

9. On May 15, 2017, the BCS at BCS No. 3525310 granted Ms. Carey a payment arrangement. (PGW Exhibit 4, p. 3).

10. The payment arrangement issued at BCS No. 3525310 was based on a gross monthly household income of \$1,664 for a household of one. (PGW Exhibit 4, p. 7).

11. Ms. Carey defaulted on the payment arrangement issued to her at BCS No. 3525310. (PGW Exhibit 2).

12. Ms. Carey defaulted on one Company-issued payment arrangement issued to her on November 15, 2018, and four Company-issued payment arrangements issued to her from 2004 to 2005. (PGW Exhibit 2).

13. On May 23, 2019, Ms. Carey filed an Informal Complaint with the BCS at BCS No. 3704678 disputing the amount PGW alleged she owed to restore her service and seeking a payment arrangement. (PGW Exhibit 4, p. 4).

14. On June 11, 2019, the BCS dismissed Ms. Carey's Informal Complaint at BCS No. 3704678, finding that Ms. Carey was not eligible for a payment arrangement and

upholding PGW's position on the amount Ms. Carey owed to restore her service. (PGW Exhibit 4, pp. 6, 7).

15. Eleven payments were made towards Ms. Carey's gas account over the period of the Statement of Account (October 2017 – June 2019). (PGW Exhibit 1).

16. As of the date of the hearing, Ms. Carey had an unpaid account balance of \$12,392.95. (PGW Exhibit 1, p. 2).

### DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

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. 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).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Carey filed a Formal Complaint with the Commission seeking a payment arrangement. The burden of proof is on Ms. Carey to show that she is eligible for a Commission-issued payment arrangement.

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

#### **§ 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.

**(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)-(b). “Household income” is defined as the following:

### **§ 1403. Definitions**

**“Household income.”** The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer/applicant and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

### **§ 1405. Payment arrangements**

**(d) Number of payment arrangements.**--Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

### **§ 1403. Definitions**

**“Change in income.”** A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403.

Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

## § 1405. Payment arrangements

**(e) Extension of payment arrangements.**--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

### § 1403. Definitions

**“Significant change in circumstance.”** Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

Initially, it should be noted that Ms. Carey asked for her monthly bills and expenses to be taken into consideration in determining her eligibility for a payment arrangement. Chapter 14 does not permit the Commission to consider a customer’s expenses when determining eligibility for a payment arrangement. The Commission also does not take into consideration a customer’s expenses when determining the length of a payment arrangement it may issue. If Ms. Carey is eligible for a payment arrangement, her gross monthly household income in relation to the Federal poverty level will dictate the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b).

Next, in order to determine if the Commission can establish a payment arrangement for Ms. Carey, the decision made by the BCS at BCS No. 3525310 must first be

discussed. On May 15, 2017, the BCS at BCS No. 3525310 issued Ms. Carey a payment arrangement. This payment arrangement became a Commission-issued payment arrangement because Ms. Carey did not appeal the BCS decision through the filing of a Formal Complaint.<sup>2</sup> Ms. Carey defaulted on this Commission-issued payment arrangement because she did not make payments under its terms. Given her default on this prior Commission-issued payment arrangement, Ms. Carey in this matter is seeking to be granted a second Commission-issued payment arrangement. The Commission can only establish a second payment arrangement for Ms. Carey if she experienced a change in income from her prior payment arrangement. 66 Pa.C.S. § 1405(d).

Ms. Carey testified at the hearing that she has a gross monthly household income of \$1,870 for a household of one. The prior Commission-issued payment arrangement, issued at BCS No. 3525310, was based on a gross monthly household income of \$1,664 for a household of one. Thus, Ms. Carey has experienced an increase in household income since her prior Commission-issued payment arrangement. As cited above, “change in income” is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. As a result, Ms. Carey has not experienced the change in income necessary to be eligible for a second Commission-issued payment arrangement in this matter.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Carey, the Commission-issued payment arrangement at BCS No. 3525310 can be reinstated and extended if Ms. Carey defaulted on the payment arrangement as a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). Although Ms. Carey testified that she has been frequently in and out of the hospital to treat a medical condition, she stated that she had been dealing with the medical condition since 2015. Thus, Ms. Carey has not experienced the “onset” of a chronic or acute illness resulting in a significant loss in her household income. 66 Pa.C.S. § 1403. Ms. Carey’s medical condition did not cause her to default on the Commission-issued payment arrangement issued to her in May 2017 because she was dealing with her medical condition prior to receiving the arrangement. Ms. Carey provided no evidence at the hearing as to any of the other three significant change in circumstance criteria that would

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<sup>2</sup> (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

lead to a finding that she defaulted on her Commission-issued payment arrangement as a result of a significant change in circumstance. Therefore, Ms. Carey has not experienced a significant change in circumstance making her eligible for reinstatement and extension of her prior Commission-issued payment arrangement.

In conclusion, Ms. Carey has not experienced a change in income making her eligible for a second Commission-issued payment arrangement, nor has she experienced a significant change in circumstance making her eligible for reinstatement and extension of her prior Commission-issued payment arrangement. Ms. Carey's Complaint will be dismissed in the ordering paragraphs below.

#### CONCLUSIONS OF LAW

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

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

3. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

4. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

5. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).

6. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a Commission order or decision. A

public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer. 66 Pa.C.S. § 1405(d).

7. If a customer defaults on a Commission-issued payment arrangement as a result of a significant change in circumstance, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. 66 Pa.C.S. § 1405(e).

8. The Complainant has not met her burden of proving that she is eligible for a Commission-issued payment arrangement.

9. The Complainant has not met her burden of proving that she is eligible for reinstatement and extension of her prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Marilyn Carey against Philadelphia Gas Works at Docket Number C-2019-3012157 is dismissed.

2. That the docket at Docket Number C-2019-3012157 is marked closed.

Date: November 1, 2019

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/s/  
Alphonso Arnold III  
Special Agent