

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Jones	:	
	:	
v.	:	C-2019-3011626
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Complaint, finding that the Complainant is not eligible for a second Commission-issued payment arrangement or to reinstatement and an extension of her first Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On July 18, 2019, Judith Jones (Complainant or Ms. Jones) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement to avoid termination of her service.

On August 7, 2019, PGW filed an Answer to the Complaint, admitting or denying the averments in the Complaint. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on August 14, 2019, the Commission scheduled this matter for a telephonic hearing on October 8, 2019 and assigned the case to me.

A Prehearing Order, served upon the parties on September 11, 2019, addressed, inter alia, the procedures applicable to the hearing.

Ms. Jones made a request to continue the October 8, 2019 hearing. The continuance request was granted, and a Hearing Cancellation/Reschedule Notice was served upon the parties on October 1, 2019 rescheduling the hearing to November 14, 2019.

The November 14, 2019 hearing was held as scheduled. Ms. Jones testified in support of her Complaint. Ms. Jones sponsored no exhibits for the record. Attorney Graciela Christlieb was present on behalf of PGW and presented the testimony of Tiffany Jones, a senior customer review officer employed by PGW, who sponsored the following five exhibits which were admitted into the record:

- PGW Exhibit 1 – Customer Contracts
- PGW Exhibit 2 – Statement of Account
- PGW Exhibit 3 – Payment Arrangement History
- PGW Exhibit 4 – 10 Day Shut-Off Notice
- PGW Exhibit 5 – BCS Complaints and Decision

The record<sup>1</sup> closed on November 14, 2019 following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed

#### FINDINGS OF FACT

1. The Complainant is Judith Jones.
2. The Respondent is Philadelphia Gas Works.

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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.

3. Ms. Jones receives gas service from PGW at 2514 South Fairhill Street, Philadelphia, Pennsylvania (service address).

4. Four adults live at the residence at the service address: Ms. Jones, her two daughters, and her friend.

5. Ms. Jones' gross monthly income is \$5,800.

6. Ms. Jones' daughters are students who do not provide the household with income.

7. Ms. Jones' friend provides the household with no income.

8. Ms. Jones' friend has been living with Complainant for eight years and has had a life threatening illness since 2015.

9. Ms. Jones has received three medical termination holds on her account. (PGW Exhibit 1).

10. On October 5, 2018, Ms. Jones filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3658076 seeking a payment arrangement. (PGW Exhibit 5, p. 1).

11. On October 8, 2018, the BCS granted Ms. Jones' Informal Complaint at BCS No. 3658076, awarding Ms. Jones a payment arrangement. (PGW Exhibit 5, p. 3).

12. The payment arrangement awarded at BCS No. 3658076 was based on a gross monthly household income of \$5,400 for a household of four. (PGW Exhibit 5, p. 1).

13. Ms. Jones defaulted on the payment arrangement issued at BCS No. 3658076. (PGW Exhibit 3).

14. As of the date of the hearing, Ms. Jones' outstanding account balance with PGW is \$3,290.96. (PGW Exhibit 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 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 to rebut the *prima facie* case with evidence which is at least co-equal. 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).

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, the Complainant made a request for a payment arrangement to prevent termination of her service. The Complainant's eligibility for a Commission-issued payment arrangement will be analyzed below.

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 and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

**(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.

A previous Commission-issued payment arrangement was established for Ms. Jones by the BCS at BCS No. 3658076. The payment arrangement established through this BCS decision became a Commission-issued payment arrangement once Ms. Jones failed to appeal the decision through filing a Formal Complaint.<sup>2</sup> Ms. Jones defaulted upon this Commission-issued

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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).

payment arrangement. Given her default on this prior Commission-issued payment arrangement, Ms. Jones in this instant Formal Complaint is seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for Ms. Jones only if she has experienced a change in income since the prior Commission-issued payment arrangement was issued and become final. 66 Pa.C.S. § 1405(d).

Ms. Jones testified at the hearing that her gross monthly household income is \$5,800 for a household of four. Ms. Jones' gross monthly household income reported at BCS No. 3658076 was \$5,400 for a household of four. Thus, Ms. Jones's gross monthly household income has increased following the issuance of her 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. Therefore, Ms. Jones has not experienced the change of income required to be granted a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Jones, 66 Pa.C.S. § 1405(e) provides that a customer's Commission-issued payment arrangement can be reinstated and extended if the customer defaulted on the payment arrangement as a result of a significant change in circumstance.<sup>3</sup> In this regard, Ms. Jones testified that she has a friend who has been residing with her for eight years and who has had a life threatening illness since 2015.<sup>4</sup> Given that Ms. Jones' friend has had his illness since 2015, and that Ms. Jones' Commission-issued payment arrangement was awarded to her and defaulted upon in 2018, Ms. Jones' household did not experience the "onset" of a chronic or acute illness causing Ms. Jones to default on her payment arrangement. 66 Pa.C.S. § 1403(1). Ms. Jones provided no evidence at the hearing that would lead to a finding that Ms. Jones defaulted on her Commission-issued payment arrangement as a result of a significant change in circumstance.

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<sup>3</sup> Additionally, the customer must have a household income less than 300% of the Federal poverty level. Ms. Jones' household income of \$5,800 for a household of four is less than 300% of the Federal poverty level. See Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 300% of the Federal poverty level for a household of four is \$6,438).

<sup>4</sup> PGW has honored two renewals of Ms. Jones' medical certificate, placing holds on the termination of her service. (PGW Exhibit 1). PGW is not required to honor a third medical renewal. 52 Pa. Code § 56.114(2).

In conclusion, Ms. Jones has not met her burden of proving she is eligible for a second Commission-issued payment arrangement, nor that she is eligible for reinstatement and an extension of her first Commission-issued payment arrangement.

### 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. 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 second Commission-issued payment arrangement, or for reinstatement and extension of her first Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Judith Jones against Philadelphia Gas Works at Docket Number C-2019-3011626 is dismissed.

2. That the docket at Docket Number C-2019-3011626 is marked closed.

Date: December 9, 2019

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/s/  
Alphonso Arnold III  
Special Agent