

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Gambrell

v.

Philadelphia Gas Works

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C-2023-3037897

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of a gas service customer seeking a payment arrangement because she failed to meet her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement or reinstatement of her prior payment arrangement.

**HISTORY OF THE PROCEEDING**

On January 26, 2023, Karen Gambrell (Complainant or Ms. Gambrell) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Ms. Gambrell checked the boxes on the Complaint form stating that the utility is threatening to shut off her service or has already shut off her service and requesting a Commission-issued payment arrangement.

On February 21, 2023, PGW filed its Answer to the Formal Complaint which admitted in part and denied in part the various material allegations of the Complaint. In its

Answer, Respondent alleged that Complainant has had multiple broken PGW-issued payment arrangements and at least one broken Commission-issued payment arrangement.

By Hearing Notice dated February 22, 2023, an Initial Call-In Telephonic Hearing was scheduled for April 25, 2023, and the matter was assigned to me.

A Prehearing Order was issued and served on April 18, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 25, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Anita Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, David Kauffman, a customer review officer for PGW. Mr. Kauffman sponsored the following three exhibits, which were admitted into the record without objection:

PGW Exhibit 1 – Gas Service Agreements Statement of Account from  
1/30/20 - 4/18/23

PGW Exhibit 2 – History of Payment Agreements

PGW Exhibit 3 – BCS Decisions

The record closed on May 10, 2023, upon the filing of the 41-page transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Karen Gambrell, who resides at 3427 North Bouvier Street, Philadelphia, Pennsylvania 19140 (Service Address). Tr. 8.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the Service Address.

3. Complainant resides alone at the Service Address. Tr. 18.

4. Complainant's monthly income is \$1,833.<sup>1</sup> Tr. 12-13.

5. The Complainant had one prior Commission-issued payment arrangement which began on August 7, 2018, and was subsequently broken by Complainant. PGW Ex. 2; Tr. 26.

6. The Commission-issued payment arrangement was reinstated on April 16, 2019, and was subsequently broken by Complainant. PGW Ex. 2; Tr. 27.

7. The Commission-issued payment arrangement was reinstated a second time on August 1, 2019, and subsequently broken by Complainant. PGW Ex. 2; Tr. 27.

8. Complainant had four company-issued payment arrangements. PGW Ex. 2; Tr. 26-27.

9. Complaint and PGW entered into a company-issued payment arrangement on August 23, 2002, which was subsequently broken by Complainant. PGW Ex. 2; Tr. 26.

10. Complaint and PGW entered into a company-issued payment arrangement January 2, 2018, which was subsequently broken by Complainant. PGW Ex. 2; Tr. 26.

11. Complainant and PGW entered into a COVID-19 payment arrangement on February 3, 2021, which was subsequently broken by Complainant. PGW Ex. 2; Tr. 27.

12. Complainant and PGW entered into company-issued payment arrangement related to the COVID-19 pandemic on June 25, 2021, which was subsequently broken by Complainant. PGW. Ex. 2; Tr. 27-28.

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<sup>1</sup> Complainant works as a teacher and does not get paid during the summer break. Complainant makes \$2,200 per month over 10 months or \$22,000 per year (\$22,000/12 mo. = \$1,833). Tr. 12-13.

13. Complainant has not satisfied the balance of the August 1, 2019, Commission-issued payment arrangement. Tr. 33-36.

14. Complainant's outstanding PGW balance at the time of the hearing was \$8,244.71. PGW Ex. 1; Tr. 22.

### 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). 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 they present 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).

### **Payment Arrangement**

Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. Section 1405(a)-(c) of the 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.

**(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.

**(c) Customer assistance programs.**—Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

66 Pa.C.S. §§ 1405(a)-(c).

Ms. Gambrell testified that she currently makes \$2,200 per month and \$22-\$23,000 per year but as a teacher, she only works during the school year. Tr. 12-13. She stated that she does not work anywhere else during the summer break. *Id.* Therefore, extrapolating her income over the course of twelve months instead of ten, her income is \$1,833 per month.<sup>2</sup>

Complainant resides alone at the service address. Tr. 12. Based on Complainant's gross income of \$1,833 per month, and her household size of one, she falls between 150% and 250% of the Federal poverty level.<sup>3</sup> Absent further restrictions, Ms. Gambrell would qualify for a Level 2 payment arrangement. 66 Pa.C.S. § 1405(b)(2). However, as explained below, due to restrictions placed on the Commission by the Code, I cannot provide Complainant with a new Commission-issued payment arrangement.

### **Second or Subsequent Payment Arrangement**

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a complainant's arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. However, the Code restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaulted on a previous Commission-

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<sup>2</sup> Complainant works as a teacher and does not get paid during the summer break. Complainant makes \$2,200 per month over 10 months or \$22,000 per year (\$22,000/12 mo. = \$1,833). Tr. 12-13.

<sup>3</sup> *See*, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx>.

issued payment arrangement. The Code addresses second or subsequent payment arrangements as follows:

**(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 by the Code as “[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.

Ms. Gambrell was previously provided with a Commission-issued payment arrangement in August 2018 at BCS No. 3632251 (August 2018 PAR). PGW Ex. 3 at 3. The August 2018 PAR provided Complainant with a Level 1 payment arrangement on her balance of \$2,648.34. *Id.* In granting the August 2018 PAR, Ms. Gambrell’s income was determined to be \$772 per month with a household size of one. *Id.* at 1. Complainant defaulted on the August 2018 PAR. PGW Ex. 2; Tr. 27. The August 2018 PAR was reinstated on April 16, 2019, and Complainant subsequently defaulted on the reinstated PAR. *Id.* The August 2018 PAR was once again reinstated on August 1, 2019, and then once again Complainant defaulted on the reinstated PAR. *Id.*

Currently, as explained above, Ms. Gambrell’s household income is \$1,833 per month, which is an increase of \$1,061 per month from the income determined in the August 2018 PAR. Complainant’s income is between 150% and 200% of the Federal poverty level. Therefore, she would need to show at least a 10% decrease in her household income to meet the “Change in income” definition under the statute to qualify for a second Commission-issued payment arrangement. Because Ms. Gambrell has had an increase in household income instead of a decrease of 10% or more, the Commission is not permitted to grant her a second or subsequent payment arrangement under the Code. 66 Pa.C.S. §§ 1403, 1405(d).

## **Reinstatement of Prior Payment Arrangement**

Although Ms. Gambrell is not eligible for a second Commission-issued payment arrangement, I must determine if she is eligible for reinstatement and extension of the August 2018 PAR. Chapter 14 authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of a significant change in circumstance:

**(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). A “significant change in circumstance” is defined in the Code as follows:

**“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.

Ms. Gambrell testified regarding a hurricane that caused damage to her home “last year.” Tr. 13. The hurricane damaged her roof and she had to spend \$2,500 to fix it. Tr. 37-38. Due to the hearing occurring in April 2023, I understood “last year” to mean either 2022 or 2021 at the earliest. PGW’s evidence suggests that the August 2018 PAR, which was last reinstated on August 1, 2019, was defaulted upon for nonpayment as early as February 2020.

PGW Ex. 1; Tr. 27. Two subsequent company-issued payment arrangements were entered into February 2021 and June 2021. PGW Ex. 2; Tr. 27.

The hurricane damage to a roof requiring \$2,500 for repairs may be considered a significant change in circumstance as “[c]atastrophic damage to a customer’s residence resulting in a significant net cost to the customer’s household” under 66 Pa.C.S. § 1403. However, the damage occurred after the August 2018 PAR was broken. Therefore, it cannot be said that Ms. Gambrell defaulted on the August 2018 PAR “*as a result of a significant change in circumstance.*” 66 Pa.C.S. § 1405(e) (emphasis added). Consequently, Complainant is not eligible to have her August 2018 PAR reinstated and extended by the Commission.

Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied and the Complaint will be dismissed.

While the Commission is not permitted to establish a second or subsequent payment arrangement in this matter, “[a] public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.” 66 Pa.C.S. § 1405(d). Ms. Gambrell is encouraged to seek any grants or assistance that may be available to help with her arrearage with PGW. Also, Ms. Gambrell testified that she had \$2,000 to pay towards her arrearages to start or reinstate a payment arrangement. Tr. 11. PGW is encouraged to work with Ms. Gambrell to find a mutually acceptable solution to this matter.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. §§ 701, 1401–1419.
2. The burden of proof in this proceeding is upon 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 and a customer. 66 Pa.C.S. § 1405(a).

5. 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).

6. 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. 66 Pa.C.S. § 1405(e).

7. The Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(c).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Karen Gambrell in Karen Gambrell v. Philadelphia Gas Works at Docket No. C-2023-3037897 is dismissed.

2. That Docket No. C-2023-3037897 be marked closed.

Date: August 8, 2023

\_\_\_\_\_/s/  
Michael J. Mroczka  
Special Agent