

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Somerset Laundry Co., LLC	:	
c/o Colleen Jackson	:	
	:	
v.	:	C-2023-3037885
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, the Complainant’s request for a payment arrangement is denied because it failed to carry the burden of proving that a second Commission-issued payment arrangement or a reinstatement or extension of the previous one is appropriate in this case.

HISTORY OF THE PROCEEDING

On January 30, 2023, Colleen Jackson filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Respondent or the Company) on behalf of Somerset Laundry Co., LLC (Complainant).¹ In the Complaint, Ms. Jackson alleged Complainant’s inability to pay the gas bills to PGW and requested an affordable payment arrangement.

¹ This case was originally captioned as *Colleen Jackson v. Philadelphia Gas Works*. However, it later became evident that Somerset Laundry Co., LLC is the ratepayer of record and account holder with Philadelphia Gas Works, whereas Colleen Jackson is the sole member of the business entity. The caption of the case has been corrected to reflect this information.

On February 21, 2023, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated February 23, 2023, a hearing was scheduled for April 10, 2023, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on April 3, 2023, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On April 3, 2023, Ms. Jackson submitted a written request for a continuance of the scheduled hearing in order to obtain legal representation for the Complainant. Ms. Jackson's communication also indicated that there had been a fire at her residence on March 15, 2023, which forced her to evacuate the premises. By email dated April 4, 2023, counsel for PGW indicated that the Respondent had no objection to Ms. Jackson's request. A Hearing Cancellation/Reschedule Notice dated April 4, 2023, informed the parties that the April 10, 2023, hearing was cancelled, and that the initial call-in telephonic hearing was rescheduled for May 25, 2023, at 10:00 a.m.

The initial hearing convened as scheduled on May 25, 2023. Eleanor Chen, Esq., represented the Complainant, and presented the testimony of Colleen Jackson, who is the sole member and operator of the Complainant. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Wendy Vacca, who is a Senior Customer Review Officer, in charge of investigating formal and informal complaints filed with the Commission against PGW. The Respondent sponsored three exhibits, which were admitted into the record.

During the hearing, Complainant requested and was granted permission to file a late-filed exhibit. The exhibit was submitted on June 2, 2023, and was marked for identification as Complainant late-filed Exhibit 1. Respondent did not object to the admission of the exhibit into the record in this matter. Complainant late-filed Exhibit 1 is admitted into the record pursuant to the ordering paragraphs below.

The record in this matter closed upon receipt of the hearing transcript on June 27, 2023.

FINDINGS OF FACT

1. The Complainant and account holder is Somerset Laundry Co., LLC, which is located at 2601 West Somerset, Philadelphia, PA 19132 (Service Address). Tr. 16, 29.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant is a limited liability company owned and operated by Colleen Jackson. Tr. 29.
4. The Service Address is a three-story building. Tr. 17.
5. The laundromat for the Somerset Laundry Co., LLC is located on the first floor of the Service Address. Tr. 17.
6. Ms. Jackson resides on the second floor of the Service Address along with her 19-year-old daughter. Tr. 17, 21-22.
7. The third floor of the Service Address is also set up for residential use. Tr. 17.
8. The Service Address receives gas service from PGW at the commercial rate. Tr. 24, 34.
9. There is only one gas meter serving the entire Service Address. Tr. 24.
10. There is one gas house heater and one gas water heater serving the entire Service Address. Tr. 26.

11. Ms. Jackson works full-time as a Property Manager for Brookfield Properties in Philadelphia. Tr. 19, 21.

12. In 2022, Ms. Jackson's gross annual income from her employment with Brookfield Properties was \$46,301. Tr. 21; Complainant late-filed Exhibit 1.

13. In 2022, Ms. Jackson's gross annual income from her self-employment with the Complainant was \$7,202. Complainant late-filed Exhibit 1.

14. Ms. Jackson's daughter works without pay at the laundromat. Tr. 22.

15. On October 14, 2021, the Complainant became the ratepayer of record for the Service Address. Tr. 44; PGW Exhibit 1.

16. As of the date of the hearing, no payments have been made on the Complainant's account with PGW. Tr. 36; PGW Exhibit 1.

17. On February 17, 2022, Ms. Jackson filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), at BCS Case No. 3821005 seeking a payment arrangement. Tr. 42; PGW Exhibit 3.

18. On March 9, 2022, BCS issued a written determination on Ms. Jackson's informal complaint at BCS Case No. 3281005, finding that the account was commercial with residential end use and establishing a six-month payment arrangement. Tr. 42; PGW Exhibit 3.

19. The payment arrangement established by BCS at BCS Case No. 3821005 directed Ms. Jackson to pay the current bill, plus \$384 per month, in addition to a \$1,098.00 security deposit due in one installment, beginning on the April 2022 due billing date. PGW Exhibit 3.

20. Ms. Jackson defaulted on the Commission-issued payment arrangement. Tr. 46; PGW Exhibit 1.

21. On March 15, 2023, a fire at the Service Address forced Ms. Jackson to close the laundromat business and leave her residence while repairs are being made. Tr.18, 22-23; 46.

22. As of the date of the hearing, Ms. Jackson and her daughter are residing at Ms. Jackson's mother's house at 5948 Christian Street, Philadelphia, PA 19143. Tr. 13.

23. As of the date of the hearing, the outstanding balance for Somerset Laundry Co. LLC is \$9,616. 31. Tr. 36; PGW Exhibit 1.

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 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, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

By law, a public utility is entitled to receive payment for the service it provides. *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. 66 Pa.C.S. §1402.

The Commission has held that a commercial account for public utility service falls within the Commission regulations at 52 Pa. Code § 55 and is not entitled to a payment arrangement or other protections applicable to a residential account under the Public Utility Code at 66 Pa.C.S. § 1401–1419 (Chapter 14) or Commission regulations at 52 Pa. Code § 56.1. *Pankey d/b/a Change Hair Salon v. PPL Elec. Utils. Corp.*, Docket No. C-2008-2014140 (Final Order entered Feb. 20, 2009); *see also, Kayla's Place, Inc. v. Duquesne Light Co.*, Docket No. C-

00981711 (Opinion and Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Opinion and Order entered Nov. 27, 1996).

However, in *Davis v. Peoples Nat. Gas Co.*, Docket No. F-01957148, (Order entered Nov. 28, 2007) (citing *Stammel v. PG Energy*, Docket No. C-20027994, slip op. pp. 3-4 (Opinion and Order entered May 21, 2003)), the Commission held that Chapter 14 provisions apply to mixed commercial/residential use accounts (hybrid accounts). *See also, George v. Equitable Gas Co.*, Docket No. F-2009-2125863, (Final Order entered May 27, 2010) (The Commission issued a payment arrangement to Complainant who resided in a hotel, now closed, that was owned by her family.).

In the present matter, Ms. Jackson is seeking a subsequent Commission-issued payment arrangement on a commercial gas account in the name of Somerset Laundry Co., LLC. She testified that she resides at the same Service Address where Somerset Laundry Co., LLC is located, and that her residence and the laundromat are served by the same meter. Ms. Jackson also testified that there is one gas house heater and one gas water heater serving the entire Service Address. Tr. 26. In turn, PGW failed to rebut Ms. Jackson's testimony with regard to the residential use of the commercial account for the Service Address. I find that the gas account of Somerset Laundry Co., LLC fits the definition of the commercial account with residential use (hybrid account) and as such it may be reviewed under the provisions of the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419.

Chapter 14 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) 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 Act provides limitations that the Commission must follow including the number of payment arrangements and circumstances that may result in the extension of an existing payment arrangement. In addition, the issuance of a payment arrangement is a matter within the Commission's discretion. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

Here, the Complainant has already received a Commission-issued payment arrangement upon which it defaulted for non-payment. The Complainant has a very poor payment history, having not made any payments to PGW since its account was opened in October of 2021, thus accruing an outstanding balance of \$9,616.31 with PGW. In this case, the Complainant has failed to demonstrate any evidence of a good faith effort in paying the gas bills to PGW.

During the hearing, Ms. Jackson testified that a drier fire that occurred at the laundromat on March 15, 2023, forced her to close the business and leave her residence while repairs are being made. Tr.18, 22-23; 46. Section 1405(e) of the Responsible Utility Customer Protection Act reads:

(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). (*Emphasis added*). In addition, a “significant change in circumstance” is defined as 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; or (4) increase in the customer’s number of dependents in the household. 66 Pa.C.S. § 1403 (*emphasis added*).

In the present case, the fire that occurred on March 15, 2023, may fit the definition of a “significant change in circumstance,” as it forced Ms. Jackson to close her laundromat business and evacuate her residence at a significant net cost to her household. In addition, Ms. Jackson’s gross household income has been reduced to \$46,301 per year (from her employment with Brookfield Properties) and falls below 300% of the Federal poverty level for a household of two individuals.² However, there is no evidence in the record that the Complainant defaulted on the Commission-issued payment arrangement as a result of the March 15, 2023, fire at the Service Address. On the contrary, because the Complainant has made no payment whatsoever to PGW, it defaulted on the Commission-issued payment arrangement the month after the payment arrangement was established, i.e., the Complainant defaulted in May of 2022. Consequently, Complainant’s last Commission-issued payment arrangement may not be reinstated or extended.

Lastly, section 1405(d) of Chapter 14 reads in pertinent part:

(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

² 88 Fed. Reg. 3424 (Jan. 19, 2023), also available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). Section 1403 of the Public Utility Code defines “change in income” 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. Jackson’s current gross income of \$46,301 per year exceeds 200% of the Federal poverty level for a household of two. While the closing of her laundromat business due to the March 2023 fire deprived Ms. Jackson of her self-employment income, the decrease in income does not amount to 20%.³

Therefore, pursuant to 66 Pa.C.S. §§ 1405(d)-(e), the Commission cannot establish a second Commission-issued payment arrangement on behalf of the Complainant, nor can it reinstate or extend Ms. Jackson’s last Commission-issued payment arrangement.

Based on the foregoing, I find that the Complainant has failed to carry the burden of proving that it is entitled to a second Commission-issued payment arrangement or a reinstatement or extension of the previous one.

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 Ms. Jackson’s gross household income in 2022 consisted of \$46,301 per year (from her employment with Brookfield Properties), plus \$ 7,202 from her self-employment with the Complainant, for a total of \$53,503 per year. With her self-employment income no longer available, Ms. Jackson’s annual income has decreased by approximately 13.46% ($7,202/53,503 \times 100 = 13.46\%$).

3. All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. 66 Pa.C.S. § 1402.

4. The issuance of a payment arrangement is a matter within the Commission's discretion. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 at 11 (Order entered Sept. 12, 2013).

5. It is the Commission's policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007).

6. A commercial account for public utility service falls within the Commission regulations at 52 Pa. Code § 55 and is not entitled to a payment arrangement or other protections applicable to a residential account under the Public Utility Code at 66 Pa.C.S. § 1401–1419 or Commission regulations at 52 Pa. Code § 56.1. *Pankey d/b/a Change Hair Salon v. PPL Elec. Utils. Corp.*, Docket No. C-2008-2014140 (Final Order entered February 20, 2009); *see also, Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Opinion and Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Opinion and Order entered Nov. 27, 1996).

7. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 provisions apply to mixed commercial/residential use accounts (hybrid accounts). *Davis v. Peoples Nat. Gas Co.*, Docket No. F-01957148, (Order entered Nov. 28, 2007), (citing *Charles Stammel v. PG Energy*, Docket No. C-20027994, slip op. pp. 3-4 (Opinion and Order entered May 21, 2003)); *see also, George v. Equitable Gas Co.*, Docket No. F-2009-2125863, (Final Order entered May 27, 2010).

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

9. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

10. 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).

11. “A change in income” is defined 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.

12. If a 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).

13. A “significant change in circumstance” is defined as 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; or (4) increase in the customer’s number of dependents in the household. 66 Pa.C.S. § 1403.

14. The Complainant has failed to carry the burden of proving that a second Commission-issued payment arrangement is appropriate in this matter. 66 Pa.C.S. §§ 332(a), 1405(d).

15. The Complainant has failed to carry the burden of proving that a reinstatement or extension of the previous Commission-issued payment arrangement is appropriate in this matter. 66 Pa.C.S. §§ 332(a), 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant late-filed Exhibit 1 is admitted into the record in this case.
2. That the Formal Complaint filed by Colleen Jackson at Somerset Laundry Co, LLC c/o Colleen Jackson v. Philadelphia Gas Works, Docket No. C-2023-3037885 is denied.
3. That Docket No. C-2023-3037885 be marked closed.

Date: September 25, 2023

/s/
Eranda Vero
Administrative Law Judge