

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Benjamin Cepeda	:	
	:	
v.	:	F-2019-3013682
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses in part, and grants in part, a Complaint filed by a gas utility customer. The customer’s claim that he is not responsible for an outstanding balance transferred to his account is dismissed because the customer accepted responsibility for the outstanding balance at the evidentiary hearing held in this matter. The customer’s request for a Commission-issued payment arrangement is granted because this Decision finds him eligible.

HISTORY OF THE PROCEEDING

On October 9, 2019, Benjamin Cepeda (Complainant or Mr. Cepeda) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a payment arrangement and contesting the transfer of an outstanding residential account balance to his account that he alleges he had no role in accumulating. The Complaint is a timely appeal of a decision made by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3731992.

On November 12, 2019, PGW filed an Answer to the Complaint. In its Answer, PGW alleged that, prior to Mr. Cepeda establishing service at 140 East Willard Street, Philadelphia, PA, the customer of record was Amanda Cepeda. When Mr. Cepeda established service at the address, the outstanding account balance of Amanda Cepeda in the amount of \$3,512.40 was transferred to Mr. Cepeda's account because he was linked to the address by an Experian utility check. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on November 18, 2019, the Commission scheduled this matter for a telephonic hearing on February 5, 2020 and assigned the case to me as presiding officer.

A Prehearing Order, served upon the parties on January 22, 2020, addressed, inter alia, the procedures applicable to the hearing.

The February 5, 2020 hearing was held as scheduled. Mr. Cepeda was present for the hearing and testified in support of his Complaint. Mr. Cepeda sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW, who sponsored the following four exhibits:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – Records of Customer Contacts
- PGW Exhibit 4 – BCS Complaint and Decision

Mr. Cepeda asserted that he had not received PGW's four exhibits for his review prior to the hearing. Despite PGW having submitted a Certificate of Service indicating that it had in fact provided a copy of the four exhibits, via mail, to Mr. Cepeda for review on January 31, 2020, it agreed to send a copy of the four exhibits to the Mr. Cepeda again through mail and through email. (Tr. 25-28). Mr. Cepeda was informed during the hearing that he would be given until February 14, 2020, to review and submit any objections to the four exhibits. Mr. Cepeda did not submit any objections to the exhibits; therefore, PGW's four exhibits will be admitted into the record in the Ordering paragraphs of this Initial Decision.

The record closed on February 28, 2020, through an Interim Order Closing the Record. The record consists of the thirty-page hearing transcript and PGW's four exhibits. For the reasons discussed below, the Complaint will be dismissed in part, and granted in part.

FINDINGS OF FACT

1. The Complainant is Benjamin Cepeda.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Cepeda receives service from PGW at 140 East Willard Street, Philadelphia, PA (service address).
4. Mr. Cepeda lives alone at the service address. (Tr. 7).
5. Mr. Cepeda receives \$1,702 a month in social security disability payments. (Tr. 7).
6. Mr. Cepeda established service at the service address on April 12, 2019. (PGW Exhibit 2, p. 3).
7. On April 15, 2019, the outstanding balance in the amount of \$3,512.40 from the prior customer of the service address was transferred to Mr. Cepeda's account. (PGW Exhibit 2, pp. 2, 3).
8. On September 5, 2019, Mr. Cepeda filed an Informal Complaint with the BCS at BCS No. 3731992 seeking a payment arrangement. (PGW Exhibit 4, p. 1).
9. On September 6, 2019, the BCS granted Mr. Cepeda's Informal Complaint at BCS No. 3731992, awarding Mr. Cepeda a payment arrangement. (PGW Exhibit 4, p. 3).

10. The present Formal Complaint is a timely appeal of the decision made at BCS No. 3731992.

11. One payment has been made on Mr. Cepeda's account since the account was established in his name. (PGW Exhibit 2, pp. 3, 4).

12. Mr. Cepeda has never received a Company-issued payment arrangement. (PGW Exhibit 3, p. 1).

13. As of the date of the hearing, Mr. Cepeda's outstanding account balance was \$4,656.79. (Tr. 23; PGW Exhibit 2, pp. 4, 5).

14. Given the income and household size provided at the hearing, Mr. Cepeda is not eligible for PGW's customer responsibility program (CRP).¹ (Tr. 24).

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.

¹ PGW's CRP is a customer assistance program for low-income customers, where participants receive reduced monthly bills.

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 the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 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).

Mr. Cepeda raised two issues in his Complaint. First, Mr. Cepeda challenged his responsibility for the outstanding balance of the prior customer of the service address that was transferred to his account once he established service at the address. However, during the hearing, Mr. Cepeda did not dispute that he was responsible for the transferred amount and accepted responsibility for the transferred outstanding balance. (Tr. 8, 9). As such, the merits of this claim will not be addressed in this Decision. Thus, this claim will be dismissed.²

The second issue that Mr. Cepeda raised was a request for a payment arrangement. Mr. Cepeda testified that, when speaking with a representative from PGW, he was offered a payment arrangement with terms consisting of his monthly bill plus \$25 towards arrears. (Tr. 6, 7). Mr. Cepeda asked that he be issued a payment arrangement with those terms.

² The Commission's regulations permit a public utility to require as a condition of furnishing residential service payment for services previously furnished under an account in the name of a person other than the applicant if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. See 52 Pa. Code § 56.35(b)(1).

(Tr. 8, 9). PGW did not have any records showing that it informed Mr. Cepeda that he was eligible for a payment arrangement with the above terms. (PGW Exhibit 1). However, PGW records do show that, on June 5, 2019, Mr. Cepeda contacted PGW seeking to be placed on a payment arrangement. (PGW Exhibit 1, p. 5). During this conversation with a PGW representative, he informed PGW that someone else would be moving into the service address next month. (Id.). Mr. Cepeda was then advised that he could apply for CRP when the new person moves in. (Id.). The second individual never moved into the service address, and Mr. Cepeda was never enrolled in CRP because he was never found to be eligible. (PGW Exhibit 1).

It can be surmised that, given the above, Mr. Cepeda seeks to be issued payment arrangement terms that might have been available to him had he been eligible and successfully enrolled in PGW's CRP. Participants in CRP are provided with reduced monthly payment terms. Mr. Cepeda was never enrolled in CRP and never had access to such payment terms. PGW witness Ms. Pinkney testified that Mr. Cepeda is still ineligible for PGW's CRP given the income and size of Mr. Cepeda's household. Although Mr. Cepeda is ineligible for CRP, Mr. Cepeda'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. See 66 Pa.C.S. § 1405(d).

Mr. Cepeda was awarded a payment arrangement through the BCS decision issued at BCS No. 3731992. The present Formal Complaint is a timely appeal of that BCS decision. A timely appeal of a BCS decision results in an automatic stay of the BCS decision. See 52 Pa. Code § 56.174(b). Timely appeals of BCS decisions are reviewed *de novo*,³ and if the Formal Complaint on an appeal is litigated to the issuance of an Initial Decision then the formal decision will replace the informal BCS decision. Ruskey v. Pa. Electric Company, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019). Therefore, Mr. Cepeda’s BCS payment arrangement is stayed and will be replaced by my decision issued through this Initial Decision.

³ Review “*de novo*” means that the decision issued in this matter will be based on the evidence presented at the evidentiary hearing. 52 Pa.Code § 56.173(a).

Chapter 14 authorizes the Commission to issue Mr. Cepeda a payment arrangement, and Mr. Cepeda's gross monthly household income in relation to the Federal poverty level will determine the length of the payment arrangement that the Commission may issue. 66 Pa.C.S. § 1405(b). Mr. Cepeda testified that his gross monthly household income is \$1,702 for a household of one, placing him between 150%⁴ and 250%⁵ of the Federal poverty level. This makes Mr. Cepeda a level 2 customer, which is defined as a customer with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level. 66 Pa.C.S. § 1405(b)(2). Level 2 customers are eligible for a payment arrangement of three years to resolve their unpaid balance. *Id.* As such, the Commission is authorized to issue Mr. Cepeda a three-year payment arrangement.

In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills. The Commission has refused to award payment arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. *Getz v. Metropolitan Edison Company*, Docket No. C-2014-2459964 (Order entered May 28, 2015); *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Order entered September 12, 2013).

Concerning Mr. Cepeda's payment history, Mr. Cepeda's has only made one payment towards his account since it was established on April 12, 2019. Regarding Mr. Cepeda's inability or unwillingness to comply with Company-issued payment arrangements, Mr. Cepeda never received a Company-issued payment arrangement. Although Mr. Cepeda's payment history is not strong, it should be noted that Mr. Cepeda's account is relatively new, and that he had been contesting an outstanding balance transferred to his account until he accepted

⁴ 150% of the Federal poverty level for a household of one is \$1,561. *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty>.

⁵ 250% of the Federal poverty level for a household of one is \$2,602. *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty>.

responsibility for the balance at the hearing. Discretion is warranted to issue Mr. Cepeda a payment arrangement in the Ordering paragraphs below.

In conclusion, the portion of Mr. Cepeda's Complaint challenging the transfer of an outstanding balance to his account will be dismissed because Mr. Cepeda abandoned the claim and accepted responsibility for the outstanding balance. Mr. Cepeda's request for a payment arrangement will be granted because Mr. Cepeda has been found eligible for a 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 and customers. 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 may issue. 66 Pa.C.S. § 1405(b).

6. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills. The Commission has refused to award payment

arrangements for those who have a poor payment history and/or inability or unwillingness to comply with payment arrangements established by the utility. Getz v. Metropolitan Edison Company, Docket No. C-2014-2459964 (Order entered May 28, 2015); Hewitt v. PECO Energy Company, Docket No. F-2011-2273271 (Order entered September 12, 2013).

7. The Complainant has met his burden of proving that he is eligible for a Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following exhibits are admitted into the record:
 - PGW Exhibit 1 – Statement of Account
 - PGW Exhibit 2 – Payment Arrangement History
 - PGW Exhibit 3 – Records of Customer Contacts
 - PGW Exhibit 4 – BCS Complaint and Decision
2. That Benjamin Cepeda's Complaint against Philadelphia Gas Works at Docket No. F-2019-3013682 is dismissed in part and granted in part.
3. That the portion of Benjamin Cepeda's Complaint, Docket No. F-2019-3013682, challenging an outstanding balance transferred to his account is dismissed.
4. That the portion of Benjamin Cepeda's Complaint, Docket No. F-2019-3013682, requesting a payment arrangement is granted.
5. That Benjamin Cepeda shall make monthly payments consisting of his budget bill plus one-thirty-sixth ($1/36^{\text{th}}$) of the balance accrued on his account, for the payment

