



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: January 24, 2006

C-20054962

JULE ANN JOHNSON
151 PERRY STREET
PUNXSUTAWNEY PA 15767

Jule Ann Johnson
v.
T.W. Phillips Gas & Oil Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge John H. Corbett, Jr. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

**DOCUMENT
FOLDER**

Encls.
Certified Mail
Receipt Requested
LJM

Very truly yours,

James J. McNulty
Secretary

JAY W DAWSON ESQUIRE
TW PHILLIPS GAS AND OIL COMPANY
205 NORTH MAIN STREET
BUTLER PA 16001

Julie Ann Johnson v. T.W. Phillips Gas and Oil Company

SERVICE LIST: C-20054962

Jule Ann Johnson
151 Perry Street
Punxsutawney, PA 15767

Jay W. Dawson, Esq.
T.W. Phillips Gas and Oil Company
205 North Main Street
Butler, PA 16001

DO 2/10

JAN 11 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jule Ann Johnson

v.

T.W. Phillips Gas & Oil Company

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C-20054962

INITIAL DECISION

DOCUMENT
FOLDER

DOCKETED
JAN 24 2006

Before
John H. Corbett, Jr.
Administrative Law Judge

HISTORY OF THE PROCEEDING

This decision denies a complaint that Jule Ann Johnson (“Complainant”) filed on July 6, 2005. Johnson alleges T.W. Phillips Gas & Oil Company (“Respondent” or “T.W. Phillips”) overbilled her for residential natural gas service. She requests a refund of the excess charges. This complaint is a timely appeal of a determination by the Commission’s Bureau of Consumer Services (“BCS”) denying her informal complaint at BCS Case No. 1613877 on May 23, 2005. T.W. Phillips answered the complaint and filed new matter on September 12, 2005. No reply to the new matter was filed. *See*, 52 Pa. Code §5.62(c).

A standard Prehearing Order was issued on October 25, 2005. A telephonic hearing was held on November 30, 2005. The Complainant appeared *pro se*. Jay W. Dawson, Esq., represented the Respondent, which submitted two exhibits for admission into the record. The hearing generated 56 pages of notes of testimony. No briefs were filed. The record closed on December 28, 2005.

FINDINGS OF FACT

1. The Complainant, Jule Ann Johnson, has resided at 151 Perry Street, Punxsutawney, Pennsylvania 15767 for 59 years (N.T. 7-8).
2. The Respondent, T.W. Phillips Gas & Oil Company, has provided the Complainant with residential natural gas service in her name at the foregoing location since November 4, 2003 (N.T. 8, 13, 35).
3. The Complainant lives in a 100-year-old, two-story frame house that has been "completely remodeled." The last remodeling was completed in 1998. The basement is finished. The first floor has a kitchen, mud room, dining room and living room. Three bedrooms and a bathroom occupy the second floor. The attic is "exceptionally well" insulated (N.T. 9-10).
4. The Complainant uses natural gas for a ten-year-old forced-air furnace, a cook top and a clothes dryer (N.T. 11-12).
5. The Complainant pays her gas bills regularly. Presently, no unpaid arrearage is due on this account. The most recent bill of \$47.59 was due on December 5, 2005 (N.T. 34; Respondent's Exh. A).
6. The Complainant contends that her gas bills from T.W. Phillips, beginning with her December 9, 2003 bill and continuing throughout 2004, were too high. In particular, she complains that the bill of February 9, 2004 in the amount of \$280.29 for 28 Mcf of gas was too high (N.T. 12-20, 23-24; Respondent's Exh. A).
7. The Complainant reads her own gas meter on occasion and reports her findings to T.W. Phillips. She read the meter for the January 9, 2004 gas bill (N.T. 25-26; Respondent's Exh. A).

8. From 1997 until November 2003, the Complainant lived here with her 90-year-old mother. Her mother maintained the furnace thermostat at 80°. Since she currently lives alone, the Complainant sets the thermostat at 70° and as low as 65°-66° at times, but she claims that she pays more now for her gas bills than her mother paid before (N.T. 12-20, 23, 30).

9. When she called T.W. Phillips to complain about her gas bills, the Complainant asserts someone there told her they were calculating her bills by comparing usage at that location from the previous year (N.T. 16-20, 23, 25).

10. Since her 2005 gas bills were supposedly based on comparisons with usage at that location from 2004, the Complainant believes her 2005 gas bills were too high also (N.T. 28-29).

11. The Complainant's gas meter is located outside her home, near the front porch. It is near the road and "very easy to read" (N.T. 22).

12. The Complainant is a retired school teacher and denies that anyone obtains an actual gas meter reading, because she sees no footsteps in the snow nor does she see anyone come to the meter when she is working in the yard outside her home (N.T. 18, 20-21, 24-29, 54).

13. T.W. Phillips has a Customer Read Program for customers, who wish to read their own gas meters. It provides these customers with a brochure on how to read their meters (N.T. 34-35).

14. T.W. Phillips reads its customers' meters every other month, except during the summer, when it estimates bills for three months during typically low consumption (N.T. 36-37).

15. If a gas meter is close enough to the road, a T.W. Phillips' meter reader can read the meter visually without leaving the truck. It does not use transponders to read its meters (N.T. 37-38, 49).

16. T.W. Phillips actually read the Complainant's meter on December 9, 2003, February 9, 2004, April 8, 2004, June 8, 2004, September 9, 2004, November 5, 2004, January 10, 2005, March 8, 2005, May 9, 2005, September 9, 2005 and November 7, 2005 (N.T. 36, 51-52; Respondent's Exh. A).

17. The Complainant read the gas meter and reported her findings to T.W. Phillips on January 9, 2004, March 8, 2004, May 10, 2004 and December 8, 2004 (N.T. 38-39; Respondent's Exh. A).

18. T.W. Phillips generates bills using either actual meter readings by its meter readers or customer meter readings (N.T. 34-35, 38).

19. T.W. Phillips experienced an increase in the cost of its natural gas supply over the past two years, which it then passed on to its customers (N.T. 41).

20. The Complainant called T.W. Phillips on February 19, 2004 to complain about a high gas bill (N.T. 40-41).

21. In response to her complaint on that date, T.W. Phillips compared gas consumption at this location and degree day information for the period of December 9, 2003 to February 9, 2004 with the same period of the previous year when the Complainant shared the residence with her mother. T.W. Phillips could not compare previous years' consumption at this location for the Complainant only, because it did not have a sufficient history in February 2004 for her residing there alone. While the period of December 9, 2003 to February 9, 2004 was colder by 1% than the previous year, the Complainant consumed 7 Mcf or 18% less natural gas during this period as compared to the previous one (N.T. 41-44, 47; Respondent's Exh. B).

22. T.W. Phillips was unable to inquire further, because the Complainant refused its offer to conduct a high bill investigation (N.T. 44, 47; Respondent's Exh. B).

23. T.W. Phillips believes the Complainant misread her gas meter on January 9, 2004, hence causing a somewhat higher bill on February 9, 2004. Johnson reported a meter reading of 343 on January 9 2004, which amounted to only 5 Mcf of natural gas consumed between December 9, 2003 and January 9, 2004. If she had reported a reading of 353 instead of 343, her consumption would have been 15 Mcf for this period. Her usage then from January 9, 2004 to February 9, 2004 would have been 18 Mcf, instead of the 28 Mcf that was reported when an actual meter reading of 371 was taken on February 9, 2004. This consumption pattern is more consistent with the Complainant's subsequent consumption history for a comparable period of the following year (N.T. 45, 47; Respondent's Exhs. A & B).

24. On May 23, 2005, the BCS issued its determination denying Johnson's informal complaint concerning this matter at BCS No. 1613877 (N.T. 45-48; Respondent's Exh. B).

DISCUSSION

The case *sub judice* is akin to many cases the Commission reviews relating to billing disputes. The customer asserts her gas bills are too high. She wants the Commission to direct the utility to credit her for the excess charges. As in every case, the party seeking affirmative relief from this Commission bears the burden of proof. *See*, 66 Pa. C.S. §332(a).

A. The Burden of Proof

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1954); and Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether the Complainant has satisfied her burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the Respondent has submitted evidence of co-equal value or weight to refute the Complainant's

evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967); and Burleson v. Pa. P.U.C., 443 A.2d 1373 (Pa. Cmwlth. 1982), *affirmed*, 501 Pa. 443, 461 A.2d 1234 (1983).

Furthermore, substantial evidence must support the Commission's decision. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; and Yellow Cab Company v. Pa. P.U.C., 524 A.2d 1069 (Pa. Cmwlth. 1987). The term "substantial evidence" means such relevant evidence that a reasonable mind may 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. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984). Moreover, in order to establish a sufficient case against a utility to satisfy the burden of proof, a complainant must show the utility is responsible or accountable for the problem described in the complaint. Feinstein, supra.

B. The High Bill Dispute

In order to determine whether a complainant has established a *prima facie* claim of unusually high bills, this Commission has considered certain factors. Waldron v. Philadelphia Electric Company, 54 Pa. P.U.C. 98 (1980). While the accuracy of the meter is an important factor in resolving a billing dispute, it is not the sole criterion. *Id.* at 100. A complainant may establish a *prima facie* case by: (1) showing that the disputed bill was abnormally high when compared to prior usage patterns; and (2) showing that his/her pattern of usage had not changed. *Id.* In reviewing these criteria, one may consider the billing history of the account, any change in the number of occupants residing in a household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding. Replogle v. Pennsylvania Electric Company, 54 Pa. P.U.C. 528 (1980). In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance. Milkie v. Pa. P.U.C., 768 A.2d 1217 (Pa. Cmwlth. 2001).

Thus, the “Waldron Rule” is an evidentiary rule, which the Commission adopted to apportion the burden of going forward with the evidence. Pennsylvania Electric Company v. Pa. P.U.C., 473 A.2d 704, 705-6 (Pa. Cmwlth. 1984). As such, it is immaterial to the applicability of the rule whether the customer is residential, commercial or industrial. Chiaverini v. Duquesne Light Company, Docket No. C-00945562 (Order entered February 13, 1995); and Kupstas v. Pennsylvania Gas & Water Company, Docket No. F-09136863 (Order entered September 17, 1992).

Here, the Complainant insists all of her gas bills are too high, particularly the one for February 9, 2004 of \$280.29 representing 28 Mcf of consumption since January 9, 2004 (N.T. 12-20, 23-24; Respondent’s Exh. A). T.W. Phillips, however, offers a plausible explanation. On occasion, the Complainant reads her own gas meter and reports her findings to T.W. Phillips (N.T. 25-26; Respondent’s Exh. A). T.W. Phillips believes the Complainant misread her gas meter on January 9, 2004, hence causing a somewhat higher bill on February 9, 2004 when it actually read the meter.

Johnson reported a meter reading of 343 on January 9 2004, which amounted to only 5 Mcf of natural gas consumed between December 9, 2003 and January 9, 2004. If she had reported a reading of 353 instead of 343, her consumption would have been 15 Mcf for this period. Her usage then from January 9, 2004 to February 9, 2004 would have been 18 Mcf, instead of the 28 Mcf that was reported when an actual meter reading of 371 was taken on February 9, 2004. This consumption pattern is more consistent with the Complainant’s subsequent consumption history for a comparable period of the following year (N.T. 45, 47; Respondent’s Exhs. A & B).

This explanation is just as reasonable, if not more so, than the one that the Complainant offers. In fact, Johnson offers nothing more than her suspicion that the utility is dealing dishonestly with her. Absent some further proof on this issue, the Complainant has not met her burden of proof here.

In addition, Johnson strenuously objects that she pays more now for her gas bills than her mother paid before, when the two of them lived in the same house together. From 1997 until November 2003, the Complainant lived here with her 90-year-old mother. Her mother maintained the furnace thermostat at 80°. Since living in the house alone, Johnson sets the thermostat at 70° and as low as 65°-66° at times (N.T. 12-20, 23, 30). These facts, however, do not relate the whole picture. T.W. Phillips experienced an increase in the cost of its natural gas supply over the past two years, which it then passed on to its customers, including the Complainant (N.T. 41).

Moreover, the Complainant easily possesses the capacity to consume the amount of gas for which she has been billed (Respondent's Exh. A). Johnson lives in a 100-year-old, two-story frame house that admittedly has been "completely remodeled" and it has an attic that is "exceptionally well" insulated (N.T. 9-10). But, she uses natural gas for a ten-year-old forced-air furnace, a cook top and a clothes dryer (N.T. 11-12). With the noted exception of the February 9, 2004 bill, all of the reported consumption between December 9, 2003 and November 7, 2005 is remarkably consistent, while allowing for more usage during the winter heating season (Respondent's Exh. A).

For its part, T.W. Phillips compared gas consumption at this location and degree day information for the period of December 9, 2003 to February 9, 2004 with the same period of the previous year when the Complainant shared the residence with her mother. T.W. Phillips could not compare previous years' consumption at this location for the Complainant only, because it did not have a sufficient history in February 2004 for her residing there alone. While the period of December 9, 2003 to February 9, 2004 was colder by 1% than the previous year, the Complainant consumed 7 Mcf or 18% less natural gas during this period as compared to the previous one (N.T. 41-44, 47; Respondent's Exh. B). So, this comparison supports the Complainant's assertion that she should have experienced lower consumption while residing there alone. But, she may not have noticed a greater decrease in the dollar amount of her bills, because T.W. Phillips experienced a higher cost of gas supply that it passed on to its customers. It was unable to shed further light on the subject, because the Complainant refused its offer to conduct a high bill investigation (N.T. 44, 47; Respondent's Exh. B).

Finally, the Complainant exhibits a bit of confusion about why T.W. Phillips engaged in a comparison of her bills with those of her mother (N.T. 16-20, 23, 25, 28-29). The comparison was not made, as Johnson contends, as a means to calculate her bills. Instead, T.W. Phillips compared her mother's prior usage at this location with her recorded consumption as a means of checking whether she had the capacity in this house to use the amount of natural gas for which it was billing her. Since she had refused T.W. Phillips' offer to conduct a high bill investigation, a comparison of bills was the only remaining reasonable alternative to respond to her complaint. Despite Johnson's protestations to the contrary, all indications support T.W. Phillips' assurances that it regularly reads her gas meter (N.T. 36-37, 51-52; Respondent's Exh. A). Likewise, ample evidence supports T.W. Phillips' assertion that it generates bills using either actual meter readings by its meter readers or customer meter readings (N.T. 34-35, 38).

For all of these reasons, the Complainant has not met her burden of proving that she is entitled to relief. No payment plan will be considered here, because no unpaid arrearage is due on this account (N.T. 34; Respondent's Exh. A). Accordingly, the complaint must be denied and the following Order will be entered.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§501, *et seq.*
2. The Complainant has not met her burden of proving that she is entitled to the relief she seeks from this Commission. 66 Pa. C.S. §332(a).
3. Under the circumstances, no payment plan needs to be considered here.

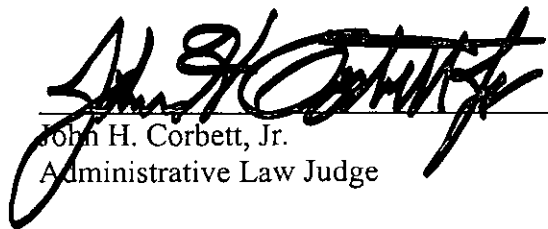
ORDER

THEREFORE,

IT IS ORDERED:


That the complaint of Jule Ann Johnson against T.W. Phillips Gas & Oil Company at Docket No. C-20054962 is hereby denied.

Date: January 5, 2006



John H. Corbett, Jr.
Administrative Law Judge

2. Article Number



7160 3901 9843 1136 9906

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:


C-20054962 10

Jule Ann Johnson

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature	
<input checked="" type="checkbox"/> <i>Jule Ann Johnson</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item? <input type="checkbox"/> Yes	
If YES, enter delivery address below: <input type="checkbox"/> No	
JAN 26 2006	

PS Form 3811, March 2005 Domestic Return Receipt

2. Article Number



7160 3901 9843 1136 9913

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

C-20054962 10

Jay W. Dawson

COMPLETE THIS SECTION ON DELIVERY	
A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature	
<input checked="" type="checkbox"/> <i>Jay W. Dawson</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item? <input type="checkbox"/> Yes	
If YES, enter delivery address below: <input type="checkbox"/> No	
1-26	

PS Form 3811, March 2005 Domestic Return Receipt