

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Cianci

v.

Philadelphia Gas Works

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F-2016-2572823

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her natural gas utility alleging that the utility overbilled her for service to an unoccupied residence she owned. This decision denies the complaint because the gas meter installed at the residence was functioning properly during the relevant billing period and the high usage experienced by the customer cannot be attributed to the utility.

HISTORY OF THE PROCEEDING

On October 26, 2016, Judith Cianci (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision issued September 2, 2016 at BCS No. 3440970 dismissing the Complainant's informal complaint. The complaint alleges that there are incorrect charges on the Complainant's natural gas bills.

The complaint states that the Complainant received bills from the Respondent in the amounts of \$988.97, \$1,074.49, \$917.58 and \$344.29 for February 2016, March 2016, April 2016 and May 2016 respectively. The complaint also asserts that the Respondent installed a new gas meter prior to the Complainant receiving the high bills.

The complaint claims that the Complainant has not resided at her residence since February 2014. According to the complaint, the Complainant sold her residence for \$12,000.00 but had to use some of the sales proceeds to pay the Respondent for an unpaid account balance. The complaint requests that the Commission order the Respondent to provide the Complainant with a refund.

The Respondent filed an answer on November 15, 2016. The answer admits that the Respondent provided natural gas service to the Complainant at the address shown on the complaint. The account was listed as residential heat and domestic usage. The answer denies that there are incorrect charges on the Complainant's bills.

The answer alleges that the Complainant's residence is equipped with an Automatic Meter Reading (AMR) device. The answer states that the Respondent's employees visited the Complainant's residence to change meters but could not gain entrance to the residence. On March 9, 2015, the Respondent completed a meter exchange. On May 24, 2016, the Respondent's employee visited the Complainant's residence and determined that the meter was recording properly. On August 1, 2016, the Respondent terminated service to the Complainant and generated a closing bill in the amount of \$4,029.91. The answer requests that the Commission dismiss the complaint.

By hearing notice dated December 13, 2016, the Commission scheduled a telephonic hearing for this matter on January 24, 2017 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated December 15, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on January 24, 2017. The Complainant appeared pro se and presented testimony in support of her complaint. In addition, the Complainant's daughter, Lisa McNamara testified on her behalf. Laureto Farinas, Esquire represented the Respondent, which presented one witness who sponsored six exhibits that I admitted into the record.

During the hearing, counsel for the Respondent requested that it be allowed to provide a copy of its gas meter test report dated January 19, 2017 as PGW Exhibit 7 for admission into the record. I issued an order dated January 26, 2017, directing the Respondent to serve copies of its gas meter test report dated January 19, 2017 to the Complainant and me. By order dated February 16, 2017, I denied the Complainant's objections to admission of the gas meter test report, admitted PGW Exhibit 7 into the record and closed the evidentiary record.

The initial hearing resulted in a transcript of 73 pages. The record closed on February 16, 2017, the date of the order admitting PGW Exhibit 7 and closing the evidentiary record. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Judith Cianci. N.T. 7.
2. The Respondent in this case is Philadelphia Gas Works. N.T. 8.
3. The Complainant currently resides at 321 Folsom Avenue, Folsom, Delaware County with her daughter. N.T. 7.
4. The Complainant has resided at this address since 2014. N.T. 7-8.
5. Previously the Complainant resided at 2111 South Simpson Street, Philadelphia. N.T. 7-8.

6. The Complainant resided at 2111 South Simpson Street for approximately 40 years. N.T. 8.

7. The Complainant moved from the residence at 2111 South Simpson Street on February 22, 2014 when her husband passed away. N.T. 8.

8. The residence at 2111 South Simpson Street is a row house. N.T. 8.

9. The residence at 2111 South Simpson Street has a gas range, gas clothes dryer, gas hot water heater and gas furnace. N.T. 20-21.

10. When she moved from 2111 South Simpson Street, the Complainant left the heat on with the thermostat set at 55 degrees in order to keep the water in the plumbing from freezing. N.T. 8-9, 23-24.

11. After the Complainant moved from 2111 South Simpson Street, she returned there weekly to pick up her mail since she did not have her mail forwarded to 321 Folsom Avenue. N.T. 8-9.

12. In October 2014, the Complainant discovered that the residence at 2111 South Simpson Street had been broken into. N.T. 13.

13. Whoever broke into the house vandalized the interior. N.T. 24-25.

14. The Complainant contacted the police. N.T. 24.

15. After the break in, the Complainant's son in law, who is a carpenter, boarded up the windows and doors of the residence. N.T. 13, 24.

16. The front door was not boarded but has two locks on the door. N.T. 26.

17. On March 9, 2015, the Respondent's employee replaced the meter at 2111 South Simpson Street and indicated that all safety checks were passed. N.T. 52, PGW Ex. 1, p. 9.

18 On May 6, 2015, Lisa McNamara contacted the Respondent complaining that the bills for 2111 South Simpson Street were too high. N.T. 52, PGW Ex. 1, p. 8.

19. On June 3, 2015, the Respondent closed this complaint after the Respondent sent a letter to the Complainant explaining that the meter has an AMR, that the Respondent can obtain a reading from the AMR and that the bill was based on actual usage obtained from a reading of the meter. N.T. 52.

20. This letter also informed the Complainant that the furnace would run even if the property was vacant and advised the Complainant to lower the thermostat setting. N.T. 52-53, PGW Ex. 1, p. 7-8, PGW Ex. 4, p. 1-3.

21. On January 30, 2016, the Respondent billed the Complainant \$988.97 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3.

22. On February 26, 2016, the Complainant contacted the Respondent complaining that the bills for 2111 South Simpson Street were too high. N.T. 53, PGW Ex. 1, p. 6.

23. On March 1, 2016, the Respondent billed the Complainant \$1074.49 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3.

24. On March 24, 2016, the Respondent closed the Complainant's complaint after the Respondent sent a letter to the Complainant explaining that the meter has an AMR, that the Respondent can obtain a reading from the AMR and that the bill was based on actual usage obtained from a reading of the meter. N.T. 53-54, PGW Ex. 1, p. 4-5.

25. This letter informed the Complainant that a field visit would be necessary due to the nature of the dispute. N.T. 53-54, PGW Ex. 1, p. 4-5.

26. The letter informed the Complainant that the Respondent had attempted to contact the Complainant to schedule a field visit but was not successful. N.T. 53-54, PGW Ex. 1, p. 4-5, PGW Ex. 4, p. 4.

27. On March 29, 2016, the Respondent billed the Complainant \$917.58 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3.

28. On April 27, 2016, the Respondent billed the Complainant \$344.29 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3.

29. Each of the bills issued from January 2016 to April 2016 was generated from an actual meter read. N.T. 59, PGW Ex. 2, p. 3.

30. On May 18, 2016, the Complainant filed a complaint with BCS. N.T. 54, PGW Ex. 1, p. 3-4.

31. The Respondent's employee visited 2111 South Simpson Street on May 25, 2016 and found that the manual read on the meter was identical to the AMR reading. N.T. 54, PGW Ex. 1, p. 3.

32. On May 27, 2016, the Respondent sent a letter to the Complainant explaining that the May 25, 2016 on site investigation of the meter concluded that it was functioning properly. N.T. 54-55, PGW Ex. 1, p. 3, PGW Ex. 4, p. 5-6.

33. The Respondent sent a similar response to BCS. N.T. 54-55, PGW Ex. 1, p. 2.

34. On July 22, 2016, the Complainant sold the property at 2111 South Simpson Street for \$12,000.00. N.T. 9.

35. At that time she sold the property, the Complainant had to pay the Respondent approximately \$4,000.00 for an unpaid account balance for gas service to the property at 2111 South Simpson Street. N.T. 10.

36. On August 1, 2016 the Respondent contacted Ms. McNamara, reviewed its findings and explained the dispute resolution process. N.T. 55, PGW Ex. 1, p. 1.

37. The Respondent also cancelled the Complainant's account as of July 21, 2016 and confirmed an address for a final bill. PGW Ex. 1, p. 1.

38. On January 18, 2017, the Respondent removed the gas meter from the residence at 2111 South Simpson Street. N.T. 59, PGW Ex. 7.

39. On January 19, 2017, the Respondent tested the meter. N.T. 59, PGW Ex. 7.

40. The meter tested as .8% fast. N.T. 59-60, PGW Ex. 7.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent 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). The Complainant must establish her case by a preponderance of the evidence. 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). To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Here, the Complainant alleges that the Respondent overbilled her.

Since the Complainant's complaint alleges overbilling, the Complainant's burden of proof is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) (Waldron).

In Waldron, the Commission concluded that a complainant may establish a prima facie overbilling case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with the evidence shifts to the Respondent.

If the Respondent fails to rebut the Complainant's evidence, then the Complainant would prevail. If the Respondent places evidence into the record to rebut the Complainant's prima facie case, the burden of going forward with the evidence shifts back to the Complainant. In order to satisfy the burden of proof, the Complainant must rebut the Respondent's evidence by a preponderance of the evidence.

Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on the Complainant. Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980).

The Commonwealth Court broadened the Commission's ruling in Waldron in Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a complainant must establish certain specific elements in order to make out a prima facie case was too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage.

Subsequent to the Milkie decision, the Commission has determined that in an overbilling case, it may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011). The Waldron rule protects the Complainant from dismissal because of her inability to produce direct proof that her meter has malfunctioned.

As noted above, the burden of proof always remains with the Complainant and if the Respondent presents evidence that is co-equal or greater in weight than the Complainant's, the Complainant will not have met her burden of proof. The Commonwealth Court in Milkie emphasized that the mere proof by the utility that its measuring devices are accurate is no longer the sole determinant of whether there is a basis to a complaint of overbilling, citing Burleson v. Pa. Pub. Util. Comm'n, 461 A.2d 1234 (Pa. 1983).

In this case, the Complainant's complaint alleges that the Respondent overbilled her. I will provide some background information taken from the evidence presented at the hearing before addressing the Complainant's contentions and the merits of the case.

The Complainant currently resides at 321 Folsom Avenue, Folsom, Delaware County with her daughter. N.T. 7. The Complainant has resided at this address since 2014. N.T. 7-8.

Previously the Complainant resided at 2111 South Simpson Street, Philadelphia. N.T. 7-8. The Complainant testified that she resided at 2111 South Simpson Street for approximately 40 years. N.T. 8. She moved from the residence at 2111 South Simpson Street on February 22, 2014 when her husband passed away. N.T. 8.

The Complainant testified that the residence at 2111 South Simpson Street is a row house. N.T. 8. According to the Complainant, the residence at 2111 South Simpson Street has a gas range, gas clothes dryer, gas hot water heater and gas furnace. N.T. 20-21.

When she moved from 2111 South Simpson Street, the Complainant left the heat on with the thermostat set at 55 degrees in order to keep the water in the plumbing from freezing. N.T. 8-9, 23-24. The Complainant testified that after she moved from 2111 South Simpson Street, she returned there at least once a week to pick up her mail since she did not have her mail forwarded to 321 Folsom Avenue. N.T. 8-9.

In October 2014 the Complainant discovered that the residence at 2111 South Simpson Street has been broken into. N.T. 13. Whoever broke into the house vandalized the interior. N.T. 24-25. The Complainant contacted the police. N.T. 24.

After this break in, the Complainant's son in law, who is a carpenter, boarded up the windows and doors of the residence. N.T. 13, 24. The front door was not boarded but has two locks on the door. N.T. 26. The Complainant testified that after her son in law boarded up the residence at 2111 South Simpson Street, the house suffered no more break ins. N.T. 26.

The Complainant testified that in May 2015, the Respondent's employee installed a new gas meter at the residence at 2111 South Simpson Street. N.T. 18.

In February 2016, the Complainant stated that she received a bill from the Respondent for \$988.97 for gas service to 2111 South Simpson Street. N.T. 11. After receiving the bill, the Complainant contacted the Respondent, questioning the accuracy of the bill. N.T. 11.

The Complainant indicated that after she contacted the Respondent, in April 2016, it sent an employee to the residence at 2111 South Simpson Street to investigate. N.T. 11. The Complainant met the employee at the residence. N.T. 11-12.

The Complainant testified that the Respondent's employee inspected and tested the gas meter and the thermostat. N.T. 11-12. The Respondent's employee reported to the Complainant that the gas meter and thermostat were both functioning properly. N.T. 11-13.

The Complainant stated that in March 2016 when she received another large bill from the Respondent for \$1,074.49 for gas service at 2111 South Simpson Street, she contacted the Respondent again questioning the accuracy of the bill. N.T. 11, 14-15. The Respondent sent an employee to the residence at 2111 South Simpson Street again.

On July 22, 2016, the Complainant sold the property at 2111 South Simpson Street for \$12,000.00. N.T. 9. At that time she had to pay the Respondent approximately

\$4,000.00 for the unpaid account balance for gas service to the property at 2111 South Simpson Street. N.T. 10.

The Complainant asserted that in January 2017 the Respondent replaced the gas meter at 2111 South Simpson Street. N.T. 19-20.

On cross examination, the Complainant indicated that she did not observe evidence of squatters living in the residence at 2111 South Simpson Street. N.T. 24-26. However, she indicated that she was aware that there were squatters living in the neighborhood. N.T. 24-26.

The Complainant's daughter, Lisa McNamara, testified on her behalf. N.T. 32. Ms. McNamara's testimony largely reiterated the Complainant's testimony. Ms. McNamara stated that she had talked to the Respondent concerning the bills for 2111 South Simpson Street. N.T. 33-34, 37-38. Ms. McNamara theorized that the Complainant's high bills were a result of the new meter installed in 2015. N.T. 37.

In response to the Complainant's evidence concerning overbilling, the Respondent presented the testimony of Jessica Glace, a customer review officer. N.T. 44-45. Ms. Glace's testimony corroborated some of the Complainant's testimony. The Respondent's records indicated dates of events that differed from some of the time frames recalled by the Complainant. Where the evidence differs as to when certain events occurred, I will give more weight to the Respondent's records since the Complainant could only testify to approximately when certain events occurred.

Ms. Glace first referred to PGW Ex. 1, a record of contacts for the account at 2111 South Simpson Street. N.T. 50-51. The record indicates that on January 21, 2010, the Respondent attempted to contact the Complainant's husband in order to replace the meter at 2111 South Simpson Street. N.T. 51, PGW Ex. 1, p. 14. According to the record, an appointment was set for January 25, 2010. However, when the employee of the Respondent arrived at the residence, he could not gain access to the property to exchange the meter. N.T. 51, PGW Ex. 1, p. 14.

For the period from August 2013 to March 2015 the Respondent unsuccessfully attempted to contact the Complainant or her husband more than twenty times to replace the meter at 2111 South Simpson Street. N.T. 51, PGW Ex. 1, p. 9-12. On March 9, 2015, the Respondent's employee replaced the meter and indicated that all safety checks were passed. N.T. 52, PGW Ex. 1, p. 9.

The records show that on May 6, 2015, Ms. McNamara contacted the Respondent complaining that the bills for 2111 South Simpson Street were too high. N.T. 52, PGW Ex. 1, p. 8. On June 3, 2015, the Respondent closed this complaint after the Respondent sent a letter to the Complainant explaining that the meter has an AMR, that the Respondent can obtain a reading from the AMR and the bill was based on actual usage obtained from a reading of the meter. N.T. 52. This letter also informed the Complainant that the furnace would run even if the property was vacant and advised the Complainant to lower the thermostat setting. N.T. 52-53, PGW Ex. 1, p. 7-8, PGW Ex. 4, p. 1-3.

The records show that on February 26, 2016, the Complainant contacted the Respondent complaining that the bills for 2111 South Simpson Street were too high. N.T. 53, PGW Ex. 1, p. 6. On March 24, 2016, the Respondent closed this complaint after the Respondent sent a letter to the Complainant explaining that the meter has an AMR, that the Respondent can obtain a reading from the AMR and that the bill was based on actual usage obtained from a reading of the meter. N.T. 53-54, PGW Ex. 1, p. 4-5. This letter also informed the Complainant that a field visit would be necessary due to the nature of the dispute. N.T. 53-54, PGW Ex. 1, p. 4-5. The letter indicated that the Respondent had attempted to contact the Complainant to schedule a field visit but was not successful. N.T. 53-54, PGW Ex. 1, p. 4-5, PGW Ex. 4, p. 4.

The record shows that on May 18, 2016, the Complainant filed a complaint with BCS. N.T. 54, PGW Ex. 1, p. 3-4. According to the record, the Respondent's employee visited 2111 South Simpson Street on May 25, 2016 and found that the manual read on the meter was identical to the AMR reading. N.T. 54, PGW Ex. 1, p. 3. On May 27, 2016, the Respondent sent a letter to the Complainant explaining that the May 25, 2016 on site investigation of the meter concluded that it was functioning properly. N.T. 54-55, PGW Ex. 1, p. 3, PGW Ex. 4, p. 5-6.

The record indicates that the Respondent sent a similar response to BCS. N.T. 54-55, PGW Ex. 1, p. 2.

The record shows that on August 1, 2016 the Respondent contacted Ms. McNamara, reviewed its findings and explained the dispute resolution process. N.T. 55, PGW Ex. 1, p. 1. The Respondent also cancelled the Complainant's account as of July 21, 2016 and confirmed an address for a final bill. PGW Ex. 1, p. 1.

Ms. Glace next referred to PGW Ex. 2, a statement of account for 2111 South Simpson Street. N.T. 57. The statement of account indicates that on January 30, 2016, the Respondent billed the Complainant \$988.97 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3. On March 1, 2016, the Respondent billed the Complainant \$1074.49 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3. On March 29, 2016, the Respondent billed the Complainant \$917.58 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3. On April 27, 2016, the Respondent billed the Complainant \$344.29 for natural gas usage. N.T. 58, PGW Ex. 2, p. 3. Each of these bills was generated from an actual meter read. N.T. 59, PGW Ex. 2, p. 3.

Ms. Glace testified that on January 18, 2017, the Respondent removed the gas meter from the residence at 2111 South Simpson Street. N.T. 59, PGW Ex. 7. On January 19, 2017, the Respondent tested the meter. N.T. 59, PGW Ex. 7. The meter tested as .8% fast. N.T. 59-60, PGW Ex. 7.

Having provided a brief summary of the testimony of the Complainant and the Respondent, I will now address the Complainant's arguments about the alleged overbilling by the Respondent.

After reviewing the evidence, I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent incorrectly billed her. I reach this conclusion for several reasons. First, the meter in the Complainant's home during the relevant billing period was tested and found to be accurately recording the Complainant's usage. The Respondent performed a test of the meter on January 19, 2017 and found it to be .8% fast. The meter's accuracy is within the 2% margin of error allowed by Commission regulations.

52 Pa.Code §§59.21 and 59.22. Based on this test, I conclude that the meter was functioning properly when the Respondent tested it.

Second, it is highly unlikely that the new meter would function properly after it was installed, malfunction during the relevant billing period, then resume functioning properly when the Respondent tested it. During the hearing, the Complainant insisted that her natural gas bills for January through April 2016 were too high and that she could not have possibly used the amount of natural gas shown on her bills because the property at 2111 South Simpson Street was unoccupied during the period from January 2016 through April 2016 when the high bills occurred. She points out that for periods before and after this time period, the bills were substantially lower.

For the period from November 2015 to May 2016, the usage is substantially higher than the previous period of November 2014 to May 2015 when the property was also vacant. PGW Ex. 2. For the period of November 2014 to May 2015 the highest usage was recorded during March 2015 when the Complainant used 385 hundred cubic feet (ccf) of natural gas for a one month period. PGW Ex. 2. This coincided with 755 degree days during the same period.

In contrast, for the period of November 2015 to May 2016, the highest usage was recorded during February 2016 when the Complainant used 856 ccf of natural gas for a one month period. This coincided with 785 degree days during the same period. From this, the Complainant theorizes that the meter malfunctioned during the period from November 2015 to May 2016.

The Complainant's assertion that the meter malfunctioned during the period from January 2016 through April 2016 is undercut by the fact that the readings from the meter from March 2015, when the Respondent installed the new meter, to November 2015 and from May 2016 to August 2016 are consistent with usage recorded by the old meter prior to March 2015 for the same time periods. The Complainant failed to present any evidence as to how the new meter first functioned properly, then malfunctioned during the period from January through April 2016, then began functioning properly again when the Respondent tested it.

If the meter had malfunctioned during the period from January through April 2016, it would have continued to malfunction. This is not the case. I conclude that since the meter was functioning properly when installed and when it was tested in January 2017, it was functioning properly for the entire intervening time period, including the period from January through April 2016.

The Complainant's evidence concerning the malfunctioning of the meter consisted of unsupported assertions. These assertions cannot form the basis of a finding of fact in her favor, regardless of how strongly the Complainant believes them. Assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987). Even pro se complainants must provide relevant and necessary information. The Complainant in this case proceeded pro se by choice and bore the risk of doing so. Groch v. Unemployment Comp. Bd. of Review, 472 A.2d 286 (Pa.Cmwlth 1984); Vann v. Unemployment Comp. Bd. of Review, 494 A.2d 1081 (Pa. 1985).

Since the property was unoccupied, the Complainant had no actual knowledge of the temperature of the house. Vitale v Pennsylvania Electric Company, Docket No. F-2015-2463308 (Opinion and Order entered February 8, 2017) (Vitale). In Vitale, the complainant also alleged the property was vacant when the overbilling allegedly occurred. The Commission pointed out that at any given time, the complainant had no actual knowledge of the temperature in the house or what lighting or appliances were being used since she was not residing in the house.

The Commission in Vitale also stated that in order to prevail on her overbilling claim, the Complainant had to prove that the usage was unreasonably high and that the high usage could be attributed to the utility. In Vitale, the Complainant was unable to demonstrate that the utility was responsible for the high usage.

Finally, in Vitale, the Commission held that the utility did not have to provide an explanation for the high usage in order to rebut the evidence produced by the complainant. The Commission reasoned that the utility may provide other evidence sufficient to rebut the Complainant's evidence without providing an explanation for the high usage.

In this case, the Complainant testified that the thermostat at 2111 South Simpson Street was set at fifty-five degrees. However, while she indicated that she visited the house weekly to pick up mail, there is no indication that she entered the house each time or that she checked the temperature setting on the thermostat for the furnace each time. As in Vitale, the Complainant here would have no actual knowledge of the temperature in the house or what appliances were used in her absence.

After the Respondent installed the new meter in March 2015, the Complainant complained that the meter was inaccurately registering usage at 2111 South Simpson Street. The Respondent investigated this complaint and concluded that the meter was accurately registering usage at the property. PGW Ex. 4, p. 1-3. The Respondent's June 3, 2015 letter pointed out that, although the property was unoccupied, appliances such as the furnace worked by thermostat setting and that the furnace would turn on every time the temperature in the residence falls below the thermostat set temperature. This letter suggested that the Complainant adjust the thermostat setting. If the setting on the thermostat were increased during the period from January through April 2016, that increase would have an impact on the natural gas consumption.

In addition, the high usage from January through April 2016 cannot be attributed to the Respondent. The Respondent inspected the meter and thermostat at the Complainant's residence and both were functioning properly. The Respondent has no control over an increase in consumption caused by conditions inside the residence.

While the Respondent did not provide an explanation for the high usage for the period from January through April 2106, it did not need to do so in order to rebut the Complainant's evidence. The Respondent provided sufficient evidence to rebut the Complainant's evidence without providing such an explanation.

Given these facts, the Complainant has failed to demonstrate that the Respondent has over billed her. The Complainant's meter accurately recorded her natural gas usage. The Respondent has no control over an increase in consumption caused by conditions inside the residence. I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent has overbilled her for natural gas service.

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 Complainant's burden of proof in this proceeding is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).
4. The Complainant failed to establish by a preponderance of the evidence that the Respondent has overbilled her for natural gas service because her gas meter is accurately recording the amounts of gas she was using. Waldron v. Philadelphia Electric Co., 54 Pa. P.U.C. 98 (1980); Milkie v. Pennsylvania Pub. Util. Com., 768 A.2d 1217 (Pa.Cmwlth. 2001).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Judith Cianci against Philadelphia Gas Works at Docket No. F-2016-2572823 is denied.
2. That the docket at Docket No. F-2016-257 2823 is marked closed.

Date: February 23, 2017

/s/
David A. Salapa
Administrative Law Judge