

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deree J. Norman	:	
	:	
v.	:	C-2018-2640719
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Deree J. Norman’s formal Complaint because he failed to sustain his burden of proving: 1) that there are incorrect charges in his gas bills from Philadelphia Gas Works; and 2) that Philadelphia Gas Works violated a Commission statute, regulation or order by not offering Mr. Norman a payment arrangement after the conclusion of his prior complaint, and with regard to Mr. Norman’s LIHEAP¹ application for 2017-2018. This Initial Decision also denies Deree J. Norman’s request for a Commission-issued payment arrangement upon concluding that a payment arrangement issued by the utility is more advantageous for him. Finally, this Initial Decision waives the late payment charges assessed against Mr. Norman’s account during the period November 23, 2015 to November 14, 2018.

¹ Low-Income Home Energy Assistance Program (LIHEAP).

HISTORY OF THE PROCEEDING

On December 27, 2017, Deree J. Norman (Mr. Norman or Complainant) filed a Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off his gas service, that he is unable to pay his gas bills to PGW, and that there are incorrect charges on his gas bills from PGW. In particular, Mr. Norman averred that his electric service has been terminated since August 21, 2017, rendering him incapable of using the gas appliances in his house that have electric pilots or ignitions. Nevertheless, his gas bills after August 21, 2017, mirror his gas bills from before the termination of his electric service. As relief, Mr. Norman requested that the Commission establish an affordable payment arrangement on his behalf, and that it review and correct his gas bills from PGW.

On January 22, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated February 2, 2018, notified the parties that an initial hearing was scheduled in this matter for March 28, 2018, at 10:00 a.m.

A Prehearing Order was issued on March 9, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On March 21, 2018, Mr. Norman requested a continuance of the hearing scheduled for March 28, 2018. In his communication, Mr. Norman cited an unforeseen medical matter as grounds for requesting the continuance.

By e-mail dated March 23, 2018, counsel for PGW expressed his objections to the request for a continuance of the hearing, arguing that Mr. Norman's request was a ploy to delay the hearing and final disposition of this matter.

On March 26, 2018, I issued an Order denying Mr. Norman's request. While the Order denied Mr. Norman's request for continuance of the hearing, it offered him the option of attending the hearing via telephone.

Also, on March 26, 2018, Mr. Norman contacted the Commission's Philadelphia Office to inquire about his request for continuance. Mr. Norman was orally informed of the recently issued Order and of the reason for the denial of his request. He was also informed that his request would be granted if he could submit documentation substantiating his claim of a medical emergency.

On March 27, 2018, I received via facsimile a letter from Mr. Norman's healthcare provider substantiating his claim. As it was unclear whether Mr. Norman had an opportunity to serve counsel for PGW with a copy of the letter, a copy of the document was forwarded to its counsel, Attorney Farinas.

The hearing scheduled for March 28, 2018 was cancelled. Due to time restrictions, no written order was issued to notify the parties of the cancellation. Neither party appeared for the March 28, 2018 hearing. The hearing was rescheduled for May 18, 2018.

On May 18, 2018, the parties convened for the initial hearing scheduled in this matter. Prior to the beginning of the hearing, the parties requested and were granted the opportunity to conduct settlement discussions with my assistance as a settlement judge. While the parties were unable to resolve the issues raised in the Complaint during the off-the-record settlement discussions, they were able to use the time to clarify the nature and scope of the issues raised. 1Tr.² 5-6. In particular, it was determined that the scope of the present Complaint would extend no further than October of 2015. 1Tr. 6. In addition, Mr. Norman clarified his high billing dispute as a synchronization issue between the PGW meter and the Company's systems (billing system, reading system). 1Tr. 6. Mr. Norman agreed to pay the undisputed portion of his bill, which amounted to \$730.98 and covered the period from October of 2015 to May of 2018, by no later than June 1, 2018. 1Tr. 6-7. In addition, the parties were instructed to work

² "1Tr." refers to the transcript of the hearing held on May 18, 2018.

together to schedule a meter test at the service address and to resolve informally any discovery issues before filing formal objections and motions on them. 1Tr. 7-9. I also instructed the parties to inform me when the gas meter serving the Service Address was removed for testing and if there were any issues that I needed to rule upon. 1Tr. 9.

Because the meter testing had not occurred more than two months after the May 18, 2018 hearing, I set the matter for a further hearing. By Hearing Notice dated September 11, 2018, a further in-person hearing was scheduled in this matter for October 12, 2018.

The parties engaged in discovery.³

The October 12, 2018 further hearing was changed to a prehearing conference where Mr. Norman amended and clarified his high billing dispute further by stipulating that, if the gas meter currently serving the Service Address was tested for accuracy, it would test accurate within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 99-104. Instead, Mr. Norman claimed that, by controlling the pressure, density and composition of the gas that goes through its meters, PGW is manipulating its meters' readings causing them to run fast. *Id.*

By Hearing Notice dated October 15, 2018, the further hearing in the above-captioned matter was rescheduled for November 29, 2018, at 10:00 a.m.

The further hearing convened as scheduled on November 29, 2018. The Complainant appeared *pro se* and testified in support of the Complaint. Mr. Norman presented the testimony of Jessica Glace, who is a Senior Customer Review Officer at PGW, and Abe Awad, who is the Director of Field Service and Maintenance at PGW. The Complainant sponsored one exhibit, which was admitted into the record.

³ For a more detailed history of the discovery proceedings in this matter please see my Orders issued on May 10, 2018, November 8, 2018, November 20, 2018, November 27, 2018, and November 28, 2018.

Laureto Farinas, Esq., represented the Respondent, and presented the testimony of Jessica Glace and Abe Awad. The Respondent sponsored three exhibits, which were admitted into the record in this case.

The record closed upon receipt of my copy of the hearing transcript on January 9, 2019.

FINDINGS OF FACT

1. The Complainant is Deree J. Norman, whose mailing address is 5367 Thomas, Avenue, Philadelphia, PA 19143 (Service Address). Tr. 120.

2. The Respondent is Philadelphia Gas Works.

High Billing Dispute

3. Mr. Norman resides at the Service Address with his adult daughter. Tr. 169-70, 207-208.

4. Mr. Norman's daughter has lived with him since 1992 and is currently holding an unpaid internship position with a record company which requires her to travel outside of the city. Tr. 207-208.

5. Mr. Norman's daughter was travelling in a similar fashion, if not more frequently, in 2016 and 2017, when she was still in school. *Id.*

6. The Service Address is equipped with a gas house heater, a gas water heater, and a gas range. Tr. 178.

7. In August 2017, the electric utility shut off electric service at the Service Address. Tr. 175-76.

8. Mr. Norman is able to use the gas water heater even without electricity. Tr. 180.

9. Mr. Norman's gas usage during the warmer months in the years 2016, 2017, and 2018 was as follows:

Billing date	Usage (CCF)						
6/23/2016	12	7/23/2016	8	8/23/2016	7	9/22/2016	9
6/22/2017	13	7/25/2017	10	8/22/2017	11	9/22/2017	11
6/28/2018	11	7/26/2018	11	8/24/2018	10	9/25/2018	10

PGW Exhibit 1A.

10. Abe Awad is the Director of Field Service and Maintenance at PGW. Tr. 212.

11. PGW follows industry standards set by the American Gas Association (AGA) with regard to levels of gas pressure in its system. Tr. 217-18.

12. Residential gas appliances need a minimum gas pressure of 4.5 inches of water column to operate. Tr. 230.

13. The allowable pressure range in PGW's low pressure system, where the Service Address is located, is between 4.5 inches of water column to 14 inches of water column. Tr. 215-16.

14. PGW keeps the gas pressure at 6 inches during the summer and 8 inches during the winter by setting those values at the station. Tr. 215-16, 220, 223-24.

15. Gas pressure is kept at 6 inches during the summer months in order to compensate for the effect of friction within the gas pipes. Tr. 217.
16. Gas pressure is raised to 8 inches during the winter months to compensate for a higher demand/use of gas in the winter. Tr. 222-23.
17. PGW has an alarm system in place that gives warnings when the pressure goes significantly below six or above eight inches. Tr. 215-16.
18. PGW's system is equipped with devices that monitor gas pressure in 30-minute intervals. Tr. 216.
19. PGW has over 20 pressure monitoring devices installed in its low-pressure system in the Philadelphia area. Tr. 219.
20. PGW does not measure gas pressure at every single property in its service territory and has no pressure monitoring device at the Service Address. Tr. 217, 220.
21. PGW's meter's capacity, or the maximum volume of gas that can go through the meter, is 250 cubic feet of gas per hour (CFH). Tr. 259.
22. The maximum allowable pressure for PGW's meters is 10 PSI or 280 inches of water column⁴. Tr. 228, 236.
23. In low pressure systems like the one that serves the Service Address, changes in gas pressure do not affect meter readings to any discernable degree. Tr. 228-29.
24. PGW uses diaphragm meters to measure residential gas usage. Tr. 229.

⁴ PSI and water column are different units to measure pressure. Tr. 225. One pound per square inches (PSI) equals 2.8 inches of water column. Tr. 225.

25. Diaphragm meters are widely used in the gas industry, having been found both cost effective and accurate devices. Tr. 256.

26. Diaphragm meters are indifferent to slight changes to gas pressure, like between 6 and 8 inches of water column. Tr. 229, 232, 234, 238.

27. The impact of gas pressure variations, in the range between 4.5 or 6 inches of water pressure and 8 inches of water pressure, on meter readings is immaterial and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 273-74.

28. Every gas appliance is equipped with its own gas pressure regulator that controls the operation of the appliance. Tr. 241-42.

29. The chambers of the gas meter are constantly filled with gas. Tr. 243-45, 261, 264.

30. Gas moves through two diaphragm valves inside the meter. *Id.*

31. Once gas moves through the second diaphragm valve, a mechanism turns the movement of the diaphragm into a movement of the meter index. *Id.*

32. If gas does not pass through the second diaphragm valve inside the meter, the meter does not register it as used. Tr. 243, 264.

33. The smallest measurement unit in the index of PGW's gas meter is two cubic feet of gas. Tr. 264-67.

34. The amount of gas left unused inside the meter at any point in time does not exceed half a cubic foot of gas. Tr. 266.

35. PGW's gas meter is hermetically sealed equipment. Tr. 248.
36. Gas inside the meter does not dissipate but sits until new demand causes it to move. Tr. 244.
37. The meters used by PGW are all tested prior to installation. Tr. 245.
38. The gas meter currently serving the Service Address is accurate within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 99-104.

Payment arrangement

39. On or before September 25, 2017, Mr. Norman filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), BCS # 3557990, alleging his inability to pay his gas bill to PGW and requesting a payment arrangement. PGW Exhibit 3.
40. On September 27, 2017, BCS issued a written decision establishing a payment arrangement upon finding that Mr. Norman was a level 1 income customer.
41. The payment arrangement issued by BCS at BCS # 3557990 required Mr. Norman to pay a special budget amount of \$121.00 per month, consisting of his regular budget amount of \$81.00 per month, plus \$40.00 per month towards his arrearages.
42. BCS instructed PGW to waive Mr. Norman's late payment charges and initiate the payment arrangement with the November 2017 billing due date. PGW Exhibit 3.
43. Mr. Norman is the sole income provider in his household. Tr. 207-208.

44. As of November 29, 2018, Mr. Norman receives \$1,535.00 per month in Social Security Disability Insurance (SSDI) benefits. Tr. 300-301.

45. In 2014, Mr. Norman received \$1,500.00 per month in SSDI benefits. *Id.*

46. Between November 23, 2015 and November 14, 2018, PGW assessed \$101.3 in late payment charges on Mr. Norman's account. See PGW Exhibit 1A.

LIHEAP application

47. PGW sends out LIHEAP applications to its customers who might be eligible for the grant. Tr. 141, 148.

48. It is up to the customer to apply for the LIHEAP grant, and if approved, to assign that grant to their account with PGW. Tr. 141.

49. PGW does not handle, administer, or control the LIHEAP program; the Department of Human Services (DHS) does. Tr. 142, 145.

50. PGW does not make any determination regarding the approval or denial of LIHEAP application or regarding the size of the grant. Tr. 141.

Payment arrangement following the conclusion of the prior complaint

51. The Commission's Opinion and Order entered on July 13, 2017, in the matter of *Deree J. Norman v. Philadelphia Gas Works*, at Docket No. C-2015-2489503, did not instruct PGW to establish a payment arrangement on behalf of Mr. Norman. Tr. 151.

DISCUSSION

In his amended formal Complaint against PGW, Mr Norman alleged: that the utility is threatening to shut off his gas service; that he is unable to pay his gas bills to PGW; and that there are incorrect charges in his bills from PGW. In particular, Mr. Norman averred that, by controlling the pressure, density and composition of the gas that goes through its meters, PGW is manipulating its meters' readings causing them to run fast. As relief, Mr. Norman requested that the Commission establish an affordable payment arrangement on his behalf, and that it review and correct his gas bills from PGW.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlt. 2001).

High Billing Dispute

In *Waldron v. Philadelphia Electric Company, (Waldron)*, 54 Pa. PUC 98 (1980), the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825 (May 1979), which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Michigan PSC stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

While a comparison of the disputed monthly bill to the Complainant's billing history and the consistency of his usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant's disputed high bill. *Waldron* does not limit the establishment of a *prima facie* case to the above two elements alone. Rather, the Commission may consider the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding. See *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

Thus, a complainant in a high bill case has the opportunity to present any other relevant evidence which, if sufficient to establish a *prima facie* case, can be used to sustain the burden of proof. There is no specific requirement as to what particular facts the complainant must offer. This will likely vary from case to case. In *Waldron*, for example, the complainant did not provide a comparison of prior billing, but asserted that the apartment was uninhabited

during the billing period in question and that the only operating appliances were a clock and a refrigerator; that two air conditioners were disconnected; and that, even if the latter had been connected, the complainant could not possibly have used the energy reflected in the billing. The Commission remanded the complaint in *Waldron* reasoning that, had the record been properly developed, those facts may have established a *prima facie* high bill case, and then the Company would have had to introduce evidence to overcome the *prima facie* case. *Waldron* at 101. Therefore, to establish a *prima facie* case under *Waldron*, a complainant must show the disputed bill was abnormally high when compared to prior usage patterns and that his or her pattern of usage has not changed or must provide other relevant evidence showing that the disputed bill is unreasonably high.

As set forth in *Waldron*, evidence proffered by a utility relating to the accuracy of a meter test alone, in response to a high bill complaint, is not conclusive evidence and would not, by itself, require a finding against a complainant and in favor of a company. *Id.* In other words, evidence of a meter test showing that the meter worked within the acceptable degree of accuracy can be overcome with circumstantial evidence that otherwise indicates that a bill was too high.

At the November 29, 2018 hearing, Mr. Norman testified that he resides at the Service Address with his adult daughter. Tr. 169-70, 207-208. He explained that his daughter has lived with him since 1992 and that she was currently holding an unpaid internship position with a record company which requires her to travel outside of the city. Tr. 207-208. Mr. Norman testified that his daughter was travelling in a similar fashion, if not more frequently, in 2016 and 2017, when she was still in school. *Id.*

Mr. Norman testified that the Service Address is equipped with a gas house heater, a gas water heater, and a gas range. Tr. 178. In August 2017, the electric utility shut off electric service at the Service Address. Tr. 175-76. He explained that without electricity he is unable to use his house heater. In addition, Mr. Norman stated that he does not use his gas stove because he does not cook. Tr. 210. However, he testified that he is able to use the gas water heater even without the use of electricity. Tr. 180. Mr. Norman maintained that, although he uses the same amount of water in the same fashion every day, his gas usage has increased since

August of 2017. Tr. 179, 184-86. In particular, Mr. Norman challenged the increased gas usage in the warmer months since August 2017. Tr. 179, 185. He pointed out the increase in gas usage from 8 CCF in July of 2016, to 10 CCF in July of 2017, and 11 CCF in July of 2018. Tr. 184, PGW Exhibit 1A. He also highlighted the increase in gas usage from 9 CCF in September of 2016, to 11 CCF in September of 2017, and 10 CCF in September of 2018. Tr. 183, PGW Exhibit 1A.

According to Mr. Norman, the variations in gas usage for the warmer months are due to the pressure of gas that goes through the PGW meter. Tr. 189. He believes that, by manipulating the pressure and density of the gas flowing through the fuel line, PGW is causing his gas meter to run fast. Tr. 189-91, 193-94, 198. In addition, Mr. Norman maintained that he is being charged not only for gas that goes through the meter but also for the gas that comes into the meter but dissipates inside the meter diaphragm before coming out of the meter and into his service line. Tr. 200-201.

Mr. Awad is the Director of Field Service and Maintenance at PGW. He testified that PGW follows industry standards set by the American Gas Association (AGA) with regard to gas pressure. Tr. 217-18. He explained that, because residential gas appliances need a minimum gas pressure of 4.5 inches of water column to operate, the allowable pressure range in PGW's low pressure system is between 4.5 inches of water column to 14 inches of water column. Tr. 215-16, 230. Mr. Awad further added that PGW usually keeps the gas pressure at six inches during the summer and eight inches during the winter by setting those values at the station. Tr. 215-16, 220, 223-24, *see* also Supplement No. 2 of PGW Gas Service Tariff – Pa P.U.C. No. 2, First Revised Page No. 53. He explained that gas pressure is kept at six inches during the summer months in order to compensate for the effect of friction within the gas pipes. Tr. 217. Similarly, gas pressure is raised to eight inches during the winter months to compensate for a higher demand/use of gas in the winter. Tr. 222-23.

PGW has an alarm system in place that gives out warnings when the pressure goes significantly below six and above eight inches. Tr. 215-16. PGW's system is equipped with devices that monitor gas pressure in 30-minute intervals. Tr. 216. PGW has over 20

pressure monitoring devices installed in its low-pressure system in the Philadelphia area.

Tr. 219. The utility does not measure gas pressure at every single property in its service territory and has no pressure monitoring device at the Service Address. Tr. 217, 220.

Mr. Awad testified that PGW's meter's capacity, or the maximum volume of gas that can go through it, is 250 cubic feet of gas per hour (CFH). Tr. 259. The maximum allowable pressure for PGW's meters is 10 PSI or 280 inches of water column. Tr. 228, 236. He explained that in low pressure systems like the one that serves the Service Address, changes in gas pressure do not affect meter readings to any discernable degree. Tr. 228-29. Mr. Awad stated that PGW uses diaphragm meters to measure residential gas usage. Tr. 229. Diaphragm meters are widely used in the gas industry. Tr. 256. Mr. Awad estimated that more than 16 million diaphragm meters are currently installed in the United States. Its design is adopted by the U.S. gas industry as a cost effective and accurate meter. Diaphragm meters are indifferent to slight changes to gas pressure, like between 6 and 8 inches of water column. Tr. 229, 232, 234, 238.

To Mr. Norman's question of whether higher pressure would move a cubic foot of gas faster, Mr. Awad answered,

At that range [between 4.5 and 8 inches of water column], no. It doesn't make any difference. Like putting your finger against that wall, is that going to move the wall? Actually, microscopically, it does move the wall. But for the eye, no, it doesn't.

That's the same thing. You're looking at microscopically, yeah, it might be a little bit more. But like I said, it's – it makes no difference. It's 0.000.

Tr. 239. (Emphasis added). Mr. Awad continued his testimony by pointing out that, within that range, the impact of the gas pressure variations on meter readings is immaterial and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22.

Tr. 273-74. He further added that increased gas pressure in the customer's line would not cause his gas usage to increase since every gas appliance is equipped with its own gas pressure regulator that controls the operation of the appliance. Tr. 241-42.

Next, Mr. Awad addressed Mr. Norman's belief that an increase in gas pressure allows more gas to stay in the meter, causing the customer to be charged for gas he is not using. Tr. 242. Mr. Awad explained that the chambers of the gas meter are constantly filled with gas. The gas is static until an appliance is turned on, placing a demand on the line. Gas moves through two diaphragm valves inside the meter. Once gas moves through the second diaphragm, a mechanism turns the movement of the diaphragm into a movement of the meter index. Tr. 243-45, 261, 264. If the gas does not pass the second diaphragm valve inside the meter, the meter does not register it as used. Tr. 243, 264.

Mr. Awad added that the smallest measurement unit in the index of PGW's gas meter is two cubic feet of gas. Tr. 264-66. Stated differently, a minimum of two cubic feet of gas needs to pass the second diaphragm inside the meter in order for the meter index to register any usage. Tr. 266-67.

Mr. Awad explained that the amount of gas left unused inside the meter at any point in time does not exceed half a cubic foot of gas. Tr. 266. He refuted Mr. Norman's claim that gas left unused inside the meter is read by the meter and then dissipates. He explained that the meter is hermetically sealed equipment. Gas inside the meter does not dissipate but sits there until new demand causes it to move. Tr. 244. He added that the meters used by PGW are all tested prior to installation. Tr. 245.

The preponderance of the evidence collected in this matter does not support Mr. Norman's claim that variations in gas pressure on PGW's system caused his gas meter to read fast and him to be billed incorrectly for gas usage at the Service Address. On the contrary, the preponderance of the evidence supports the conclusion that the impact of the gas pressure variations between 4.5 and 8 inches of water column on meter readings is immaterial and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. More importantly, the record created in this matter does not support Mr. Norman's claim that his gas usage increased after his electric service was terminated in August of 2017.

Billing date	Usage (CCF)	Billing date	Usage (CCF)	Billing date	Usage (CCF)	Billing date	Usage (CCF)
6/23/2016	12	7/23/2016	8	8/23/2016	7	9/22/2016	9
6/22/2017	13	7/25/2017	10	8/22/2017	11	9/22/2017	11
6/28/2018	11	7/26/2018	11	8/24/2018	10	9/25/2018	10

PGW Exhibit 1A. (Emphasis added). The August 2017 bill is the first bill that was affected by the termination of electric service at the Service Address, yet the Complainant’s account statement (PGW Exhibit 1A) clearly shows that the increase in gas usage began well before then, at least since June of 2017. In addition, the Complainant’s gas usage in the warmer months increased in 2017 and then decreased in 2018. Although Mr. Norman insisted that his gas usage after the termination of electric service was limited to the operation of his gas water heater and that there had been no changes in his usage of hot water, these statements do not account for the hot water usage by the other occupant of the Service Address – Mr. Norman’s adult daughter, who travels frequently for school and work. Mr. Norman did not substantiate his testimony with records showing unvarying water usage at the Service Address during the period in question. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). In view of the above, I conclude that Mr. Norman has failed to carry his burden of proving by a preponderance of the evidence that any variations in his usage during the warmer months were caused by the variations of gas pressure in PGW’s system. In addition, he failed to carry his burden of proving by a preponderance of the evidence that the amount of unused gas resting in the meter caused his gas bill to be incorrect. Ultimately, I find that Mr. Norman failed to carry his burden of proving that there are incorrect charges in his gas bills from PGW.

Payment arrangement

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or 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 in handling customer complaints. Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(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.

* * *

(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 agreement if a customer has defaulted on a previous payment agreement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. §§ 1405(a), (b), (d) (emphasis added). In addition, "household income" is defined in section 1403 of the Public Utility Code as "[t]he combined gross income of all adults in a

residential household who benefit from the public service." 66 Pa.C.S. § 1403. Furthermore, section 1403 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.

On or before September 25, 2017, Mr. Norman filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), BCS # 3557990, alleging his inability to pay his gas bill to PGW and requesting a payment arrangement. PGW Exhibit 3. On September 27, 2017, BCS issued a written decision on Mr. Norman's informal complaint establishing a payment arrangement on his behalf upon finding that Mr. Norman was a level 1 income customer. The payment arrangement issued by BCS required Mr. Norman to pay a special budget amount of \$121.00 per month consisting of his regular budget amount of \$81.00 per month, plus \$40.00 per month towards his arrearages. In addition, BCS instructed PGW to waive Mr. Norman's late payment charges and initiate the payment arrangement with the November 2017 billing due date. PGW Exhibit 3.

The record contains no indication that PGW billed Mr. Norman in accordance with the payment arrangement issued by the BCS, probably because he filed the present Complaint within days from the November 2017 billing due date, which was December 18, 2017. PGW Exhibit 1A. Mr. Norman has not defaulted on the Commission-issued payment arrangement. In the present Complaint, Mr. Norman requested a more affordable payment arrangement than the one issued by BCS on September 27, 2017.

At the November 29, 2018 hearing, Mr. Norman testified that he resides at the Service Address with his adult daughter and that his gross household income consists of \$1,535.00 per month in Social Security Disability Insurance (SSDI) benefits. Tr. 300-301. He explained that his gross household income has remained the same or increased slightly since he first began receiving the SSDI benefits in 2014. Tr. 300-301. With a gross household income of \$1,535.00 per month for a household of two individuals, Mr. Norman is a level one income customer. *See* 66 Pa.C.S. §§ 1405(b)(1); *Federal Register*, Vol. 84, No. 22 at 1168 (February 1,

2019). Because he has not defaulted on a Commission-issued payment arrangement, Mr. Norman qualifies for a payment arrangement that requires him to pay a special budget amount, consisting of his regular budget amount plus an amount equal to one sixtieth ($1/60^{\text{th}}$) of the balance accrued on his account. See *Moeller v. Duquesne Light Company*, Docket No. Z-01215104 (Order entered September 10, 2003) (Budget billing should be the norm for payment arrangements); see also *Frayne v. PECO Energy Company*, Docket No. C-20029005 (Order entered September 10, 2003).

At the hearing PGW offered to establish a 60-month long payment arrangement on behalf of the Complainant with terms similar to the payment arrangement described above and to the payment arrangement issued by the BCS on September 27, 2017 (current budget billing plus $1/60^{\text{th}}$ of the outstanding balance). Tr. 284, 295. Because Mr. Norman is on a fixed income and because the provisions of Chapter 14 restrict the number of Commission-issued payment arrangements to one, absent a decrease of 10% of Complainant's household income, I find that a company-issued payment arrangement is more advantageous to the Complainant than a Commission-issued one. Consequently, I shall deny his request for a Commission-issued payment arrangement. I strongly encourage Mr. Norman to approach the Respondent and accept its offer. I also encourage Mr. Norman to apply for enrollment in PGW's Customer Responsibility Program (CRP) for which he may qualify on the basis of his household income.

Late payment charges

The Pennsylvania Public Utility Code (Code) and the Commission's regulations allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d). The record indicates that Mr. Norman has resided at the Service Address with his daughter since 1992 and that he has been the sole income provider since, at least, 2014. At the hearing, Mr. Norman explained that his SSDI benefits amounted to \$1,500.00 per month in 2014 and had increased slightly to \$1,535.00 per month by 2018. Complainant's gross household income

places him below 150% of the federal poverty level⁵ for a household of two individuals. Therefore, any late payment charges assessed against Mr. Norman's outstanding balance during the period November 23, 2015⁶, to November 14, 2018, can be waived by the Commission pursuant to the provisions of 66 Pa.C.S. § 1409 and 52 Pa.Code § 56.22.

Between November 23, 2015, to November 14, 2018 PGW assessed \$101.30 in late payment charges on Mr. Norman's account. See PGW Exhibit 1A. Consequently, the Respondent shall credit the Complainant's account in the amount of \$101.30.

LIHEAP application

At the evidentiary hearing, Mr. Norman claimed that PGW had improperly handled his LIHEAP application for 2017-2018. Although this claim was not part of either his initial or amended Complaint, it was addressed by PGW's Senior Customer Review Officer, Jessica Glace. In her testimony, Ms. Glace refuted Mr. Norman's claim by pointing out that PGW sends out LIHEAP applications to its customers who might be eligible for the grant. Tr. 141, 148. However, it is up to the customer to apply for the LIHEAP grant, and if approved, to assign that grant to their account with PGW. Tr. 141. She explained that PGW does not handle, administer, or control the LIHEAP program; the Department of Human Services (DHS) does. Tr. 142, 145. Ms. Glace added that the return envelope for the LIHEAP application bears the DHS mailing address. Tr. 145. She maintained that PGW does not make any determination regarding the approval or denial of LIHEAP applications or regarding the size of the grant. Tr. 141. Mr. Norman did not submit additional evidence to support his claim. In view of the above, I find that he has failed his burden of proving that PGW violated a Commission statute, regulation or order regarding Mr. Norman's LIHEAP application.

⁵ *Federal Register*, Vol. 84, No. 22 at 1168 (February 1, 2019).

⁶ PGW Exhibit 1A – Specific Service Agreement Statement of Account covers only the period November 23, 2015, to November 14, 2018

Payment arrangement following the conclusion of the prior complaint

At the evidentiary hearing, Mr. Norman claimed that PGW had failed to offer him a payment arrangement at the conclusion of his prior Complaint against the Respondent, Docket No. C-2015-2489503 (Opinion and Order entered July 13, 2017) and *Norman v. Pennsylvania Public Utility Commission*, 189 A.3d 1158 (Pa.Cmwlth. 2018) (affirming the Commission’s Opinion and Order entered July 13, 2017 in the matter of *Deree J. Norman v. Philadelphia Gas Works*, C-2015-2489503). Although this claim, too, was raised for the first time at the evidentiary hearing on November 29, 2018, Ms. Glace briefly addressed it in her testimony. In her testimony, Ms. Glace explained that when a formal complaint is concluded, PGW is not obligated to offer the complainant/customer a payment arrangement, unless the utility was ordered to do so by the Commission. Tr. 151. There was no such order in the Commission’s Opinion and Order entered July 13, 2017, in the matter of *Deree J. Norman v. Philadelphia Gas Works*, at Docket No. C-2015-2489503, and my research has revealed no legal grounds that support Mr. Norman’s contention that PGW should have done so. In view of the above, I find that Mr. Norman has failed his burden of proving that PGW has violated a Commission statute, regulation or order by not offering to establish a payment arrangement on behalf of Mr. Norman following the Commission’s Order on Docket No. C-2015-2489503 and his subsequent appeal of that Order before the Commonwealth Court of Pennsylvania.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. In establishing whether a “high bill” has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also

consider the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98, 100 (1980).

4. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement

6. The Pennsylvania Public Utility Code (Code) and the Commission's regulation allow the Commission to order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is denied, in part, and granted, in part.

2. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is denied, in part, with regard to his claim that there are incorrect charges in his gas bills from Philadelphia Gas Works.

3. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is denied, in part, with regard to his claim that Philadelphia Gas Works violated a Commission statute, regulation or order by not offering Mr. Norman a payment arrangement after the conclusion of his prior complaint.

4. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is denied, in part, with regard to his LIHEAP application for 2017-2018.

5. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is denied, in part, with regard to his request for a Commission-Issued payment arrangement.

6. That the Formal Complaint filed by Deree J. Norman against Philadelphia Gas Works at Docket No. C-2018-2640719 is granted in part, with regard to the late payment charges assessed against his gas account.

7. That Philadelphia Gas Works shall credit Deree J. Norman's account in the amount of \$101.30.

8. That the Secretary mark this docket closed.

Date: March 28, 2019

/s/
Eranda Vero
Administrative Law Judge