

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lillian Chin	:	
	:	
v.	:	F-2020-3021607
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold, III
Special Agent

INTRODUCTION

A gas utility customer filed a Complaint, alleging that her gas bill issued on November 26, 2019, was incorrect and unreasonably high. This Initial Decision denies the Complaint, finding that the customer did not meet her burden of proving that the utility incorrectly charged her in violation of the Pennsylvania Public Utility Code, a Commission regulation or order, or a Commission-approved tariff.

HISTORY OF THE PROCEEDING

On July 16, 2020, Lillian Chin (Ms. Chin or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), alleging that there are incorrect charges on her bill. In an attachment to the Complaint, Ms. Chin singled her December 2019 bill as being too high.¹

¹ As discussed in this Decision, the bill that Ms. Chin is challenging as being incorrect was issued on November 26, 2019.

The Formal Complaint is an appeal from a decision of the Bureau of Consumer Services (BCS) at Case No. 3754793, which dismissed Ms. Chin's Informal Complaint.

On September 18, 2020, PGW filed its Answer to the Complaint, denying that there are incorrect charges on Ms. Chin's bill and requesting that the Commission dismiss the Complaint.

On September 22, 2020, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on November 4, 2020 at 10:00 a.m. and assigning the case to me as presiding officer. A Prehearing Order was served on the parties on October 8, 2020, addressing, inter alia, various procedural rules applicable to the hearing.

The telephonic hearing was held as scheduled on November 4, 2020. Ms. Chin appeared *pro se* and testified on her own behalf. Ms. Chin sponsored no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of Adrian Pinkney, a customer review officer employed by PGW. Ms. Pinkney sponsored five exhibits, PGW Exhibits 1-5, all of which were admitted into the record.

The record closed on November 18, 2020, when the 32-page hearing transcript was filed with the Commission. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Lillian Chin.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Chin receives service from PGW at 321 Arch Street, Philadelphia Pennsylvania (service address).

4. Ms. Chin is disputing her gas bill of \$124.60, generated on November 26, 2019. (Tr. 10; PGW Exhibit 4, p. 1).

5. As shown on Ms. Chin's Statement of Account, Ms. Chin's gas usage and charges at the Service address for the November months in 2015-2019 were as follows:

Billing date	Number of Days	CCF Usage	HDD	Transaction Amount
November 24, 2015	32	26	308	\$49.80
November 23, 2016	32	6	416	\$20.89
November 24, 2017	30	7	423	\$22.06
November 28, 2018	33	8	638	\$25.31
November 26, 2019	32	85	569	\$124.60

(PGW Exhibit 1, pp. 5, 6).

6. As shown on Ms. Chin's Statement of Account, Ms. Chin's gas usage and charges at the Service address for the 2019-2020 winter months (November – February) were as follows:

Billing date	Number of Days	CCF Usage	HDD	Transaction Amount
November 26, 2019	32	85	569	\$124.60
December 29, 2019	31	24	808	\$46.64
January 30, 2020	33	7	820	\$24.27
February 29, 2020	30	6	718	\$22.92

(PGW Exhibit 4, pp. 2, 3).

7. Ms. Chin left the service address on October 9, 2019 to reside at her home in Florida, and as of the date of the hearing, has not returned to the service address. (Tr. 6, 9).

8. Ms. Chin's home at the service address has a gas dryer, a gas hot water heater, and gas stove, and is heated by gas. (Tr. 9; PGW Exhibit 1, p. 1).

9. Ms. Chin's house heater and gas hot water heater work by thermostat setting and turn on every time the temperature in the residence falls below the thermostat set temperature. (PGW Exhibit 1, p. 1).

10. The meter servicing the service address is equipped with an Automatic Meter Reading (AMR) device and as such, the bills issued reflect the actual usage recorded on the meter. (PGW Exhibit 1, p. 1).

11. There is no human interaction between collecting the AMR read from Ms. Chin's meter and generating her gas bills. (Tr. 17, 18).

12. As a result of a dispute filed with PGW on December 5, 2019 concerning the November 26, 2019 bill, PGW performed an investigation and determined that the bill was correct as rendered. (PGW Exhibit 1, p. 1).

13. PGW performed a gas usage analysis as part of its December 5, 2019 investigation and determined that there was a slight increase in gas consumption at the service address property which can be attributed to a host of unknown internal conditions in the residence. (PGW Exhibit 1, p. 1).

14. The meter servicing the service address was tested on September 15, 2020 and was found to be 0.1% slow. (PGW Exhibit 3).

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in

violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990) (Patterson); Feinstein v. Phila. Suburban Water Co., 50 Pa. PUC 300 (1976) (Feinstein). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Chin alleged that her November 26, 2019 bill of \$124.60 was too high. The burden of proof for "high bill" complaints has been explained in Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980), and its progeny. In Waldron, the Commission adopted the

Michigan Public Service Commission's (PSC's) policy announced in Hallifax v. O & A Elec. 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 Commission 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.

The Commission has further explained the burden of proof set forth in *Waldron* as follows:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a "high bill" complaint, the Commission may consider such evidence as "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.*"

Thomas v. PECO Energy Co., Docket No. C-2010-2187197, at 5 (Opinion and Order entered November 15, 2011) (emphasis in original) (quoting Bennett v. Natural Gas Co., Docket No. C-2009-2122979, at 6 (Order entered October 13, 2010).

Ms. Chin raised concerns about her November 26, 2019 bill, explaining that the bill was greater than her bills from the same time period from previous years. (Tr. 6). Ms. Chin argued that her November 26, 2019 bill should not have been as high as it was because her home has been unoccupied since October 9, 2019. (Tr. 6). Ms. Chin testified that her gas appliances, which consist of a house heater, gas hot water heater, gas dryer, and gas stove, are plugged in at her home but have not been in use since the home has been unoccupied. (Tr. 9, 10). Ms. Chin further testified that she hired a serviceman to check her heating system on November 5, 2019, and that he set the thermostat to 50 degrees at that time. (Tr. 6). After she received the

November 26, 2019 bill, Ms. Chin testified that she had her neighbor check her home, who informed Ms. Chin that the thermostat was set to 50 degrees. (Tr. 6). Ms. Chin argued that she knows her meter is equipped with an AMR device, but theorized that human error could have led to her high bill. (Tr. 8).

PGW presented the testimony of Adrian Pinkney, a customer review officer employed by PGW. Ms. Pinkney testified that there is no human interaction between collecting the AMR read and generating the bill, and that Ms. Chin’s bills are rendered based on actual meter readings. (Tr. 17, 18). Ms. Pinkney testified that PGW removed the meter servicing the service address for testing on September 15, 2020, and that the meter tested within the 2.0% margin of error permitted within the Commission’s regulatory requirements. (Tr. 20; PGW Exhibit 3). Additionally, Ms. Pinkney sponsored as an exhibit the results of an investigation that PGW performed following a dispute raised by Ms. Chin concerning her November 26, 2019 bill. (PGW Exhibit 1). The investigation concluded that: (1) the balance in question was correct as rendered; (2) the bill that is being disputed reflects the actual usage recorded on the meter; (3) there was a slight increase in consumption at the property which can be attributed to a host of unknown internal conditions in the residence; and (4) the house and water heater turn on every time the temperature falls below the thermostat set temperature. (PGW Exhibit 1, p. 1).

Furthermore, Ms. Pinkney sponsored Ms. Chin’s Statement of Account, which was admitted into the record as an Exhibit in this proceeding. The Statement of Account showed that Ms. Chin’s gas usage and charges for the November months of 2015 – 2019 were as follows:

Billing date	Number of Days	CCF Usage	HDD	Transaction Amount
November 24, 2015	32	26	308	\$49.80
November 23, 2016	32	6	416	\$20.89
November 24, 2017	30	7	423	\$22.06
November 28, 2018	33	8	638	\$25.31
November 26, 2019	32	85	569	\$124.60

(PGW Exhibit 1, pp. 5, 6). Ms. Chin's gas usage and charges for the 2019-2020 winter months were as follows:

Billing date	Number of Days	CCF Usage	HDD	Transaction Amount
November 26, 2019	32	85	569	\$124.60
December 29, 2019	31	24	808	\$46.64
January 30, 2020	33	7	820	\$24.27
February 29, 2020	30	6	718	\$22.92

(PGW Exhibit 4, pp. 2, 3).

As pointed out by Ms. Chin, her November 26, 2019 bill was substantially higher than her November bills from previous years, and substantially higher than any bill issued in the 2019-2020 winter months. There was substantially more gas used at the service address in November 2019 than any month outlined above.

After consideration of the evidence provided by the parties, I find that Ms. Chin has failed to meet her burden of proof in this proceeding. I reached this conclusion for several reasons.

First, although Ms. Chin testified that her home has been unoccupied since October, that her gas appliances have not been used since then, and that her thermostat has been set to 50 degrees since November 5, 2019, the fact that Ms. Chin has been away from her home since October means that Ms. Chin has no actual knowledge of the temperature of the home or what appliances are being used while she is not there. All of the information that Ms. Chin has received concerning the condition of her home has been received second-hand from her serviceman and her neighbor. As PGW concluded when it completed a gas usage analysis, it is possible that internal conditions existed at Ms. Chin's home that caused the spike in gas consumption in November 2019.

Second, PGW provided uncontroverted evidence that the gas meter that served the service address was tested and found to be accurate within the Commission's regulations. Specifically, the Commission's regulations require that tested gas meters fall within a 98% - 102% accuracy. See 52 Pa. Code § 59.21. If a meter is found to have an average error of more than 2% fast, then the public utility shall refund or credit the customer for the overcharge. See 52 Pa. Code § 59.22(a). The meter servicing the service address was removed for testing and tested 0.1% slow, which is within the 2% margin of error as required by the Commission's regulations.

Lastly, PGW also presented evidence that shows that the Complainant's bills are based on actual meter reads and not estimates. As such there is no human interaction that takes place between collecting the AMR read from the Complainant's meter and generating the gas bill. Ms. Chin's bills are based on the actual gas usage recorded on the meter.

It is concerning that Ms. Chin's November 26, 2019 bill is substantially higher when compared to her other bills. However, for Ms. Chin to satisfy her burden of proof, she must prove by a preponderance of the evidence that the bill was unreasonably high and that the fault can be attributed to the utility.² Ms. Chin has not proven that PGW was at fault in this instance. Even if she had done so, PGW successfully rebutted Ms. Chin's evidence.

In conclusion, based on the evidence presented, Ms. Chin failed to demonstrate that PGW violated the Code, a Commission regulation or order, or a Commission-approved tariff. Therefore, the Complaint will be dismissed.

CONCLUSIONS OF LAW

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

² As stated above, to satisfy the burden of proof, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. See Patterson and Feinstein.

2. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

3. To satisfy the burden of proof, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Phila. Suburban Water Co., 50 Pa. PUC 300 (1976).

4. In evaluating a “high bill” complaint, the Commission may consider such evidence as “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.* Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Order entered November 15, 2011).

5. The Commission’s regulations require that tested gas meters fall within a 98% - 102% accuracy. 52 Pa. Code § 59.21.

6. If a meter is found to have an average error of more than 2% fast, then the public utility shall refund or credit the customer for the overcharge. 52 Pa. Code § 59.22(a).

7. The Complainant has not met her burden of proving that Respondent has overbilled her in violation of the Public Utility Code, a Commission regulation or order, or a Commission-approved tariff.

