

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Fortuna	:	
	:	
v.	:	F-2021-3027276
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

A gas utility customer filed a Complaint, alleging that he was overbilled for gas service. The utility acknowledged that it tested the customer's meter and found it to be running fast outside the allowable range provided for in the Pennsylvania Public Utility Commission's regulations. As a result, the utility issued the customer a credit for the overbilling. The customer found the credit amount to be unsatisfactory and requested that the Commission order the utility to provide his account with an additional credit.

This Initial Decision grants the Complaint to the extent that the undersigned finds that the customer met his burden of proving that the utility overbilled him for gas service. This Initial Decision denies the Complaint to the extent that the undersigned finds that the customer did not meet his burden of proving that he is entitled to an additional credit for the overbilling.

HISTORY OF THE PROCEEDING

On June 7, 2021, Anthony Fortuna (Mr. Fortuna 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 his gas bills. Mr. Fortuna attached his November 2020, December 2020, February 2021, March 2021, and April 2021 bills to his Complaint. Mr. Fortuna claimed that he was overcharged for gas service during these months, because the service address was vacant during those months. For relief, Mr. Fortuna stated that “I want the correct bill not the outrageous amount they are charging me.” Complaint ¶5.

The Formal Complaint is an appeal from a determination of the Commission’s Bureau of Consumer Services at Case No. 3783128, which dismissed Mr. Fortuna’s Informal Complaint, finding that the bills rendered to the Complainant were correct as rendered.

On August 6, 2021, PGW filed its Answer to the Complaint, denying that there are incorrect charges on Mr. Fortuna’s bill. PGW admitted that on June 20, 2021, it tested Mr. Fortuna’s meter and found the meter to be -2.6% fast, outside the allowable range of +/-2%. As a result, PGW issued Mr. Fortuna a credit for the overcharge. PGW requested that the Commission dismiss the Complaint.

On August 12, 2021, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on September 13, 2021, at 10:00 a.m. and assigning the case to me as presiding officer. A Prehearing Order was served on the parties on August 17, 2021, addressing, inter alia, various procedural rules applicable to the hearing.

The telephonic hearing was held as scheduled on September 13, 2021. Mr. Fortuna appeared *pro se* and testified on his own behalf. Mr. Fortuna sponsored no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of Jessica Glace, a senior customer review officer employed by PGW. Ms. Glace sponsored seven exhibits, PGW Exhibits 1-7, all of which were admitted into the record.

The record was initially closed on October 4, 2021, when the 44-page hearing transcript was filed with the Commission. After review of the record, I determined it necessary to reopen the record to receive additional evidence from PGW concerning how it calculated the

credit it provided to Mr. Fortuna for overcharging him. Therefore, the record was reopened by Order issued to the parties on October 28, 2021.

On November 10, 2021, PGW submitted PGW Exhibit 8 in compliance with the October 28, 2021, Order. Mr. Fortuna did not submit an objection to PGW Exhibit 8. Therefore, an Order was issued on November 24, 2021, wherein PGW Exhibit 8 was admitted into the record. The November 24, 2021, Order additionally closed the record.

After further review of the record, I concluded that it was unclear whether PGW refunded Mr. Fortuna's meter testing fee after testing his meter and finding it to be fast outside the allowable range of +/-2%. Therefore, I informally reopened the record to request that PGW submit such evidence. On January 31, 2022, PGW submitted PGW Exhibit 9 in compliance with this inquiry. Mr. Fortuna indicated that he did not object to PGW Exhibit 9. PGW Exhibit 9 will be admitted into the record in the Ordering paragraphs of this Decision.¹

For the reasons discussed below, the Complaint will be granted in part and denied in part.

FINDINGS OF FACT

1. The Complainant is Anthony Fortuna.
2. The Respondent is Philadelphia Gas Works.
3. The service address is 2514 South Rosewood Street, Philadelphia, Pennsylvania 19145 (service address). Tr. 8.
4. The service address property is a home with two floors, three bedrooms, and a basement. Tr. 41, 42.

¹ These communications relating to PGW Exhibit 9 were done informally via email.

5. Gas service was established in Mr. Fortuna's name at the service address on July 15, 2020. PGW Exhibit 1.

6. On December 28, 2020, Mr. Fortuna filed a dispute with PGW alleging that his November 2020 bill was too high. PGW Exhibit 2, p.1.

7. PGW responded to Mr. Fortuna's December 28, 2020, dispute by performing an investigation, including a gas usage analysis, and concluded that the November 2020 bill was based on actual meter readings and was correct was rendered. PGW Exhibit 2, p.1.

8. At the request of Mr. Fortuna, the gas meter servicing the service address (gas meter #2074357) was removed for testing on May 12, 2021. Tr. 23, 24; PGW Exhibit 3 and 4.

9. Gas meter #2074357 was tested on June 10, 2021, and was found to be -2.6% fast. PGW Exhibit 4 and 5.

10. A fast meter means that the meter is registering more gas than is actually used at the property. PGW Exhibit 4.

11. PGW informed Mr. Fortuna of the results of the meter test by letter on June 17, 2021, wherein PGW told Mr. Fortuna that he was entitled to a credit for the overcharge based upon what the meter would have registered had it not been fast for a period of time. PGW Exhibit 4.

12. The June 17, 2021, letter also informed Mr. Fortuna that his testing fee is considered refundable and will be credited to his gas account. PGW Exhibit 4.

13. On July 30, 2021, a credit was issued to Mr. Fortuna's account in the amount of \$31.26 for gas meter #2074357 being fast. Tr. 29, PGW Exhibit 6, p. 2.

14. The \$31.26 credit issued to Mr. Fortuna's account covered the meter reading -2.6% fast for the period of July 15, 2020, to May 17, 2021. Tr. 30; PGW Exhibit 8.

15. The period of time covered by the refund consists of the entirety of the time that the gas provided by gas meter #2074357 was in Mr. Fortuna's name, that is, from the date gas was placed in Mr. Fortuna's name to the first AMR² reading after the meter exchange. Tr. 30; PGW Exhibit 8.

16. On January 27, 2022, Mr. Fortuna's \$10 meter testing fee was refunded to his gas account. PGW Exhibit 9.

17. The service address contains a gas heater, a gas water heater, and a gas range. Tr. 11.

18. A gas heater works by thermostat setting and will cycle on to heat the home anytime the ambient temperature drops below the temperature set by the thermostat. Tr. 36, 37.

19. A gas water heater works by thermostat setting and cycles on to heat the water in the home in anticipation of somebody using hot water. Tr. 36.

20. PGW has no record that Mr. Fortuna ever requested that gas be shut off to the service address. Tr. 37.

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.

² "AMR" is an acronym for "Automatic meter reading."

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. Cmwlth. 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. Cmwlth. 2001) (Milkie); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth. 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).

The Complainant, Mr. Fortuna, alleges overbilling in this matter, therefore Mr. Fortuna's burden of proof is governed by Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980) (Waldron).

The Waldron rule provides that while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. To establish a *prima facie* case of

overbilling, a complainant may show other factors such as that: (1) the number of occupants in the household has not changed; (2) the potential for energy utilization was low; and (3) the complainant's billing history shows no prior abnormalities. Waldron; Replogle v. Pa. Elec Co., 54 Pa. PUC 528 (1980). See also, Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Final Order entered Nov. 15, 2011).

The Commonwealth Court of Pennsylvania further refined the Waldron rule by holding:

While the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe that this view is too restrictive. Rather the controlling principle is that even where a utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal direct proof that his meter had malfunctioned. Burleson v. Pennsylvania Pub. Util. Comm'n, 501 Pa. 433, 435-6, 461 A.2d 1234, 1235 (1983).

Milkie at 1219-20.

Meter error

On July 15, 2020, PGW placed gas service in Mr. Fortuna's name at the service address. Mr. Fortuna became concerned that he was being overbilled for his gas service, so he requested that PGW test his gas meter. On May 12, 2021, PGW removed the meter, gas meter #2074357, for testing. On June 10, 2021, the meter was tested and was found to be -2.6% fast outside the allowable range of +/-2%.³ The meter running fast meant that it was registering more gas than used at the service address. PGW sent Mr. Fortuna a letter on June 17, 2021, informing

³ As discussed below, the Commission's regulations state that a customer shall be credited when their gas meter has an average error of more than 2.0% fast.

him of the results of the meter test, and informing him that he is entitled to a credit for the overcharge. On July 30, 2021, Mr. Fortuna was provided with a credit to his account in the amount of \$31.26 for the overcharge. PGW offered evidence regarding how it calculated the \$31.26 billing adjustment credit at PGW Exhibit 8. Specifically, the credit issued covered the meter running -2.6% fast from July 15, 2020 (the date service was established in Mr. Fortuna's name) to May 17, 2021 (the first AMR reading after the meter exchange).

The June 17, 2021, letter additionally informed Mr. Fortuna that he was entitled to a refund of his meter testing fee. On January 27, 2022, Mr. Fortuna was provided with a refund to his account in the amount of \$10 for the meter testing fee.

As PGW tested Mr. Fortuna's gas meter and found it to be fast, Mr. Fortuna has met his burden of proof, under Waldron. Mr. Fortuna's gas meter was inaccurate, causing him to be overbilled for gas service.

Given that Mr. Fortuna's gas meter, upon test, was found to have an average error of more than 2.0% fast, the Commission's regulation at 52 Pa. Code § 59.22(a) applies, which states the following:

§ 59.22. Adjustment of bills for meter error.

(a) *Fast meters.* If, upon test of a meter, it is found to have an average error of more than 2.0% fast, the public utility shall refund to or credit the customer for the overcharge, based upon what the meter would have registered had it not been fast or slow for a period equal to 1/2 the time elapsed since the last previous test, but not to exceed 12 months or 1/2 the period of occupancy of the premises by the customer, whichever is less. If the period of registration error may be definitely fixed, the overcharge shall be computed for the period. If the meter has not been tested under § 59.21 (relating to meter tests), the period for which it has been in service beyond the regular test period shall be included in computing the refund.

52 Pa. Code § 59.22(a). As Mr. Fortuna made the request for the meter test, Section 59.21(f) of the Commission's regulations is also applicable, which states the following:

§ 59.21. Meter tests.

(f) *Meter test on request of customer.* Meter tests, if requested by a customer, shall conform with all of the following:

(1) If a customer requests, in writing, a test of the accuracy of the meter through which gas service is supplied and the meter is not due for periodic test, the public utility shall notify the customer of the conditions under which the test will be made by the utility or by a referee. If the customer then requests the utility to proceed with the test and remits an amount equal to the scheduled cost of a referee test, the utility shall make the test promptly. If, when tested, the meter is found to be more than 2.0% fast or slow, the testing fee shall be promptly refunded to the customer.

52 Pa. Code § 59.21(f)(1).

The record reflects that PGW complied with Section 59.22(a) of the Commission's regulations when it credited Mr. Fortuna's account in the amount of \$31.26 for the overbilling caused by Mr. Fortuna's meter running fast outside the allowable range of 2.0%. Section 59.22(a) dictates that the last time the gas meter was tested, prior to the meter being tested at the request of the customer, shall factor into the calculation of the credit. The record does not reveal the last time gas meter #2074357 was tested prior to its removal for testing at the request of Mr. Fortuna on May 12, 2021. However, PGW complied with Section 59.22(a) by providing Mr. Fortuna with a credit based on what the meter would have registered had it not been fast from the date service was established in Mr. Fortuna's name to the date of the first AMR reading after the meter exchange. Thus, the period of the credit covers the entirety of the period under which the gas service was in Mr. Fortuna's name.⁴

⁴ In Douglas v. Phila. Gas Works, Docket No. F-2010-2164009 (Opinion and Order entered August 20, 2015), the Commission found that the Complainant was entitled to a credit, governed by Section 59.22(a), for her meter testing fast. The Complainant's meter was last tested on August 6, 1996, prior to it testing fast on May 31, 2011. Pursuant to Section 59.21, the Complainant's gas meter should have been tested every eight years. Therefore, the Commission found that the Complainant's meter had not been tested under Section 59.21, given that the Complainant's meter was in service for almost seven years beyond the regular test period. Pursuant to Section 59.22(a), this seven-year period would be included in computing the credit owed. However, given that the Complainant did not become a PGW customer until December 7, 2006, the Commission concluded that the appropriate credit should be determined from December 7, 2006, to May 31, 2011.

The record also reflects that PGW complied with Section 59.21(f)(1) of the Commission's regulations when it refunded Mr. Fortuna's \$10 meter testing fee on January 27, 2022.

In summary, Mr. Fortuna met his burden of proving that he was overbilled by PGW when his meter was tested and was found to be running fast outside the allowable range of 2.0%. PGW complied with the Commission's regulations when crediting Mr. Fortuna's account for the overbilling and when refunding Mr. Fortuna's meter testing fee.

Credit amount

Mr. Fortuna argued at the hearing that the \$31.26 credit issued did not satisfy the extent of the overbilling on his account. Specially, Mr. Fortuna claimed his bills from November 2020 to April 2021 were too high and that he was entitled to an additional credit as a result. Tr. 7-15. In that regard, I find that Mr. Fortuna has not met his burden of proving that he is entitled to an additional credit towards his account. I do not find that Mr. Fortuna has been overbilled in an amount greater than \$31.26. The extent of the overbilling was covered by the credit already provided to Mr. Fortuna by PGW.

Mr. Fortuna testified that the service address property is a home with two floors, three bedrooms, and a basement. The home contains a gas heater, a gas water heater, and a gas range. Mr. Fortuna's primary argument in claiming that his gas bills from November 2020 to April 2021 were too high was that these bills were not consistent with a home that was vacant with the gas appliances not in use. Tr. 6 – 9. Mr. Fortuna testified that the home was vacant until around June 2021 when his brother began to reside at the home. Tr. 8, 13. While the home was vacant, Mr. Fortuna testified that the thermostat was kept at approximately 55 degrees. Tr. 11. Mr. Fortuna further claimed that only he and his brother accessed the property during the period in question to occasionally check on the property. Tr. 6.

PGW presented the testimony of Jessica Glace, a senior customer review officer. Ms. Glace testified that even if a home is vacant, that the gas appliances in the home will

continue to use gas unless the customer makes a request of PGW to shut off the gas to the property. Tr. 36, 37. PGW has no record that Mr. Fortuna requested that gas be shut off to the service address. Concerning the gas heater, Ms. Glace testified that the gas heater works by thermostat setting and will cycle on to heat the home anytime the ambient temperature drops below the temperature set by the thermostat. Concerning the gas water heater, Ms. Glace testified that the gas water heater also works by thermostat setting and cycles on to heat the water in the tank.

As discussed in the previous section, Mr. Fortuna has already shown that the metered usage at his service address exceeded the actual usage at the address. Mr. Fortuna was overbilled by 2.6%. However, as Mr. Fortuna disagrees with the amount he was credited for the overbilling, he must show that he was overbilled in an amount greater than what was discovered through the meter test. After review of the record, Mr. Fortuna has not demonstrated that he is entitled to an additional credit to his account. Mr. Fortuna failed to present evidence, circumstantial or otherwise, that would support a finding that the metered usage exceeded the actual usage in an amount greater than what was already discovered through the meter test. I reach this conclusion for several reasons.

First, although Mr. Fortuna gave testimony relating to the condition of the service address home, Mr. Fortuna did not have actual knowledge of the condition of the home. As noted, Mr. Fortuna's primary contention was that the bills he received from November 2020 to April 2021 were too high and inconsistent with a home that was vacant. Mr. Fortuna stated that the thermostat was set to 55 degrees and that the gas appliances at the home were not in use as the home was vacant. However, since the property was unoccupied, Mr. Fortuna had no actual knowledge of the temperature of the house, or what appliances were being used since he was not residing in the home. See Cianci v. Phila. Gas Works, Docket No. F-2016-2572823 (Initial Decision issued February 23, 2017, Final Order entered April 28, 2017) (Cianci). In Cianci, the Administrative Law Judge pointed out that at any given time, the complainant had no actual knowledge of the temperature in the house or what appliances were being used since she was not residing in the house. While Mr. Fortuna testified that he and his brother would visit the home,

Mr. Fortuna had no actual knowledge of the daily conditions of the home because he did not reside there.

Second, contrary to his contentions, the gas appliances at Mr. Fortuna's vacant home were active and were still using gas because Mr. Fortuna never contacted PGW to have the gas shut off. As pointed out by Ms. Glace, the home's gas heater cycles on to heat the home whenever the ambient temperature in the home drops below the temperature set by the thermostat. The gas water heater in the home also works by thermostat setting. The bills that Mr. Fortuna challenged are bills that he received during the colder months of the year. Mr. Fortuna's gas usage history at the service address highlights a typical pattern of seasonal usage with colder months characterized by higher gas usage than warmer months, due to the gas appliances having to expend more gas in the colder months to maintain the temperature set by the thermostat in the home.⁵ The fact that the home was vacant does not mean that the home was incapable of using the gas recorded by PGW.⁶

In summary, while PGW did overbill Mr. Fortuna, Mr. Fortuna did not meet his burden of proving that he was overbilled in an amount greater than what was discovered through the meter test, an overcharge for which PGW credited his account. Although the amount of his bills increased in the colder months, Mr. Fortuna was unable to demonstrate that PGW was responsible for the increase or that his home was incapable of using the gas recorded. The record supports no further credit adjustment to Mr. Fortuna's account.

Civil penalty

Lastly, whether PGW should be penalized will be explored. Section 3301 of the Code authorizes the Commission to assess a civil penalty for violations of the Code, regulations,

⁵ I will note Mr. Fortuna became a PGW customer on July 15, 2020, therefore, Mr. Fortuna's usage history is too short to conduct a year-to-year usage analysis or comparison to previous colder months. I cannot determine if Mr. Fortuna's gas usage during the cold months in question is inconsistent or unreasonably high in comparison to his usage during previous cold months.

⁶ At the hearing, Mr. Fortuna compared his bills from the vacant service address to his bills from his residence at 2845 S 12th Street, Philadelphia, PA. Tr. 9. A comparison of usage and bills between the service address to another address is irrelevant to this proceeding.

or orders of the Commission in an amount up to \$1,000 per day per violation. See 66 Pa.C.S. § 3301. The Commission's policy statement at Section 69.1201(c) of the Commission's regulations provides guidance in determining the amount of the civil penalty to be levied. See 52 Pa. Code § 69.1201

Section 1501 of Code states that "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service...as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501. "Service... includes any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities." 66 Pa.C.S. § 102.

The test to determine the adequacy of a utility's service is that of reasonableness. Thurby v. W. Penn Power, C-2011-2254048 (Final Order entered April 4, 2013); Bertsch v. PPL Elec. Utils. Corp., C-2011-2251784 (Final Order entered April 2, 2012); Scherich v. Verizon Pa. Inc., Docket No. C-2008-2061244 (Final Order entered January 28, 2010). Section 1501 does not mandate perfect service, nor must a public utility provide the best possible service. A public utility is not a guarantor of either perfect service or the best possible service. Re Metro. Edison Co., 80 Pa. PUC 663 (1993).

The billing of charges for gas service falls under the definition of "service," cited above. Therefore, when a utility bills a customer, they must do so reasonably. As discussed, PGW overbilled Mr. Fortuna. However, this error was corrected when PGW credited Mr. Fortuna's account with the amount overbilled. The amount credited was calculated in compliance with the Commission's regulations. PGW further complied with the Commission's regulations by refunding Mr. Fortuna his meter testing fee. Given that a utility is not mandated to provide perfect service, I find that PGW acted reasonably under the circumstances and did not provide Mr. Fortuna with unreasonable service.

In summary, PGW did not violate Section 1501, or any other portion of the Code. PGW did not violate the Commission's regulations or orders of the Commission. Therefore, PGW's actions in this matter do not warrant a civil penalty.

Conclusion

In conclusion, Mr. Fortuna met his burden of proving that he was overbilled by PGW. However, Mr. Fortuna did not meet his burden of proving that he was entitled a credit in an amount greater than what PGW credited him for the overbilling. PGW complied with the Commission's regulations when crediting Mr. Fortuna's account for the overbilling.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
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 cases alleging overbilling, the burden of proof is governed by Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980).
5. A customer may prove an overbilling case by producing circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980); Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001).

6. If a gas meter, when tested at the request of a customer, is found to be more than 2.0% fast or slow, the testing fee shall be promptly refunded to the customer. 52 Pa. Code § 59.21(f)(1).

7. The Respondent complied with the Commission's regulations in refunding the Complainant's meter testing fee. 52 Pa. Code § 59.21(f)(1).

8. If, upon test of a gas meter, it is found to have an average error of more than 2.0% fast, the public utility shall refund to or credit the customer for the overcharge, based upon what the meter would have registered had it not been fast or slow for a period equal to 1/2 the time elapsed since the last previous test, but not to exceed 12 months or 1/2 the period of occupancy of the premises by the customer, whichever is less. If the period of registration error may be definitely fixed, the overcharge shall be computed for the period. If the meter has not been tested under § 59.21 (relating to meter tests), the period for which it has been in service beyond the regular test period shall be included in computing the refund. 52 Pa. Code § 59.22(a).

9. The Complainant did not have actual knowledge of the condition of his property because he did not reside there. Cianci v. Phila. Gas Works, Docket No. F-2016-2572823 (Initial Decision issued February 23, 2017, Final Order entered April 28, 2017).

10. The Complainant met his burden of proof that he was overbilled for gas service provided by Respondent because Respondent tested Complainant's meter and found it had an average error of more than 2.0% fast. Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980); Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001); 52 Pa. Code § 59.22(a); 66 Pa.C.S. § 332(a).

11. The Respondent complied with the Commission's regulations in crediting the Complainant's bill for the overbilling. 52 Pa. Code § 59.22(a).

12. The Complainant did not meet his burden of proof that he was entitled to an additional credit to his account. Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980); Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001); 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW Exhibit 9 is admitted into the record in this proceeding.
2. That the Formal Complaint filed by Anthony Fortuna against Philadelphia Gas Works at Docket No. F-2021-3027276 is granted in part and denied in part.
3. The Formal Complaint in the matter of Anthony Fortuna against Philadelphia Gas Works at Docket No. F-2021-3027276 is granted regarding its allegations of overbilling.
4. The Formal Complaint in the matter of Anthony Fortuna against Philadelphia Gas Works at Docket No. F-2021-3027276 is denied regarding the Complainant's request for an additional credit to his gas service account.
5. That the docket at Docket No. F-2021-3027276 be marked closed.

Date: January 31, 2022

_____/s/
Alphonso Arnold III
Special Agent