

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sonceiray Bowman	:	
	:	
v.	:	C-2023-3041967
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of a gas service customer but orders the waiver of late-payment charges assessed on the Complainant’s account. Complainant failed to meet her burden of proving that she was overbilled for her gas service. Complainant failed to meet her burden of proving that she is eligible for a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 30, 2023, Sonceiray Bowman (Complainant), through her power of attorney, Angela Bowman (Ms. Bowman), filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Complainant checked the boxes on the

Complaint form stating that the utility is threatening to shut off her service or has already shut off the service. As relief, Complainant requested the following:

I would like PGW to give a smaller payment arrangement no more than \$2000.00. As stated before, I am a tenant who was not responsible for repairs at the home for the heating problem. The landlord does not legally take care of his obligations. It is very hard to find a new home, especially with this situation. I get SSI and my income is only \$750.00 per month. I saved the money rather than pay the bill because they would still threaten to cut it off at this time and not take any prior money as credit as PGW [has] done before.

Compl. ¶ 6.

On August 21, 2023, PGW filed its Answer to the Complaint which admitted in part and denied in part the various material allegations of the Complaint.

By Hearing Notice dated August 22, 2023, an Initial Call-In Telephonic Hearing was scheduled for November 25, 2023, and the matter was assigned to me.

A Prehearing Order was issued and served on September 25, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding. The Prehearing Order explained, *inter alia*, that “[i]f you are an individual, you may represent yourself or you may have an attorney represent you.... [U]nless you are an attorney, you may not represent someone else.”

On October 25, 2023, the hearing convened as scheduled. Attorney Anita Murray, Esquire, appeared on behalf of PGW with one witness. Angela Bowman appeared on behalf of Sonceiray Bowman as her power of attorney. Sonceiray Bowman was also present. Angela Bowman was informed that she could not represent

Complainant in the hearing if she is not a licensed attorney. I asked Sonceiray Bowman if she was requesting a continuance to get an attorney, which she did. PGW did not object to the continuance.

On October 26, 2023, I issued an Interim Order granting the continuance request.

On October 30, 2023, a Rescheduled Initial Telephonic Hearing Notice as issued scheduling the hearing for November 29, 2023.

I issued a second Prehearing Order on November 7, 2023, again reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On November 29, 2023, the hearing convened as scheduled. All parties were present. Ms. Bowman informed us that the attorney for Community Legal Services was not available to represent Complainant for that date and had asked that she request a continuance. Ms. Bowman also informed us that she had sent a continuance request via fax the prior day. I was able to obtain the fax and asked that Ms. Bowman forward the request to PGW.

The continuance request addressed an issue regarding a billing dispute. Complainant did not address this issue in her Formal Complaint, thereby failing to provide notice of this allegation to PGW.

On November 29, 2023, I issued an Interim Order granting the continuance request. The Interim Order also provided Complainant ten days to file an Amended Formal Complaint which included the allegations of incorrect charges on the bill. PGW was permitted 20 days from service of the Amended Formal Complaint to file a

responsive pleading. The hearing would be scheduled after the time for the filings had passed.

On December 11, 2023, an Amended Formal Complaint was filed. However, the filing was docketed as a “Request for Investigation into Calculations of Gas Usage & Associated Charges Etc.” The Amended Formal Complaint included allegations of incorrect charges. Along with the Amended Formal Complaint, Complainant filed a copy of the Power of Attorney.

On January 9, 2024, a Further Hearing Notice was served scheduling a hearing for March 7, 2024.

On February 28, 2024, PGW filed a Motion for Continuance and Prehearing Conference. PGW requested that the hearing scheduled for March 7, 2024 be converted to a prehearing conference and the hearing be scheduled for a new date. PGW indicated that Complainant did not have an objection to the Motion.

On March 1, 2024, Complainant filed a reply to the Motion for Continuance and Prehearing Conference, objecting to the converting the hearing to a prehearing conference and objecting to a continuance, despite previously having no objection.

On March 5, 2024, I issued an Interim Order granting the Motion for Continuance and Prehearing Conference, converting the March 7, 2024 hearing into a prehearing conference to discuss 56 Pa.C.S. §§ 5601.4, 5602(a)(20), 5603(s) regarding whether the designated agent of a Power of Attorney could pursue litigation on behalf of the principal. I further ordered that a hearing would be scheduled after the conclusion of the prehearing conference.

On March 7, 2024, the prehearing conference convened as scheduled. Angela Bowman appeared as Complainant's power of attorney. The Complainant, Ms. Sonceiray Bowman, was present but did not participate in the discussions. Graciela Christlieb, Esq. appeared on behalf of PGW. I permitted the parties to present argument on why Angela Bowman should or should not be permitted to represent Complainant as her power of attorney under 56 Pa.C.S. §§ 5601.4, 5602(a)(20) and 5603(s). After argument, I advised Angela Bowman that she is not permitted to represent Complainant in a hearing under the Power of Attorney, as she is not licensed to practice law in Pennsylvania. I provided Complainant two options for going forward with the hearing: (1) Complainant can have an attorney present at the hearing, or (2) Complainant could be present for the hearing, representing herself, and call Angela Bowman as a witness. I also advised PGW that they had not filed an answer to the Amended Complaint. It was discovered that Complainant was emailing documents to Graciela.christlieb@pgw.com and not attorney Christlieb's correct email address, Graciela.Christlieb@pgworks.com.

On March 10, 2024, a Cancelled/Rescheduled Initial Telephonic Hearing Notice was issued rescheduling the hearing for April 13, 2024.

On March 12, 2024, Complainant, through Angela Bowman, filed a Motion for Sanctions against PGW's attorney.

On March 13, 2024, I issued an Interim Order memorializing the decisions I made at the prehearing conference. I also provided PGW until March 18, 2024, to file an answer to the Amended Formal Complaint.

On April 4, 2024, Ms. Bowman submitted a continuance request by mail, asking that the hearing be rescheduled. The Commission received the request on April 6, 2024. PGW did not object to the continuance request.

A Prehearing Order was issued and served on April 5, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On March 15, 2024, a Further Hearing Notice was served scheduling a hearing for April 22, 2024.

On March 21, 2024, PGW filed its Answer to the Amended Complaint.

On April 17, 2024, PGW filed its response to the Complainant's Motion for Sanctions.

On April 22, 2024, the hearing convened as scheduled. Jeffrey B. First, Esquire, appeared on behalf of the Complainant and presented one witness, Angela Bowman, Complainant's sister and power of attorney, and offered no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented testimony of one witness, Patricia Bernard, a customer review officer for PGW and offered the following exhibits, which were admitted into the record:

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangement History
- PGW Exhibit 3 – Informal Complaint dated 8/8/22 at BCS No. 3855662
- PGW Exhibit 4 – Informal Complaint dated 10/20/22 at BCS No. 3872987
- PGW Exhibit 5 – Formal Complaint dated 10/26/22; Power of Attorney dated 10/24/2022
- PGW Exhibit 6 – Service Order for Meter Exchange
- PGW Exhibit 7 – Transcript of 1/27/23 Hearing at Docket No. C-2022-3036666
- PGW Exhibit 8 – Two Letters Re: Winterization
- PGW Exhibit 9 – Collection of Letters Re: CRP
- PGW Exhibit 10 – Customer Contacts
- PGW Exhibit 11 – Photographs; Meter Exchange Information

During the hearing, I requested that PGW submit late-filed exhibits regarding any late payment charges (LPC) on the bill.¹ On May 6, 2024, PGW provided, via email, four additional documents in response to my request. The following exhibits will be admitted in the ordering paragraphs below:

PGW Exhibit 12 – (Additional Document 1) LPCs from 1/22/21 to 7/21/21

PGW Exhibit 13 – (Additional Document 2) LPCs and LPC waivers from 10/19/22 to 3/20/24

PGW Exhibit 14 – (Additional Document 3) Account summary from 11/15/17 to 4/17/24

PGW Exhibit 15 – (Additional Document 4) LPCs and LPC waivers from 12/16/17 to 3/20/2024

Also during the hearing, I provided Complainant until May 6, 2024 to submit late-filed exhibits. If any late-filed exhibits were submitted by Complainant, Respondent was afforded ten days to file any objections it may have to the exhibits. On May 7, 2024, I received an email from Ms. Angela Bowman. Attached was a “Request for Extension of Time Regarding Missing Filing for Post Hearing Evidence,” a letter titled “Post Hearing,” and eleven proposed late-filed exhibits.²

On July 30, 2024, I issued an Interim Order reopening the record to provide PGW a chance to object to Complainant’s late-filed exhibits because I noticed that the late-filed exhibits were not properly served to the respondent’s correct email address. Furthermore, I realized that the exhibits admitted at the hearing were not uploaded to the docket with the transcript.

¹ I note that I asked for information regarding late payment charges for the entirety of Ms. Bowman’s account. PGW objected to my consideration of any late payment charges more than 3-years old. This objection was taken under advisement and will be ruled on below.

² Also attached to the email were two eFiling conformation documents listing the exhibits and the letters. There is no indication that these documents were actually uploaded to the docket at that time.

On August 9, 2024, PGW sent a letter, via email, asserting PGW's objections to Complainant's late-filed exhibits. PGW's objections will be sustained below.

The record closed again on October 4, 2024 when both the 123-page transcript and the transcript exhibits were filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Sonceiray Bowman, who resides at 6734 North Broad Street, Philadelphia, Pennsylvania 19126 (Service Address). Tr. 57.
2. The Respondent is PGW Utilities, Inc., a jurisdictional public utility, which provides gas service to Complainant at the Service Address.
3. Complainant is the only resident at the service address. Tr. 68.
4. Complainant's gross monthly income is supplemental security income (SSI) in the amount of \$751. Tr. 68-69.
5. Complainant's household income falls below 150% of the Federal poverty guidelines.³
6. Complainant's outstanding balance at the time of the hearing was \$28,778.89. PGW Ex. 1; Tr. 76.

³ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlt. 1990). A complainant can meet that burden if he or she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Complainant's Late-Filed Exhibits

During the hearing, I provided Complainant until May 6, 2024 to submit late-filed exhibits. On May 7, 2024, I received an email from Ms. Angela Bowman. Attached was a "Request for Extension of Time Regarding Missing Filing for Post Hearing Evidence," a letter titled "Post Hearing," and eleven proposed late-filed exhibits. PGW provided a letter, via email, objecting to Complainant's late-filed exhibits.

PGW objects to Complainant's late-filed exhibit 1 through exhibit 3 as cumulative. PGW alleges that all three files contain the same information as in PGW's Exhibit 1, which is already part of the record. Additionally, PGW argues exhibit 1 has handwritten notes on it, making it inadmissible. On review of Complainant's late-filed exhibits 1-3, it is clear that they contain the exact same information as PGW's Exhibit 1. Therefore, PGW's objection to Complainant's late-filed exhibits 1-3 is sustained.

PGW objects to Complainant's late-filed exhibits 4 and 5, arguing that they are screen shots of portions of news articles referencing the "weather normalization adjustment," which were not referenced during the evidentiary hearing in this case and do not reference the Complainant or her account. After a review of the late-filed exhibits

and the transcript, Complainant had not alleged that a weather normalization adjustment had any affect on her PGW bill. PGW's objection to Complainant's late-filed exhibits 4 and 5 is sustained.

PGW objects to Complainant's late-filed exhibit 8 alleging it is an unauthenticated and undated photograph from Google of one window of what PGW assumes Angela Bowman is alleging to be the property where the Complainant lives. PGW further alleges that the address under the photograph is not the service address at issue in this case. PGW's objection to the Complainant's late-filed exhibit 8 is sustained. Neither Complainant nor her sister allege that they took the photo in question. Without someone available to testify to the authenticity of the photograph/screenshot (i.e., when the photo was taken; the location of the photo; etc.), it is inadmissible hearsay.

PGW objects to Complainant's late-filed exhibits 6 through 7 and exhibits 9 through 11, alleging they are unauthenticated screen shots, which are of no probative value. Late-filed exhibit 6 is a screenshot of an "EZ-Payslip." The screenshot does not have any dates, payment amounts or any relevant information. Late-filed exhibit 7 is what seems to be a screenshot of a text message, possibly from PGW, providing confirmation codes and a link to an "Ez-Payslip." The text message does not contain any relevant information. Late-filed exhibit 9 is a screenshot from "Deferit" stating an amount paid of \$300. The Screenshot does not have any dates or other information that would suggest when the alleged payment was made. Late-filed exhibit 10 is a screenshot of an email exchange withdrawing a prior Commission complaint. Late-filed exhibit 11 is a screenshot, again from "Deferit," stating "Your bill's been paid!" The Screenshot does not have any dates or other information that would suggest when this alleged payment was made. PGW's objections to Complainant's late-filed exhibits 6, 7, 9, 10 and 11 are sustained as the exhibits lack relevance or are not properly authenticated.

PGW objects to the document labeled “Request for extension” alleging that it is drafted in the nature of a filing and is neither relevant nor probative. This document is a request for an extension to file the proposed late-filed exhibits because they were sent one day late. Because I am ruling on the admissibility of the late-filed exhibits for reasons other than the fact that they were provided late, this matter is moot.

PGW objects to the document labeled “Post Hearing” alleging that it is testimony that Angela Bowman is attempting to give after the evidentiary hearing. Ms. Angela Bowman was called to testify during the hearing and had an opportunity to give her account. Moreover, PGW alleges that this document is a combination of numbered grievances she has regarding the proceedings since the inception of this case and evidence already admitted as well as instructions she wishes to give to the Court. PGW argues that the document labeled “Post Hearing” is not admissible as evidence. After a review of the document labeled “Post Hearing,” it is clear that this document is either an attempt to provide a brief, or provide post hearing testimony. This was not permitted nor requested of the parties. Therefore, PGW’s objection is sustained.

PGW also presented an overarching objection to the fifteen documents submitted by Angela Bowman being accepted as late-filed exhibits. PGW argues that it is an attempt to supplement the record by someone who is not permitted to do so. PGW alleges that the Commission should not accept exhibits from Angela Bowman for the same reason it would not accept Exceptions to the Initial Decision from Angela Bowman; she is neither the Complainant nor an attorney representing the Complainant. The Complainant, Sonciray Bowman, is represented by counsel, Jeffrey B. First, Esq. While PGW’s argument may or may not be a persuasive one, none of the submitted documents/exhibits are being admitted for the reasons stated above. Therefore, this objection is moot.

Consequently, for the reasons stated above, Complainant's proposed late-filed exhibits are not admitted to the record in this matter and will not be relied upon in this decision.

Incorrect/High Bill

Complainant has alleged that there are incorrect charges on her gas bill. As the Complainant in this matter, Sonceiray Bowman has the burden of proving that she was overbilled by PGW. 66 Pa.C.S. § 332(a). Complainant's sister testified that she believes one or all of the following reasons may be the cause of the bill being incorrect or high: 1) PGW has not included all payments made on the account, 2) there is possible theft of gas from neighboring households, and/or 3) the meter is inaccurate, causing high bills.

1.) Payments

Ms. Bowman argues that PGW has not included all of the payments that were made on the account, resulting in an incorrect arrearage. Complainant alleges that an \$870 payment was not included in the account statement as well as several cash payments. Tr. 48-49. Ms. Bowman alleges cash payments made to Family Dollar of approximately \$123 each in March and April of 2023 that are not reflected in the statement of account. Tr. 49, 51. She also believes that approximately three payments were made by a third party that are not reflected in the statement. She states the amount of these payments to be approximately \$1,200 with one payment being about \$560 and another being \$400-and-something. Tr. 50-51. Ms. Bowman also alleges that an \$870 payment that was made in October of 2022 as part of a settlement agreement is not in the statement.

PGW explains that Complainant made a total of nine payments on the account since it was opened and that the statement of account indicates five payments were made by Ms. Bowman since August 2020. Tr. 100; PGW Ex. 1. PGW explains that it has no record of any payments made outside of the payments listed in the statement. Further, PGW argues that Complainant has not provided any proof of any alleged payments for it to investigate.⁴ Tr. 101, 106.

Complainant has not provided any credible evidence to counter PGW's claim that the statement of account details all payments made on the account, thereby failing to rebut PGW's evidence. Consequently, Complainant has not met her burden of proving that PGW has not given her credit for all payments made on the account.

2.) Theft

Ms. Bowman argues that there may be theft of gas at the property contributing to the high usage and high bills. Ms. Bowman testified that the service address is between two households that have been under construction for a while. She explained that she believes that the meter may feed more than just her sister's home. Tr. 53, 64

PGW explains that PGW technicians are trained to identify situations that would indicate theft at the property and would check for theft at every property that is visited. Tr. 81, 103. There were no signs of theft at the property at any of the times PGW technicians have visited the property. Tr. 80-81. PGW also explains that for the type of theft that Ms. Bowman is speaking of, any person attempting to steal gas would

⁴ I note that the statement reflects two payments on October 4, 2022 for a total amount of \$930 Tr. 67; PGW Ex. 1. Ms. Bowman believes her October payment to have been a single payment but does not have a receipt. Tr. 67.

need to go through the wall of the service address to connect to the gas line, which would be visible. Tr. 108.

Complainant has not met her burden of proving that there is theft of gas at the property causing high gas bills.

3.) *Meter Accuracy*

Last, Complainant alleges that the meter is not working correctly, causing high bills. Tr. 54. Ms. Bowman explains that PGW tested her meter twice, but believes the tests were incorrect. *Id.*

Commission regulations provide tolerance standards for recording gas usage within an error variance of 2.0% or less as follows:

- (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.
- (b) *Slow meters.* If, upon test of a gas meter it is found to have an average error of more than 2.0% slow, the public utility may render a bill for the gas consumed but not covered by bills previously rendered, for a period equal to 1/2 of the time elapsed since the last previous test, but not to exceed 3 months. If the period of

registration error may be definitely fixed, the charge may be computed for the period.

52 Pa. Code § 59.22(a)-(b).

PGW's witness, Ms. Bernard, testified that the meter at the service address was removed, replaced and tested on two occasions. The first meter was tested on January 13, 2023. Tr. 81; PGW Ex. 6. The first meter tested 2.02 percent fast which is .02 percent faster than the allowable variance under 52 Pa. Code § 59.22. Tr. 81-82; PGW Ex. 6. Complainant was issued a bill adjustment/credit in the amount of \$53.45 to address the discrepancy.⁵ The second meter was removed, exchanged and tested on April 19, 2024. The second meter tested at .3 percent fast, which is within the allowable variance under 52 Pa. Code § 59.22. Tr. 84; PGW Ex. 11.

In cases of alleged high billing, the Commission applies the *Waldron* rule, which provides that to establish a *prima facie* case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that the complainant's billing history shows no prior abnormalities. Once the complainant makes out a *prima facie* case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the Complainant. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980); *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980).

In *Milkie*, the Commonwealth Court of Pennsylvania further refined the *Waldron* rule by holding:

[w]hile 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

⁵ PGW explained that for the majority of the prior 12 months, Complainant was not billed on usage, but was billed based on her income due to her being enrolled in the Customer Responsibility Program. Tr. 82-83.

utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the 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.

Milkie, 768 A.2d at 1219-1220 (emphasis in original, footnote omitted) (citing *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1235 (Pa. 1983)). In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (*Thomas*), the Commission explained:

the *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, at 5 (emphasis in original) (citation omitted).

PGW argues that the high bills are likely due to issues with the heating and weatherization at the service address. See Tr. 60, 84. PGW presented a letter from Ms. Bowman explaining that the property is in bad shape with broken windows and the landlord was not fixing the heater. PGW Ex. 5 at 8; Tr. 60. Further, Ms. Bowman testified in a prior proceeding that she believes the landlord is responsible for their situation. Tr. 62; PGW Ex. 7 at 6.

PGW provided the statement of account which lists all transactions from August 19, 2020 through April 14, 2024. PGW Ex. 1. The following shows the average CCF per day for the months of December, January, February, and March from 2020 until the hearing date:

Average CCF/Day for Heating Seasons				
	December	January	February	March
2020-2021	18.53	23.59	24.83	18.64
2021-2022	13.97	19.12	22.79	16.47
2022-2023	17.1	16.41	17.29	13.33
2023-2024	12.83	16.35	17.79	17.62

PGW Ex. 1; Tr. 74-75. PGW argues that the gas usage at the service address is consistent and trending down. Tr. 76. The argument that the usage is trending down is consistent with Ms. Bowman’s statements that the landlord worked on the heater and made some repairs to the property. *See* Tr. 60-61.

Complainant has not shown a change in usage patterns or provided any other evidence showing that she was incorrectly billed and therefore, has failed to present a *prima facie* case of overbilling. Accordingly, I conclude that Complainant has not proven the allegation of overbilling by a preponderance of the evidence.

Late Fees

Upon review of PGW's Exhibit 1, I noticed that there were large late payment charges added to Complainant's bill monthly.⁶ Under 66 Pa.C.S. § 1409, "[t]he commission may 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."⁷ Therefore, I asked PGW to supply exhibits that provide the total amount of late fees assessed against Complainant. PGW supplied late-filed exhibits that laid out all late-payment charges and waivers applied to Complainant's account. There were a total of \$4,701.30 in late-payment charges applied to Complainant's account that were not subsequently waived. PGW Ex. 15. Of the \$4,701.30 total, \$3,030.42 was charged within the Commission's statute of limitations.⁸ PGW Ex. 12, 13.

As discussed below, Complainant's household income does not exceed 150% of the Federal poverty level. Therefore, in the ordering paragraph's below, I am ordering a waiver of \$3,030.42 of the late-payment charges applied to Complainant's account.⁹

⁶ The late-payment charges are understandably high due to the size of the Complainant's arrearage.

⁷ It is noted that Chapter 14, 66 Pa.C.S. §§ 1401-1419, sunsetted on December 31, 2024 and has not been reauthorized by the Pennsylvania Legislature. Nevertheless, since this action arose prior to the sunset of Chapter 14, its substantive effect still applies to this action. *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 418 (Pa. Cmwlth. 2008).

⁸ "No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part." 66 Pa.C.S. § 3314.

⁹ I note that while \$3,030.42 is a large sum of money, it is a small dent in the overall arrearage owed by Complainant and is not enough to make any payment arrangement affordable to Complainant.

Payment Arrangement

Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. Section 1405(a)–(c) of the Code reads as follows:

§ 1405. Payment arrangements

(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.

(c) Customer assistance programs. — Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

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

66 Pa.C.S. § 1405(a)–(b), (d).

If the Commission has not previously ordered a payment arrangement for a Complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a Complainant's arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. Complainant's gross monthly income is supplemental security income in the amount of \$751. Tr. 68-69. Complainants have a household size of one. Tr. 68. Based on Complainant's gross household income of \$751 per month, and the household size of one, Complainant is below 150% the Federal poverty level.¹⁰ Complainant has not had a prior Commission issued payment arrangement. Therefore, pursuant to the Code, Complainant would be eligible for a five-year payment arrangement under 66 Pa.C.S. § 1405(b), absent a restriction set out in the Code.

¹⁰ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

The Commission does not have authority to order a payment arrangement on customer assistance program (CAP) arrearages. 66 Pa.C.S. § 1405(c); *Cooper v. PECO Energy Co.*, Docket No. F-2011-2254904 (Opinion and Order entered Aug. 2, 2012) (*Cooper*). A “customer assistance program” is defined as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403. PGW’s Customer Responsibility Program (CRP) rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission. *See Maxwell v. Phila. Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered Aug. 23, 2018). A portion, \$1,372.11, of Complainant’s balance is made up of CAP arrears. Tr. 107. In a mixed arrearage case, the Commission does not have authority to establish a payment arrangement for the CAP arrears under 66 Pa.C.S. § 1405, but is not restricted from issuing a payment arrangement for any remaining arrearage, subject to the discretion of the Commission. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*); *see also, Cooper, supra*.

Complainant’s total arrearage at the time of the hearing was \$28,778.89. PGW Ex. 1; Tr. 76. The non-CAP arrearage was \$27,406.78. PGW Ex. 1; Tr. 76, 107. Subtracting the \$3,030.42 in late-payment charges discussed above, Complainant is left with a non-CAP arrearage of \$24,376.36. As mentioned above, Complainant would be eligible for a five-year payment arrangement under 66 Pa.C.S. § 1405(b)(1).

Complainant would be required to pay the budget bill plus \$406.27.¹¹ As the Commission explained in *Hewitt*, bifurcating the arrearage and establishing a payment arrangement only for the non-CAP arrearages may not be feasible in most cases. *Hewitt*. The Commission, in *Hewitt*, states:

In effect, such a truncated arrangement would require the utility to place the CAP portion of the arrearage on hold, presumably indefinitely. As long as the customer adhered to the payment agreement for the non-CAP portion of the arrearage, the utility presumably would be prohibited from terminating service for non-payment of the CAP arrearage. In many instances, it is likely that the utility ultimately would be required to simply write off the CAP arrearage. This obviously would not be in the public interest, and would allow customers to utilize payment agreements for non-CAP arrearages as a tool to avoid payment of CAP bills, which already are discounted from standard rates.

Hewitt at 11. Nonetheless, here, Ms. Bowman stated that Complainant could afford to pay a maximum of \$300 per month. Tr. 69. The budget bill itself is currently more than \$300. Tr. 105. Adding an additional \$406 to her monthly payment would be unaffordable for the Complainant and would likely exceed her total monthly income.

Although the Commission may have the authority to establish a payment arrangement for the non-CAP portion of the arrearage, I decline to do so in this case. Complainant has not shown the ability to pay her gas bill nor has she made a good faith effort to do so. Therefore, Complainant has not met her burden of proving that she is eligible for a Commission-issued payment arrangement.

¹¹ $\$24,376.36 \div 60 = \406.27 . I note that this number has possibly gone up since the date of the hearing.

Complainant is eligible to get back on PGW's CRP program with a payment \$2,520.98. Tr. 107. The CRP program is the best payment plan available to Complainant. I encourage the parties and Ms. Angela Bowman, as Complainant's power of attorney, to work together to get Complainant back on PGW's CRP program. I further encourage Complainant and Ms. Bowman to reach out to PGW regarding their weatherization programs in an attempt to lower the monthly usage at the service address.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. §§ 701, 1401–1419.
2. The Complainant has the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).
3. A complainant must show, by a preponderance of the evidence, that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976).
4. The decision of the Commission must be supported by substantial evidence or 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

5. Once 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 the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

6. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401–1419.

7. “The commission may 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.

8. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

9. The Commission does not have authority to order a payment arrangement on customer assistance program arrearages. 66 Pa.C.S. § 1405(c); *Cooper v. PECO Energy Co.*, Docket No. F-2011-2254904 (Opinion and Order entered Aug. 2, 2012).

10. In a mixed arrearage case, the Commission does not have authority to establish a payment arrangement for the CAP arrears under 66 Pa.C.S. § 1405, but is

not restricted from issuing a payment arrangement for any remaining arrearage, subject to the discretion of the Commission. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

11. In a high bill proceeding, the Commission will 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 v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980); *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

12. The Complainant has failed to carry her burden of proving that she was overbilled for her gas usage. 66 Pa.C.S. § 332(a).

13. The Complainant has failed to carry her burden of proving that she is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW's objections to Complainant's proposed late-filed exhibits are sustained and Complainant's proposed late-filed exhibits are not admitted into the record.

2. The PGW's Exhibits 12 through 15 are hereby admitted into the record.

3. That the Formal Complaint filed by Sonceiry Bowman in Sonceiry Bowman v. Philadelphia Gas Works at Docket No. C-2023-3041967 is denied and dismissed.

4. That Philadelphia gas works shall waive a total of \$3,030.42 in late-payment charges.

5. That Docket No. C-2023-3041967 be marked closed.

Date: January 2, 2025

_____/s/
Michael J. Mroczka
Special Agent