

1 **OFFICE OF THE HEARING EXAMINER**
2 **CITY OF TACOMA**

3 **HWAN JOON KIM**

4 **Appellant,**

5 **v.**

6 **THE CITY OF TACOMA**, through
7 its Department of Public Utilities,

8 **Respondent.**

HEX NO. HEX2022-010
(TPU Account #100537747)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

9 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner
10 for the City of Tacoma (the “City”), on November 3, 2022.¹ Appellant Hwan Joon Kim
11 (“Appellant” or “Kim”) appeared *pro se* at the hearing. Tacoma Public Utilities (“TPU”) was
12 represented by Rachel Frias, Customer Accounts Supervisor. TPU also appeared *pro se*.

13 Appellant testified on his own behalf and called no other witnesses. Frias testified for
14 Respondent, TPU.² All testimony was taken under oath and penalty of perjury. Exhibits were
15 admitted and reviewed. Based upon the evidence presented, the Hearing Examiner makes the
16 following:

17 //

18 //

19 //

20 _____
21 ¹ At the Appellant’s election the hearing was conducted with both an in-person component at the Tacoma Municipal Building, First Floor Council Chambers and hybrid over the internet using Zoom conferencing at no cost, with participation available by both video and telephone. Additionally, this appeal hearing was originally scheduled on September 8, 2022, but due to an unexpected illness of one of TPU’s representatives on the morning of the hearing, the matter was rescheduled by agreement of the parties.

² After first introduction, parties and witnesses may be referred to by last name only.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

1 **FINDINGS OF FACT**³

2 1. This appeal concerns the provision of electrical service, under TPU account
3 number 100537747 (the “Subject Account”), to Myong Kim and Appellant Hwan Joon Kim
4 at the real property located at 6903 35th Street West, University Place, WA 98466-5204 (the
5 “Subject Property”), which they own. *Kim Testimony; Ex. R-7.*

6 2. Kim has lived at the Subject Property since 2003. *Kim Testimony.*

7 3. Kim disputes all but \$200 of his electric bill for the period 03/01/22 to 04/27/22
8 (the “Disputed Billing Period” or “DBP”).⁴ The undisputed \$200 amount has been paid.
9 Kim’s stated amount in dispute is \$1,161.49 (the “Disputed Amount”). *Ex. R-4, Ex. R-6.*

10 4. Kim’s electricity consumption at the Subject Property has typically ranged from
11 approximately 500 kilowatt hours (“KWH”) to just under 2,000 KWH, with billed amounts
12 ranging from less than \$100 to around \$200. During the Disputed Billing Period, consumption
13 spiked up to 14,237.00 KHW with a billed amount of \$1,276.49. Kim testified that the
14 maximum he had ever been billed for electric power at the Subject Property over the course of
15 his occupancy had been around \$450. *Kim Testimony; Ex. R-8 and Exs. A-1~G-3.*

16 5. Kim submitted copious exhibits showing his bills and consumption history going
17 back as far as 2014. *Kim Testimony; Exs. A-1~G-3.* Kim’s exhibits do show a pattern of use
18 that makes the numbers for the Disputed Billing Period clearly aberrational. *Id.*

19 6. For its part, TPU does not dispute that the numbers for the Disputed Billing
20 Period are aberrational. TPU does not know what caused the spike during the Disputed
21

³ The material facts in this appeal are not in any meaningful dispute. Nevertheless, these findings are made and presented as contextual background to the decision rendered herein.

⁴ The same date format found in Exhibit R-8 is used here for the Disputed Billing Period.

1 Billing Period. TPU had the meter at the Subject Property tested on or around June 17, 2022,
2 and it was found to be functioning properly. Frias testified that, in her years of experience
3 with TPU, meters do not speed up in their readings and spike like what happened during the
4 Disputed Billing Period, and then go back to reading more in line with the meter's past
5 history. To the contrary, as meters age, they are prone to slowing down and registering lower
6 than actual consumption. *Frias Testimony, Ex. R-3.*

7 7. Kim does not know the cause of the spike either. He testified that there was no
8 unusual electric power use at the Subject Property, and that his appliances all appear to be
9 functioning well. He testified that the Subject Property uses electric baseboards for heat and
10 that they too appear to function properly. He also testified that the baseboards have individual
11 on/off switching and temperature controls that he monitors closely in order to not overheat or
12 overuse. *Kim Testimony.*

13 8. Nothing in either side's testimony or circumstance leads the Examiner to believe
14 that any of the testimony was not credible.

15 9. Any conclusion of law herein which may be more properly deemed or
16 considered a finding of fact is hereby adopted as such.

17 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the
18 following:

19 CONCLUSIONS OF LAW

20 1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this
21 appeal pursuant to Tacoma Municipal Code ("TMC") 1.23.050.B.21 as a "[d]ispute[] concerning
utility service..."

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

1 2. The Hearing Examiner’s review of this matter is *de novo*. *TMC 1.23.060*.

2 3. The Appellant bears the burden of proof to establish, by a preponderance of the
3 evidence, that its claim is consistent with applicable legal standards, and that the lower
4 decision should be reversed, i.e., TPU’s decision to not reduce the Disputed Amount. *TMC*
5 *1.23.070.C*.

6 4. “Preponderance of the evidence” means that the trier of fact is convinced that it
7 is more probable than not that the fact(s) at issue is/are true, or that “[t]he proposition on
8 which that party has the burden of proof is more probably true than not true.”⁵ Here, that
9 proposition is whether the essentially undisputed facts, against the backdrop of applicable
10 laws, require or even allow the Examiner to waive, reduce or otherwise alter the Disputed
11 Amount. This question is primarily a legal one, but its determination must be made against
12 the established facts as they relate to the law.

13 5. The preponderance of the evidence standard is at the low end of the spectrum for
14 burden-of-proof evidentiary standards in the U.S. legal system, and is not particularly difficult
15 to meet.⁶ That said, the Examiner must base his decisions on proven evidence and not on
16 mere speculation.

17 6. TPU, as a municipal utility, is generally obligated by law to bill the cost of utility
18 services provided.⁷ The foregoing notwithstanding, “A municipal corporation has inherent
19

20 ⁵ *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 511~512 (2017); *State v. Paul*, 64 Wn. App. 801,
807, 828 P.2d 594 (1992).

21 ⁶ *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009). Another somewhat recent case
referred to it thusly: “The lowest legal standard of proof [in the U.S. legal system] requires the proponent to prove
its case by a preponderance of the evidence.” *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241,
1246-1247 (2006).

⁷ See, e.g., RCW 35.92.010, RCW 80.28.080; TMC 12.06.110, and .160; *Housing Auth. v. Sewer and Water
District*, 56 Wn. App. 589, 784 P.2d 1284 (1990).

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

1 power to enter into a compromise settlement of disputed claims, arising out of a subject
2 matter concerning which the municipality has the general power to contract.”⁸ TPU’s
3 provision of utilities to its customers is a contractual relationship in which TPU agrees to
4 provide utility service for specified payment from the named customer.

5 7. Kim proved by a preponderance of the evidence that the consumption and
6 amount billed for the Disputed Billing Period was an aberration. TPU does not dispute this.
7 That does not resolve the issue, however. As the party bearing the burden of proof, Kim must
8 also show that the cause of the spike was not his responsibility to bear, but rather TPU’s. In
9 other words, Kim must show that the cause of the spike is due to some TPU error or action.
10 That has not been proved by a preponderance of the evidence presented. TPU tested the meter
11 and it was working and has continued to work.

12 8. TPU comes into an appeal such as this with the presumption that its meter
13 readings and the billing therefor is correct because the appellant bears the burden to show
14 otherwise. Admittedly, even though only by a preponderance of the evidence, showing the
15 cause of a spike such as what occurred here is difficult for a lay person. Without some tipping
16 Evidence that shows what caused the spike, the presumption that benefits TPU is not overcome.

17 9. Any finding of fact herein which may be more properly deemed or considered a
18 conclusion of law is hereby adopted as such.

19 //

20
21 ⁸ *Warburton v. Tacoma Sch. Dist.*, 55 Wn.2d 746, 752, 350 P.2d 161 (1960), citing *Abrams v. Seattle*, 173 Wash.
495, 502, 23 P.2d 869 (1933), and *Christie v. Port of Olympia*, 27 Wn.2d 534, 179 P.2d 294 (1947). See also
Eugster v. City of Spokane, 139 Wn. App. 21, 31-32, 156 P.3d 912, 918 (2007) (*A good faith settlement of a
dispute is sufficient consideration, absent any actual donative intent, to not be a violation of the constitutional
prohibition on gifting public funds.*).

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

1 Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing
2 Examiner makes the following:

3 **DECISION AND ORDER**

4 The Appellant's appeal is DENIED. TPU is required by law, in the absence of proof
5 by a preponderance of the evidence that TPU's billing is in error, to collect the money owed,
6 and the Examiner is without any authority to waive or reduce the same without that proof.

7 The Disputed Amount shall be paid over 24 months' time starting 30 days from the
8 date of this Decision and shall be payable without interest, late fees or other penalty.

9 **DATED** this 8th day of November, 2022.

10 

11 **JEFF H. CAPELL, Hearing Examiner**

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER’S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of motions
13 for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
14 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set
15 forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole
16 discretion of the Examiner to determine whether an opportunity shall be given to other parties
17 for response to a motion for reconsideration. The Examiner, after a review of the matter, shall
18 take such further action as he/she deems appropriate, which may include the issuance of a
19 revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

11 **APPEAL OF EXAMINER’S DECISION TO MUNICIPAL COURT:**

12 **NOTICE**

13 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing
14 Examiner's decision may be appealable to Tacoma Municipal Court. Any court action to set
15 aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner likely will
16 need to be commenced within 21 days of the entering of the decision by the Examiner, unless
17 otherwise provided by statute.

18
19
20
21
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**