

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janete Galasso

v.

PECO Energy Company

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:

C-2008-2014171

INITIAL DECISION

Before
Eranda Vero
Special Agent

HISTORY OF THE PROCEEDING

On December 4, 2007, Janete Galasso (Ms. Galasso or Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) alleging an inability to pay her gas bills and incorrect billing on the part of PECO. On February 5, 2008,¹ Respondent filed an Answer denying the material allegations of the Complaint.

An Initial Telephone Hearing Notice dated March 20, 2008, advised the parties that an initial telephonic hearing was scheduled for April 21, 2008, and that they could lose the case if they failed to appear for the hearing. The case was assigned to me, pursuant to 52 Pa. Code §56.174.

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

¹ The Commission served the Complaint upon Respondent on January 17, 2008.

reminded the parties of their responsibility to advise the presiding officer of any change in the telephone number at which they were to be contacted.

In accordance with the provisions of the Prehearing Order on April 17, 2008, Respondent submitted three copies of six (6) proposed exhibits for possible use at the hearing. On April 18, 2008, Respondent submitted the facsimile of the Company's Residential High Bill Investigation Report as an additional proposed exhibit.

The Telephone Hearing convened as scheduled on Monday, April 21, 2008 at 10:00 a.m. Janete Galasso appeared *pro se* and testified on behalf of the Complaint. Michael S. Swerling, Esq., represented the Respondent. During the hearing, Ms. Galasso averred that she had not received copies of Respondent's proposed exhibits. She was offered the option of following the testimony of Respondent's witness on the day of the hearing and submitting in writing any objections to the admission of the proposed exhibits into the record once she had opportunity to receive and review the exhibits in question; or she could request a continuation of the hearing on a later date. Ms. Galasso requested a continuation of the hearing. In order to give Complainant an opportunity to fully participate in the hearing and considering that the Respondent's last proposed exhibit was submitted to me via facsimile on the Friday before the hearing, I granted Ms. Galasso's request over Mr. Swerling's objection. Because the parties had completed Ms. Galasso's direct and cross-examination on April 21, 2008, I scheduled a Further Telephone Hearing on Friday, April 25, 2008 for the limited purpose of entering Respondent's direct and cross-examination into the record.²

The Further Telephone Hearing convened as scheduled on Friday, April 25, 2008 at 10:00 a.m.³ Ms. Galasso appeared *pro se*. Mr. Swerling represented the Respondent which sponsored seven (7) proposed exhibits and presented the testimony of two witnesses. PECO Exhibits 1-7 were admitted into the record. The record closed at

² The Commission's Notice to the parties was erroneously titled "Hearing/Cancellation/Reschedule Notice" instead of "Further Telephone Hearing Notice." The parties however, had a clear understanding of purpose of the Further Telephone Hearing as it was explained to them during the April 21st hearing.

³ Tape recordings of both the Initial and the Further Hearing were made, no court reporter being present.

the conclusion of the Further Telephone Hearing on April 25, 2008.

FINDINGS OF FACT

1. Complainant is Janete Galasso, who resides at 967 Springfield Avenue, Darby, Pennsylvania 19023 (Service Address) with her brother.
2. Respondent is PECO Energy Company.
3. Ms. Galasso has been a tenant at the Service Address for four or five years. The property at the Service Address is a house with four bedrooms, one bath, living room, dining room, kitchen, and basement.
4. Ms. Galasso has been unemployed for at least three years.
5. Ms. Galasso was receiving Supplemental Security Income (SSI) until two or three years ago. The SSI benefits were interrupted when she was no longer deemed disabled.
6. Ms. Galasso's brother works for a construction company and receives \$600.00 a month in cash.
7. Ms. Galasso testified that at one point she was getting some money from her ex-husband, whom she described as making voluntary payments and giving her about \$400.00 per month.
8. Another family member used to live with Complainant at the Service Address but she had moved out by late summer of 2007.
9. In the cold months, Complainant uses a wood stove as a supplemental source of heat.

10. Ms. Galasso testified that she uses the wood stove in addition to keeping her thermostat at 68°F “so that the pipes downstairs do not freeze.”

11. Complainant testified that she and her brother conserve hot water by taking baths instead of showers and by doing laundry in cold water.

12. Ms. Galasso testified that she does not use gas in the summer and continued to add that “If [gas is used], it is infrequent. It ain’t all day, all night, or you know everyday like during the winter time. I mean you know during the winter time when you may use it to cook or on frequent basis.”

13. During the last four years Ms. Galasso experienced several problems with the gas meter serving the Service Address. She reported those problems to the Company and had her meter removed by PECO on multiple occasions.

14. From April 2004 to March 2007, Respondent has replaced two malfunctioning meters and one faulty automated meter reading (AMR) device at the Service Address. The first malfunctioning meter was replaced on April 24, 2004; the faulty AMR was replaced in January or February of 2006; and the second malfunctioning meter was replaced on March 12, 2007.

15. The Company has credited Complainant’s account after every detection and replacement of its metering devices. The Company credited Ms. Galasso’s account in the amount of \$1,476.06 in August of 2005. On January 13, 2006, PECO credited Ms. Galasso’s account in the amount of \$1,620.49 as a result of a billing cancellation covering the period from January 11, 2005 to January 9, 2006. Finally, PECO credited Ms. Galasso’s account in the amount of \$1,861.44 in April of 2007. PECO Exhibit # 1.

16. Following the meter change in March of 2007, Complainant has been billed on actual usage.

17. From March 2007 forward, PECO has not detected any abnormalities in Complainant's meter readings.

18. PECO witness, Mr. Fisher, is a high bill field representative for PECO. He visited the Service Address on April 14 or 15 of 2008 and inspected the gas meter and gas usage at the property.

19. Mr. Fisher performed a "drop load" test at the property. The test showed that there was no gas leak and no foreign piping at the property.

20. Mr. Fisher testified that he also tested the new meter at Ms. Galasso's residence by using Complainant's gas water heater which required 36,000 BTUs of gas pressure to work. Mr. Fisher registered 60 seconds per revolution on the half foot dial of the meter which told him that 30,900 BTUs were flowing through that meter for a 36,000 BTU appliance. Mr. Fisher concluded that the gas meter was running properly.

21. Mr. Fisher did an energy analysis of Complainant's gas appliances. He found that Ms. Galasso's 36,000 BTU gas water heater, her 140,000 BTU gas heater, 20,000 BTU gas dryer, and her gas range⁴ had the potential to use the amount of gas Ms. Galasso had been charged for.

22. The 36,000 BTU gas water heater has the potential to use 0.35 ccf per hour; the 20,000 BTU gas dryer has the potential to use 0.19 ccf per hour; and her 140,000 BTU gas heater can use 1.36 ccf per hour.

⁴ Mr. Fisher testified that he did not have access to the BTU information for Ms. Galasso's gas range. According to Mr. Fisher, the label containing BTU information for gas ranges is usually placed in a location that is not easy to access without removing the appliance and damaging its installation.

23. Domestic appliances such as Ms. Galasso's water heater and range have an average usage of about 1ccf per day.

24. Ms. Galasso's potential for gas usage during the winter months was calculated by taking into account her 140,000 BTU gas heater and estimating that it was working about four hours per day. Running the gas heater four hours per day at 1.36 ccf per hour equals 6.5 ccf of gas per day potentially used by Complainant in the winter.

25. Ms. Galasso's highest gas consumption for the winter months was registered in the January 9, 2008 to February 10, 2008 billing period at 208 ccf for 32 days, or 6.5 ccf per day. During the summer months she consumed approximately 1 ccf per day for domestic use, i.e. water heating and cooking. PECO Exhibit # 1, p. 3.

26. Mr. Fisher also took an actual meter reading when at the property. That reading was checked against the bills that the Company had issued to Complainant and was found to be correct.

27. Mr. Fisher memorialized his findings and conclusions in a Residential High Bill Investigation Report dated April 15, 2008. PECO Exhibit # 7.

28. PECO's billing period is from 25 to 35 days. Equipped with the AMR device Ms. Galasso's meter reports readings to the Company on a daily basis.

29. PECO witness, Renee Tarpley, is a regulatory assessor responsible for reviewing formal and informal complaints filed with the Commission.

30. Ms. Tarpley testified that Ms. Galasso's payment history with PECO has been satisfactory with payments made monthly but falling short of the required amount. Complainant's payments average about \$100.00 per month. This amount does not cover her current charges because the average bill on the account is \$138.00.

31. Ms. Galasso has entered into two payment agreements with the Company, one in June of 2003 and the other in January of 2006, and has defaulted on both of them. PECO Exhibit # 2.

32. Ms. Galasso was enrolled in the Company's CAP rate program but was removed from it in May of 2006 because she failed to submit the required income and household information.

33. When PECO's CAP program receives incorrect or incomplete information from the applicant it sends out an automatic rejection notice to the applying customer.

34. Ms. Galasso can recertify for PECO's CAP program if she submits the required information.

35. As of the time of the second hearing, Ms. Galasso had an account balance of \$2,295.05.

DISCUSSION

In her Formal Complaint, Complainant alleged that she had received notice that her gas service was being terminated; that she was unable to pay her gas bills; and that there were incorrect charges on her bill from a malfunctioning meter. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. § 332(a). This means that she has the duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). Additionally, care must be exercised to insure that the decision of the Commission is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.

See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Norfolk & Western Ry. Co. v. PA PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth 1984).

Upon the presentation by a Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the customer shifts to the Respondent. If the evidence presented by the Respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Respondent. *Morrissey v. PA Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. P.U.C.*, 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982), *aff’d*. 501 Pa. 443, 461 A.2d 1234. For example, if one driver claims that an accident occurred on a dry road on a sunny day, and the other driver claims that the road was wet and it was raining at the time of the accident, neither driver has satisfied the burden of proof. Additional evidence concerning the condition of the road and weather must now be provided by one or the other.

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. PA PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980); and *Replogle v. Philadelphia Electric Company*, 54 PA PUC 528 (1980).

High billing dispute

The Complainant alleges a billing dispute. Therefore, the Complainant's burden of proof is governed by *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980). In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* case by showing that: (1) the number of occupants of the household has not

changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities.

The Commonwealth Court has broadened the Commission's ruling in *Waldron in Milkie v. Pennsylvania Pub. Util. Com.*, 768 A.2d 1217 (Pa. Cmwlth. 2001). The Commonwealth Court held that the Commission's determination that the complainant must establish certain specific elements in order to make out a *prima facie* case is too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate; the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage. This rule protects the complainant from dismissal because of his or her inability to produce direct proof that the meter malfunctioned. As noted above, the burden of proof always remains with the complainant and if the utility presents evidence that is co-equal or greater in weight than the complainant's, the complainant will not have met his or her burden of proof. The Court emphasized that the mere proof by the utility that its measuring devices are accurate is no longer the sole determinant of whether there is a basis to a complaint of over billing. *Burleson v. Pennsylvania Pub. Util. Comm'n*, 461 A.2d 1234 (Pa. 1983).

In this case the Complainant is challenging her gas bills received from Respondent at least from March 12, 2007. Ms. Galasso claims that she could not have used the amount of gas for which the Respondent has been charging her. She bases her claim on the fact that, for the last four years, she has experienced a series of malfunctioning gas meters and incorrect bills, and on the fact that in the cold months, she uses a wood stove as a supplemental source of heat. Complainant also testified that she and her brother conserve hot water by taking baths instead of showers and by doing laundry in cold water.

While Respondent admits that from April 2004 to the present it has had to change Complainant's entire gas meter twice and the AMR device once, Respondent maintains that the current gas meter installed in Ms. Galasso's residence in March 2007 is

working properly. PECO witness, Mr. Fisher, visited the Service Address on April 14 or 15 of 2008 to conduct a high billing investigation. He inspected the gas meter and gas usage at the property. Mr. Fisher performed a "drop load" test which showed that there was no gas leak and no foreign piping at the property. Mr. Fisher also tested the current gas meter at Ms. Galasso's residence by using Complainant's gas water heater which required 36,000 BTU of gas pressure to work. He registered 60 seconds per revolution on the half foot dial of the meter which told him that 30,900 BTUs were flowing through that meter for a 36,000 BTU appliance. Mr. Fisher concluded that the gas meter was running properly.

In addition, Mr. Fisher did an energy analysis of Complainant's gas appliances. He found that Ms. Galasso's 36,000 BTU gas water heater, her 140,000 BTU gas heater, 20,000 BTU gas dryer, and her gas range had the potential to use the amount of gas Ms. Galasso had been charged for. The 36,000 BTU gas water heater has the potential to use 0.35 ccf per hour; the 20,000 BTU gas dryer has the potential to use 0.19 ccf per hour; and her 140,000 BTU gas heater can use 1.36 ccf per hour. Domestic appliances such as Ms. Galasso's water heater and range have an average usage of about 1ccf per day. Ms. Galasso's potential for gas usage during the winter months was calculated by taking into account her 140,000 BTU gas heater and estimating that it was working about four hours per day. Running the gas heater four hours per day at 1.36 ccf per hour equals 6.5 ccf of gas per day potentially used by Complainant in the winter. This calculation matches Ms. Galasso's highest gas consumption for the winter months registered in the January 9, 2008 to February 10, 2008 billing period, at 208 ccf for 32 days, or 6.5 ccf per day. During the summer months she consumed approximately 1 ccf per day for domestic use, i.e. water heating and cooking. PECO Exhibit # 1, p. 3.

When at the Service Address, Mr. Fisher also took an actual meter reading. That reading was checked against the bills that the Company had issued to Complainant and was found to be correct. Another PECO witness, Ms. Tarpley, testified that from March 2007 forward, PECO has not detected any abnormalities in Complainant's meter readings and each of Ms. Galasso's bills from May 9th of 2007

forward has been billed on actual reading.

Ms. Galasso resides in a house with four bedrooms, one bath, living room, dining room, kitchen, and basement. In her testimony she specifically stated that during the winter months she uses the wood stove in addition to keeping her thermostat at 68°F “so that the pipes downstairs do not freeze.” Regarding her gas consumption during the warmer months, Ms. Galasso first testified that she does not use gas in the summer, but then continued to add that “If [gas is used], it is infrequent. It ain’t all day, all night, or you know everyday like during the winter time. I mean you know during the winter time when you may use it to cook or on frequent basis.” Her testimony that she heats up a four-bedroom house by keeping the thermostat at 68°F may be all day and night long, and that she uses some gas during the warmer months to cook corroborates the testimonies of Respondent’s witnesses regarding Complainant’s gas consumption.

I find that Ms. Galasso has failed to carry her burden of proof with regard to her claim of incorrect billing. Consequently, this claim will be dismissed from her Complaint.

Payment arrangement

The Responsible Utility Customer Protection Act, 66 Pa. C.S. §§1401, *et seq.* (the Act or Chapter 14) applies to this proceeding. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1403 of the Public Utility Code defines “Payment Agreement” as follows:

An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

66 Pa. C.S. §1403 (Definition of “Payment Agreement”). Section 1405 of the Public Utility Code regarding payment arrangement reads in pertinent part:

(b) LENGTH OF PAYMENT AGREEMENTS--

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement 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) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

* * *

(d) NUMBER OF PAYMENT ARRANGEMENTS --

Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa. C.S. §1405 (b) and (d).

The Commission has the authority to review a payment arrangement to ensure compliance with Chapter 14 of the Public Utility Code but lacks the authority to establish a second or subsequent payment arrangement, absent a change in a customer's household income, if a customer has defaulted on a previous payment arrangement.

Complainant has entered into and defaulted on two Company-issued payment arrangements. However, this would be her first Commission-issued payment arrangement. With a monthly income of \$600.00 for a household of two, Ms. Galasso falls far below the 150% of the Federal poverty guidelines for the year 2008.⁵ Complainant is a Level 1 income customer and is required to pay her monthly current bill plus an amount equal to one sixtieth (1/60th) of the balance accrued on her account, beginning with the first bill following the Commission's final order in this case. See 66 Pa. C.S. §1403(b)(2).

I note that during the hearings, the parties discussed the possibility of Ms. Galasso's recertification in the Company's CAP rate program. I encourage Complainant to provide the Company with the appropriate information required for her enrollment in the program.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding.
2. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is on the Complainant.
3. To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint.
4. A showing that the respondent public utility is responsible or

⁵ Ms. Galasso testified that at one point she was getting some money from her ex-husband, whom she described as making voluntary payments and giving her about \$400.00 per month. It is not clear from her testimony whether she continues to receive such payments from her ex-husband. Nevertheless, this information would not have changed the outcome of this decision. Even if she currently receives \$400.00 per month from him, with an income of \$1,000.00 (\$600.00 + \$400.00) per month for a household of two, Ms. Galasso still falls far below the 150% of the Federal poverty guidelines.

accountable for the problem described in the Complaint must be by a preponderance of the evidence.

5. A preponderance of the evidence is accomplished by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.

6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.

7. Substantial evidence has been defined as such relevant evidence as 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.

8. The Complainant's burden of proof with regard to her incorrect billing claim is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).

9. The Complainant has not met her burden of establishing a prima facie case pursuant to Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) and Milkie v. Pennsylvania Pub. Util. Com., 768 A.2d 1217 (Pa. Cmwlth. 2001).

10. The Commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

ORDER


THEREFORE,

IT IS ORDERED:

1. That the complaint of Janete Galasso against PECO Energy Company at Docket No. C-2008-2014171 is sustained, in part, with regard to Janette Galasso's request for a payment arrangement.
2. That the complaint of Janete Galasso against PECO Energy Company at Docket No. C-2008-2014171 is dismissed, in part, with regard to Janette Galasso's high billing dispute.
3. That Janete Galasso shall make monthly payments consisting of her current bill plus one sixtieth ($1/60^{\text{th}}$) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.
4. That as long as Janete Galasso keeps the payment schedule stated in this order, PECO Energy Company shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.
5. That, if Janete Galasso does not keep the payment schedule stated in this order, PECO Energy Company is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.

6. That the record at Docket No. C-2008-2014171 is marked closed.

Dated: July 25, 2008



Eranda Vero
Special Agent