

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Nehemiah B. Thomas
v.
PECO Energy Company

Public Meeting October 28, 2011
2187197-ALJ
Docket No. C-2010-2187197

**MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for disposition is an Initial Decision (ID) dismissing the above-captioned Formal Complaint for failure to meet the burden of proof in accordance with Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), and related Commission precedent.

The Complaint alleges, in part, that Respondent overbilled him from December 2007 to June 2008. According to the record, service was first established in Complainant's name on December 18, 2007. The ID found that Complainant did not carry his burden of proof under Waldron v. Philadelphia Electric Company, 54 PA PUC 98 (1980) and its progeny. Although I agree with the ultimate outcome here, I do not agree with ID's statement of the Waldron Rule.

According to the ID, a Complainant establishes a prima facie case under Waldron by presenting the following testimony: (1) that the number of occupants in a household has not changed; (2) that the potential for energy utilization was low; and, (3) that complainant's prior billing history showed no previous abnormalities. Upon review, I do not agree that Waldron limits the establishment of a prima facie case to these three factors.

Rather, consistent with our holding in Christine Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), 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*.

As stated in Bennett, limiting the Waldron rule to the above three factors creates the situation where a new customer is being asked to produce evidence that he or she does not possess regarding prior usage. This interpretation of Waldron is too narrow and would prevent a new customer from challenging a high bill.

Nevertheless, for the reasons stated in the ID, I agree that the Complainant has not met his burden of proof that he was over billed.

THEREFORE, I move that:

1. The Initial Decision be modified consistent with this Motion.
2. The Commission's Office of Special Assistants draft an Order consistent with this Motion.

DATE: October 28, 2011



**JOHN F. COLEMAN, JR.
VICE CHAIRMAN**