

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wayne Alan Stewart	:	
	:	
v.	:	F-2010-2210240
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Kandace F. Melillo
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On November 12, 2010, Wayne Alan Stewart (Complainant or Mr. Stewart) filed a Formal Complaint against PECO Energy Company (PECO, the Company or Respondent) with the Pennsylvania Public Utility Commission (Commission), at Docket No. F-2010-2210240. Complainant alleged that there was a meter mix-up and that he was without electricity for several months until the matter was corrected. As relief, Complainant requested two new meters and that the Company correct his credit scores. This case was a timely appeal from a Bureau of Consumer Services (BCS) informal decision (BCS case #002671063) dated October 4, 2010.

On or about December 7, 2010, PECO filed an Answer which admitted that the meters at the Complainant's service location were transposed and that Complainant's third floor meter actually registered usage from the second floor tenant. PECO claimed that it made multiple attempts to correct the situation and was able to perform the necessary repairs by installing new meters for the second and third floors on November 30, 2009. The Company also alleged that it was able to determine Complainant's actual usage on the correct meter and, while

a slight underbilling had occurred, PECO did not rebill for the additional usage. PECO further averred that Complainant had made only one (1) \$100 payment since service was initiated in 2009, and that the Formal Complaint should be dismissed with prejudice.

By Hearing Notice dated October 6, 2011, the parties were notified that an Initial Hearing was scheduled for Thursday, November 10, 2011, at 2:00 p.m., in an available 4th Floor Hearing Room, 801 Market Street, Philadelphia, PA 19107. Administrative Law Judge (ALJ) Cynthia W. Fordham was assigned to preside in this matter and render a decision.

On October 31, 2011, ALJ Fordham issued a Prehearing Order which reiterated the day, date, time, and location for the hearing, and provided applicable procedures regarding, *inter alia*, the submission of exhibits, continuances, subpoenas, discovery, and burden of proof. The Commission policy at 52 Pa. Code §5.231(a) encouraging settlements was also emphasized.

The Initial Hearing was held as scheduled on Thursday, November 10, 2011, at 2:00 p.m., in an available Hearing Room, 801 Market Street, Philadelphia, PA 19107, with ALJ Fordham presiding. Complainant appeared pro se, testified in his own behalf, and presented no other witnesses and no exhibits. PECO, which was represented by Dana Pirone Carosella, Esquire, presented two employee witnesses (Eric Riley, a High Bill Field Technician, and Charles Thomas, a Regulatory Assessor) and five (5) exhibits (PECO Exhibit Nos. 1- 5). No briefs were filed.

On February 8, 2012, this case was reassigned to me. Accordingly, I closed the record for decision writing, effective February 8, 2012.

The record consists of eighty-six (86) transcript pages and five (5) Company exhibits. This matter is ready for a decision.

FINDINGS OF FACT

1. Complainant is Wayne Alan Stewart, 2542 N. 33rd Street, Third Floor, Philadelphia, PA, 19132, a residential electric customer of PECO Energy Company. Tr. 6-7, 25.

2. Respondent is PECO Energy Company, a public utility providing residential electric distribution service to customers in the Commonwealth of Pennsylvania. Tr. 9-10; PECO Exhibit (Ex.) 1.

3. At Complainant's request, a PECO electric service account was opened in Complainant's name at the service location of 2542 N. 33rd Street, Third Floor, Philadelphia, PA, 19132, effective April 1, 2009. Tr. 60; PECO Ex. 5.

4. PECO service was initiated at the service location between April 1 and May 17, 2009. During that time period, Complainant was billed for 1124 kilowatt hours (kWh) of usage, and Complainant received monthly bills thereafter. Tr. 60; PECO Ex. 1.

5. PECO's records fail to support Complainant's contention that he did not have service for five (5) months from April through August 31, 2009, or that he was provided service on an emergency basis, as was contended by Complainant. Tr. 60; PECO Ex. 1.

6. On August 31, 2009, Complainant contacted PECO and stated that his bills were incorrect. PECO Ex. 2.

7. In response to Complainant's billing inquiry, PECO scheduled an appointment for September 11, 2009, to visit the service location, but Complainant was not at home or did not provide access at that time. The appointment was then rescheduled for November 19, 2009. Tr. 38; PECO Exs. 2, 5.

8. On the return visit, on November 19, 2009, PECO employee Eric Riley, a High Bill Field Technician with over 29 years' working experience with the Company, conducted the high bill investigation. Tr. 29-31, 34-35; PECO Ex. 3.

9. During this November 19, 2009, investigation, Mr. Riley performed meter tests of the meters in the apartment building and discovered that Complainant, the third floor tenant, was erroneously being billed from the second floor meter (meter #022474571) and that the actual meter registering Complainant's usage (meter #331406428) was not in PECO's system. Tr. 46-47; PECO Exs. 3, 5.

10. The second floor tenant was receiving estimated rather than actual bills during this time as the meter thought to be registering his usage (meter #331406428) was not in PECO's system and therefore was unknown. Tr. 47; PECO Exs. 3, 5.

11. PECO did not explain how it could determine Complainant's usage from an unknown meter (meter #331406428) during the disputed period of April 1, 2009 to December 15, 2009, as there was no indication of any baseline from which usage during the disputed period could have been calculated. Tr. 21, 35-36; PECO Ex. 3.

12. As of November 30, 2009, PECO had corrected its billing system so that Complainant has been billed from the correct meter (meter #331406428) since the billing cycle commencing on December 15, 2009. Tr. 55; PECO Exs. 1, 2.

13. Since there is no explanation of how metered usage in an unknown meter for a certain period of time, with no clear baseline, could have been determined, a reasonable surrogate, based upon this record, is the actual metered usage for the Complainant during the same eight-month time period (April to December) in the subsequent year. PECO Ex. 1.

14. Complainant's actual metered usage is 3,521 kWh during the same eight-month time period in 2010 that was disputed in 2009. PECO Ex. 1.

15. Complainant has made only one (1) payment of \$100 on his account since service was initiated, effective April 1, 2009. Tr. 52; PECO Ex. 1.

16. Complainant was provided information about PECO's Customer Assistance Program (CAP). Tr. 56-57.

DISCUSSION

In his Complaint, Mr. Stewart alleged that there had been a meter mix-up and that, as he had been without electric service for several months, the billing was incorrect. As the party seeking affirmative relief from the Commission, Mr. Stewart bears the burden of proof. 66 Pa. C.S. §332(a). To satisfy this burden, he must demonstrate that Respondent violated the Public Utility Code or a regulation or Order of the Commission. 66 Pa. C.S. §701. This must be shown by a preponderance of the evidence. Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602, alloc. den., 602 A.2d 863 (1992).

In Waldron v. Philadelphia Electric Company (Waldron), 54 PA PUC 98 (1980), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a prima facie case, showing that the utility breached some duty owed to the complainant, in that the utility has violated the Public Utility Code or a regulation or Order of the Commission. 66 Pa. C.S. §701. If the complainant establishes a prima facie case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the prima facie case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. Poorbaugh v. West Penn Power Company (Poorbaugh), 1994 Pa. PUC LEXIS 95.

Mr. Stewart testified that when his lease began at his current residence of 2542 N. 33rd Street, Third Floor, Philadelphia, PA, 19132, on April 30, 2009, he contacted PECO to have service initiated at the apartment. Tr. 6-7, 25. When PECO came to turn on the electricity, according to Mr. Stewart, the crew switched the meters around to purportedly match each meter to the correct apartment, and Complainant lost his electric service. Tr. 9-10. PECO again tried to initiate service to the Complainant but was unsuccessful. Apparently because the meters were switched, PECO thought the service was on so Complainant was continually frustrated in his efforts to have service connected and could not stay in the apartment. Tr. 11-12. Also, when service crews (two-man crews) were sent out to turn on the service, they were always moving the meters around, to no avail. Tr. 14, 22. Finally, on the sixth PECO visit, one service man was able to connect the service and Complainant had electricity for the first time in about five months, on an emergency basis. Tr. 13-14, 25, 67.

During the period when he was without electric service, Complainant claimed to have continued to receive bills from PECO. Tr. 14, 25-26. He contacted the Commission and, although PECO service was eventually provided, he claimed he was told by the Commission to disregard the bills until the meter mix-up was resolved. Tr. 14. However, due to Complainant's concern that he could lose his electricity while the case was being investigated, he made one (1) \$100 payment since he moved into the apartment. Tr. 16, 26. Upon questioning by ALJ Fordham, Complainant acknowledged that he was only contesting his electric bills from April 30, 2009 until September 1, 2009, which was the period he claimed to have had no electricity. Tr. 18, 21.

Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. §1501, states, in relevant part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in and to such service and facilities as shall be necessary or proper for the

accommodation, convenience, and safety of its patrons, employees, and the public. Such service shall also be reasonably continuous and without unreasonable interruptions or delay. . . .

In Section 102 of the Code, 66 Pa. C.S. §102, service is broadly defined, in relevant part, as:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . in the performance of their duties under this part to their patrons, employees, other public utilities, and the public. . . .

Essentially, Complainant is contending that PECO provided him with unreasonable public utility service as his electricity was not provided without unreasonable interruption or delay, and billing occurred when no service was being provided. Complainant's testimony shifted the burden of going forward with the evidence, but not the ultimate burden of proof, to the utility to rebut Complainant's case with evidence which was at least co-equal. Waldron, supra; Poorbaugh, supra.

In response to Complainant's testimony, PECO presented the testimony of Eric Riley, a High Bill Field Technician with over 29 years' working experience with the Company. Tr. 29-31. In the course of his employment, Mr. Riley had considerable firsthand experience with resolving meter mix-ups. Tr. 31. Upon receiving Mr. Stewart's high bill complaint on August 31, 2009, Mr. Riley scheduled a home visit on September 11, 2009, but Complainant was not home or did not provide access at that time. Tr. 38; PECO Ex. 2.

The home visit was rescheduled for November 19, 2009, at which time Mr. Riley performed meter tests to determine whether Complainant was being billed from the correct electric meter. This investigation, reported in PECO Ex. 3, revealed that Complainant, the third floor tenant, was being billed from the incorrect second floor meter #022474571 and that the actual meter registering Complainant's usage (meter #331406428) was a formerly unknown

meter that was not in PECO's system. Tr. 46-47. The billing department was notified of the error and Complainant has been billed from the correct meter since that time. Tr. 35, 47-48.

As to Mr. Stewart's contention that the PECO workers all came in crews of two, with the exception of the last visit, Mr. Riley testified that PECO does not send two-man crews to residences for meter investigations. Tr. 39. Mr. Riley verified that the Complainant's electric service was on when he arrived on November 19, 2009, for the meter investigation. Tr. 45.

PECO also presented the testimony of Charles Thomas, a Regulatory Assessor and PECO employee for over 12 years. Tr. 49-50. Mr. Thomas sponsored three (3) exhibits (PECO Exs. 1, 4, and 5), which consisted of Complainant's account activity statement, the BCS decision, and a letter sent to Complainant, dated November 1, 2011, offering to discuss settlement. According to Mr. Thomas' exhibits (PECO Exs. 1, 5), PECO service to Complainant at the service location was initiated effective April 1, 2009, and there is no record that Complainant was without power for five (5) months (i.e., until August 31, 2009) or that any emergency service had to be provided, as claimed by Mr. Stewart. Tr. 59-60.

Mr. Thomas verified that all metering corrections to the billing system were completed on November 30, 2009, and the Complainant has been billed from the correct meter since that time. Tr. 55. He also testified that, based on the reconciliation of billed to actual usage, Complainant should have been billed for 4,588 kWh for the time period April 1, 2009, to December 15, 2009, but was instead billed for 4,453 kWh, based on meter #022474571, which was the second floor tenant's usage. PECO elected not to rebill Complainant for the slight underbilling.

According to Mr. Thomas, Complainant has made only one (1) payment on his account of \$100 since service was initiated, effective April 1, 2009. The current account balance is \$3,246.47. Tr. 52, 60; PECO Ex. 1.

Mr. Thomas also paraphrased the BCS decision in this matter, which found that the bills were correct as rendered and therefore, the informal complaint was dismissed. Tr. 59; PECO Ex. 4. Complainant has been provided information about PECO's CAP. Tr. 56-57.

Upon consideration of the evidence of record, I conclude that Complainant has failed to establish that he received no service from PECO between April 1, 2009, and September 1, 2009, and that therefore any billing during that time period was improper. While Complainant testified as to multiple PECO visits to provide service over that five-month period, this account was not supported by PECO records, leaving the proof in equilibrium. As the party with the burden of proof, Complainant must provide evidence that preponderates by even the slightest amount, and this was not done. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602, alloc. den., 602 A.2d 863 (1992). Moreover, Complainant's complaint, as reported to PECO on August 31, 2009, was not the lack of service (as Complainant has contended) but a high bill complaint, consistent with a concern about a meter mix-up. Therefore, I conclude that Complainant has not met his burden of proof as to unreasonably delayed service and improper billing during a time of no service.

However, I further conclude that PECO has not substantiated the claimed usage by Complainant during the disputed period. Specifically, PECO failed to explain how the 4,588 kWh usage was derived when there was no indication of a baseline measurement from the correct meter prior to Mr. Stewart's tenancy, and when the meter actually registering Complainant's usage for that time period was not in the PECO system.

While PECO witness Eric Riley claimed that actual usage could be determined from the meter history, and that this could then be compared to billed usage, he failed to explain how there could be a meter history for an unknown meter and how actual usage could be calculated with no indication of baseline information. When questioned about the comparison of billed to "actual" usage, Mr. Riley responded as follows:

Q. And do you know what the result[s] of the comparison was?

A. Once I give it to the billing department, no, I don't know what the results are.

Tr. 36.

PECO did not present a witness from the billing department.

Given the evidence of record, the most reasonable surrogate for Complainant's actual usage for the disputed period would be the actual usage for the same time period in the subsequent year. This usage, as indicated in PECO Ex. 1, is 3,521 kWh, which is considerably lower than PECO's claimed 4,588 kWh or the billed amount of 4,453 kWh based on the second floor tenant's usage. The Commission has previously indicated that billing history is a factor to be considered in high bill complaint cases. Thomas v. PECO Energy Company, Docket No. C-2010-2187197, Opinion and Order entered November 15, 2011; Bennett v. The Peoples Natural Gas Company, LLC, Docket No. C-2092122979, Opinion and Order entered October 13, 2010.

Other than the unsupported billing for 4,453 kWh, I found no other service violations on the part of PECO. The meter mix-up was corrected within a reasonable time period after Complainant's high bill complaint on August 31, 2009, given Complainant's failure to be available for the originally scheduled September 11, 2009, home visit, and the billing was appropriately adjusted as of December 15, 2009. PECO will be required to recalculate Complainant's bills for the disputed period, at then current rates, so as to credit the Complainant for the cost of the difference between the 4,453 kWh billed usage and 3,521 kWh consumed usage.

For all the foregoing reasons, I conclude that Complainant has failed to meet his burden of proof with respect to unreasonable service delays and billing for no service, but has met his burden of proof as to high billing during the disputed period. Thus, the Complaint will be sustained in part and denied in part. A payment agreement was not addressed during the hearing due to Complainant's unwillingness to commit to a payment arrangement, even as to those arrearages he was not disputing.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. §§102, 701, 1501.
2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. §332(a).
3. To satisfy his burden of proof, Complainant must demonstrate that Respondent violated the Public Utility Code or a regulation or Order of the Commission. 66 Pa. C.S. §701. This must be shown by a preponderance of the evidence. Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990).
4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602, alloc. den., 602 A.2d 863 (1992).
5. The complainant's billing history is a factor to be considered in high bill complaint cases. Thomas v. PECO Energy Company, Docket No. C-2010-2187197, Opinion and Order entered November 15, 2011; Bennett v. The Peoples Natural Gas Company, LLC, Docket No. C-2092122979, Opinion and Order entered October 13, 2010.
6. The preponderance of the evidence does not support Complainant's position with respect to lack of service and billing for no service, but does support a high bill complaint for the disputed period. Therefore, the Complaint is properly sustained in part and denied in part. 66 Pa. C.S. §332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Wayne Alan Stewart against PECO Energy Company at Docket No. F-2010-2210240 is sustained as to inaccurate billing during the disputed period but is otherwise denied.
2. That within sixty (60) days of entry of the Final Commission Order in this matter, PECO Energy Company shall issue a billing statement which credits the Complainant's account with the cost of the difference between the 4,453 kWh billed and 3,521 kWh consumed for the period April 1, 2009 and December 15, 2009, at then prevailing rates.
3. That PECO Energy Company file a certification of compliance at this docket, including a copy of the bill issued to Complainant, within ten (10) days of issuing the adjusted bill.
4. That upon receipt of the certification in Paragraph 3, above, this docket will be marked closed.

Date: April 11, 2012

Kandace F. Melillo
Kandace F. Melillo
Administrative Law Judge