**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joan Howard :

:

v. : F-2012-2339667

:

:

Metropolitan Edison Company :

**INITIAL DECISION**

Before

Elizabeth H. Barnes

Administrative Law Judge

HISTORY OF THE PROCEEDING

On December 17, 2012, Joan Howard (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent). The complaint alleges that the Complainant’s bills for her electric service are incorrect. The complaint contends that she has gas appliances including: a dryer, stove, heat and hot water heater; thus, she should only be billed for approximately 540 kWh per month. Complainant complains that several times a year she gets charges on one bill and the charges could be for three months of service and that the meter readings occasionally “jump up” and must be incorrect. Finally, Complainant suspects there has been meter tampering. This is a timely appeal of BCS Case No. 3006718.

The Respondent filed an answer to the complaint on January 7, 2013. The answer admits that the Respondent provides service to the Complainant at the address shown on the complaint. The answer denies that there are incorrect charges on the Complainant’s bill. Respondent contends that Complainant has received twelve customer billing analyses (CBA) since July, 2009 and that through all of these investigations, there has been no evidence that there is anything incorrect with the meters. The Respondent requests that the Commission dismiss the complaint.

Initially, an evidentiary hearing was scheduled for March 22, 2012; however, Complainant requested a continuance and this request was granted. By hearing notice dated March 12, 2013, the Commission scheduled an initial hearing for this matter on April 11, 2013 at 10:00 a.m. and assigned the case to me. The hearing was held as scheduled. The Complainant appeared *pro se* and presented one exhibit that was 58 pages in length and was admitted into the record. Patrick Malone, Esquire represented the Respondent, which presented 3 witnesses who sponsored 8 exhibits that were admitted into the record. The initial hearing resulted in a transcript of 90 pages. The record closed on May 2, 2013, the date the transcript was filed with the Secretary’s Bureau.

FINDINGS OF FACT

1. The Complainant in this case is Joan Howard. N.T. 8.

2. The Respondent in this case is Metropolitan Edison Company. N.T. 8.

3. From October 9, 2009 through December 12, 2009, Complainant vacated her service residence and resided with her daughter. N.T. 10. Complainant’s Exhibit 1, p. 24.

4. Complainant returned home and lived in the service residence from December 12, 2009 through January 28, 2010, until she sustained an injury and returned to her daughter’s residence. N.T. 10.

5. From January 28, 2010, through July, 2010, Complainant did not reside at her property. N.T. 11.

6. The Complainant’s home is approximately 1800 square feet with some electric appliances including: a television, refrigerator, freezer, dishwasher, washing machine, dryer, two window air conditioners, 2 dehumidifiers, sump pump, microwave, toaster, coffee pot, and an oxygen machine. N.T. 12-21.

7. Complainant has gas heat, a gas stove, and gas hot water heater. N.T. 22.

8. The Complainant lives in the home alone. N.T. 11, 18.

9. Complainant’s account is current and she has no arrearage. N.T. 29.

10. Pamela Jordan is employed by Met-Ed as an advanced business analyst in the Pennsylvania Compliance Department. N.T. 26.

11. Upon one of Complainant’s many high bill inquiries, the Respondent performed a Customer Billing Analysis on November 29, 2012 and another one on February 16, 2013, which were dependent upon the accuracy of information provided to Respondent from the customer. N.T. 33, Respondent Exhibits 3 and 4.

12. The November 29, 2012 customer billing analysis indicated that the Complainant’s potential use was 582 kWh per month, based upon an assumption that there was no electric dryer or dehumidifiers and only one window air conditioner. N.T. 34-35. Respondent Exhibit 3.

13. The February 16, 2013 customer billing analysis report indicated that Complainant’s potential use was 630 kWh per month, based upon an assumption that there was an electric dryer but no dehumidifiers and only one window air conditioner. N.T. 35-38. Respondent Exhibit 4.

14. The customer billing analysis reports do not have electric dehumidifiers or a second air conditioner unit listed as existing in the home. N.T. 36-37. Respondent Exhibits 3 and 4.

15. Complainant’s current electric usage is slightly higher this year than last year with the biggest difference in the months of August 2011 versus August 2012. N.T. 41. Respondent’s Exhibit 2.

16. The Respondent also agreed to test the Complainant’s meter. N.T. 42.

17. Respondent removed and tested Complainant’s meter in September, 2010 and the weighted average was 100.03 percent. N.T. 47. Respondent Exhibit 6.

18. The Respondent again removed the Complainant’s meter on December 5, 2012 and installed a new meter. N.T. 42-43.

19. The Respondent tested the meter on December 5, 2012 and the weighted average was 99.95 percent. N.T. 43. Respondent Exhibit 8.

20. Complainant is a PCAP customer. N.T. 48.

21. Jamie Kemp is employed by Metropolitan Edison as a contact center supervisor. N.T. 64.

22. Complainant has contacted Respondent more than a dozen times with complaints of high bills since 2010. N.T. 67. Respondent’s Exhibit 9.

23. Respondent has mailed Complainant approximately 12 letters advising Complainant of investigation results and the Company’s position that the bills are correct. N.T. 69.

24. Donald Smith is employed by Met-Ed as a regional meter reading supervisor. N.T. 77.

25. On average, Met-Ed’s meter readers went to Complainant’s residence on a bi-monthly basis to read her meter and inspect the meter for tampering. N.T. 78.

26. There is no company record of Complainant’s seal on her meter being broken or it being tampered with in any matter. N.T. 79-80.

27. The Company’s meter reader may have broken the tape that Complainant placed on her meter so that they could inspect the meter’s seal. N.T. 80.

28. Complainant was for a time reading her meter incorrectly, from left to right, when she should have read it right to left. N.T. 81.

DISCUSSION

Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. P.U.C. 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. P.U.C. 300 (1976). The Complainant must establish her case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm’n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Generally, the Complainant asserts incorrect charges on her bill. Since a portion of the complaint here alleges a billing dispute, the Complainant’s burden of proof regarding that portion of her complaint is governed by Waldron v. Philadelphia Electric Co., 54 Pa. P.U.C. 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. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. If the Respondent fails to rebut the Complainant’s evidence, then the Complainant would prevail. If the Respondent places into the record evidence to rebut the Complainant’s *prima facie* case, the burden of going forward with the evidence shifts back to the Complainant. In order to satisfy the burden of proof, the Complainant must rebut the Respondent’s evidence by a preponderance of the evidence. Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on the Complainant. Replogle v. Pennsylvania Electric Co., 54 Pa. P.U.C. 528 (1980).

The Commonwealth Court broadened the Commission’s ruling in Waldron in Milkie v. Pennsylvania Pub. Util. Com., 768 A.2d 1217 (Pa. Cmwlth. 2001) (Milkie). The Commonwealth Court held that the Commission’s requirement that the Complainant must establish certain specific elements in order to make out a *prima facie* case was 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. The Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. Bennett v Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010); Thomas v PECO Energy Co., Docket No. C-2010-2187197 (Order entered November 15, 2011). This rule protects the Complainant from dismissal because of 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 her burden of proof. The Commonwealth Court in Milkie 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).

The Complainant’s complaint fails to specify a particular time period when the incorrect charges on her bill occurred. The Complainant checked the box in paragraph 4 A of the Commission’s complaint form indicating that there were incorrect charges on her bill and stated in the complaint that her usage was consistent but her bills were out of line and did not make sense. The Complainant’s testimony provided additional information regarding the basis of her claim that there were incorrect charges on her bill and that she suspected meter tampering.

Complainant testified that she has consistently lived alone in an 1800 square foot residence which had gas heat, gas stove, and gas hot water heater. She also testified she had some electric appliances including: a refrigerator, freezer, microwave, 2 dehumidifiers, 2 window air conditioner units, an oxygen machine, space heaters (that she does not use), and a television. She testified that she placed tape on her meter, and would sometimes find the tape tampered with.

The Customer Billing Analysis dated February 16, 2013, concludes that on a typical thirty day billing cycle her usage range should be between 516 and 638 kWh. This report was based upon information given to the Company from Complainant, and it indicates contrary to her testimony that there are no dehumidifiers or portable heaters in the home, and that there is only one window air conditioner instead of two. Further, it does not mention portable electric space heaters or an oxygen machine. Therefore, the potential monthly usage of 638 kWh is potentially a low estimate given Complainant’s testimony that there are more electrical appliances in her household than those disclosed on the report.

Respondent has mailed Complainant approximately 12 letters advising Complainant of investigation results and the Company’s position that the bills are correct. N.T. 69. The Respondent presented the testimony of Pamela Jordan, an advanced business analyst in the Pennsylvania Compliance Department. Ms. Jordan explained that if a customer calls the Respondent questioning the amount of their bills, the Respondent’s customer service representatives perform a customer billing analysis. The customer service representative will ask the customer questions about how the customer heats and cools their home and the appliances the customer has in order to try to determine what is causing the high bills. In this case, the Respondent performed two customer bill analysis reports and determined that the Complainant’s usage was consistent with what appliances she told the Respondent she had in the house and the type of heat she used.

The Respondent also agreed to test the Complainant’s meter twice since 2010. N.T. 42. The Respondent removed the Complainant’s meter in September, 2010 and installed a new meter. The Respondent tested the meter and the average was 100.03. N.T. 47. Respondent Exhibit 6. The Respondent again removed the meter on December 5, 2012, and installed a new meter. N.T. 42-43. The Respondent tested the meter on December 5, 2012 and the weighted average was 99.95 percent. N.T. 43. Respondent Exhibit 8. These two weighted averages are within the Public Utility Code’s guidelines.

The Complainant did not present any credible evidence challenging the Respondent’s customer bill analysis or meter test. Complainant’s hand-written notes regarding her alleged meter readings are unpersuasive as I find Respondent’s witness Donald Smith credible that for a time Complainant was reading her meter incorrectly backwards. I further find no evidence that Complainant’s meter has been tampered with as Mr. Smith testified that the Company’s meter reader may have broken the tape that Complainant place on her meter in order to inspect the meter seal, and there is no evidence of a meter seal being broken. N.T. 79-80.

Complainant’s billing comparison taken from Respondent’s Exhibit 1 in part is as follows.

**Read Date Consumer Usage No. Days Type of Read Billed**

July 5, 2011 770 28 Actual $101.50

July 9, 2012 878 31 Estimate $106.90

August 5, 2011 1,057 31 Actual $135.91

August 7, 2012 1,540 29 Actual $180.56

September 3, 2011 813 29 Cust $107.48

September 7, 2012 998 31 Estimate $118.56

Respondent’s Exhibit 1 shows that Respondent’s meter reading and use of estimates for bills rendered on a monthly basis was in compliance with 52 Pa. Code § 56.12 (relating to meter reading; estimated billing; and ratepayer readings.) From March through October, 2011 the meter readings were either actual reads, or a customer read. From November 2011 through January, 2012, the reads were estimate reads; however, an actual read was then taken on February 3, 2012 and thereafter, readings alternated from month to month being actual reads to estimated reads through March 12, 2013. The Complainant accused the Respondent of incorrect bills which “jumped up” periodically. Complainant especially complained about her usage in August, 2012, which according to Respondent’s Exhibit 1, totaled 1,540. Degree days were not provided in Respondent’s Exhibit 1. Although the consumer usage is greater than it was in August, 2011, it is plausible that the weather temperatures in August, 2012 were comparatively hotter, and Complainant could have turned on a second air conditioner unit for relief from hotter temperatures. I am not persuaded by Complainant’s testimony that until the temperature had reached 104 degrees in her residence, she would not have turned on a second unit.

The Respondent’s bill analysis shows the Complainant was capable of using at least 638 kWh per month, not including a second air conditioner window unit, or dehumidifiers. The most recent statement of account for the Complainant indicates that for the non-heating months in 2012, the Complainant’s electricity usage was averaging 831 kWh. Respondent Ex. 1. Although this is on average higher than the report’s potential usage of 638, all of the electrical appliances in the home were not disclosed to the Company during its investigation of Complainant’s high bill complaint.

The meter removed from the Complainant’s house tested as 99.95% and 100.03% respectively. These results are within the 2% margin of error allowed by the Commission’s regulation at 52 Pa. Code §57.20. Because the Complainant was capable of using the amount of electricity shown on her bills and because the meter removed from her residence tested as accurate in 2010 and 2012, I conclude that the Complainant has failed to prove by a preponderance of the evidence that her electric bills for each month were too high.

The Complainant’s evidence regarding inaccurate billing consisted mostly of unsupported assertions. These assertions, no matter now honest or strong cannot form the basis of a finding in her favor. Assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987). Even *pro se* complainants must provide relevant and necessary information. The Complainant in this case proceeded *pro se* by choice and bore the risk of doing so. Groch v. Unemployment Comp. Bd. of Review, 472 A.2d 286 (Pa. Cmwlth 1984); Vann v. Unemployment Comp. Bd. of Review, 494 A.2d 1081 (Pa. 1985).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701

2. Pursuant to 66 Pa. C.S. §332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant has not met her burden of proving that she is entitled to relief. 66 Pa. C.S. §332(a).

4. The Complainant’s burden of proof in this proceeding is governed, in part, by Waldron v. Philadelphia Electric Co., 54 Pa. P.U.C. 98 (1980).

5. If a utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the utility provides a ratepayer with the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills shall be based on the information provided, except for an account where it is apparent that the information is erroneous. 52 Pa. Code § 56.12.

6. Evidence of record does not support a finding that Respondent’s actions constitute a violation of the Public Utility Code, Commission regulations or any outstanding order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Joan Howard against Metropolitan Edison Company at Docket No. F-2012-2339667 is hereby denied.

2. That the case at Docket No. F-2012-2339667 is marked closed.

Date: June 18, 2013 \_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elizabeth H. Barnes

Administrative Law Judge