

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert P. Mangieri	:	
	:	
v.	:	F-2015-2493094
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses a complaint filed by a customer of an electric distribution company who averred that the company has incorrectly charged for usage at the service address. The complaint is dismissed because the customer failed to demonstrate that the company in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

**HISTORY OF THE PROCEEDING**

On June 14, 2015, Robert P. Mangieri filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against PPL Electric Utilities Corporation (PPL), Docket Number F-2015-2493094. The complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services, case number 3291860. In his complaint, Mr. Mangieri indicated that there are incorrect charges on his bill and that he would like to receive credit for the electricity he was charged for but did not use.

The formal complaint was served on PPL electronically by the Commission's Secretary.<sup>1</sup>

On August 5, 2015, PPL filed an answer to Mr. Mangieri's complaint. In its answer, PPL admitted or denied the various averments made by Mr. Mangieri. In particular, PPL denied that Mr. Mangieri was charged for electric usage in excess of what he actually used. PPL concluded its answer by requesting that the complaint be denied.

By telephonic hearing notice dated October 8, 2015, an initial telephonic hearing was scheduled for this matter for Thursday, November 19, 2015, at 10:00 a.m. and I was assigned as the Presiding Officer. A prehearing order was issued on October 9, 2015 setting forth various rules that will govern the hearing.

The hearing convened on November 19, 2015, as scheduled. Mr. Mangieri appeared *pro se*. Kimberly G. Krupka, Esquire appeared on behalf of PPL. Prior to commencing the hearing, the parties were offered an opportunity to engage in settlement discussions. At the conclusion of those discussions, it was determined that further settlement discussions would be appropriate and the hearing should be continued. An order formally granting a continuance was issued November 20, 2015.

The parties were unable to resolve the complaint. As a result, on March 1, 2016, a further telephonic hearing was scheduled for this matter for Tuesday, March 29, 2016 at 10:00 a.m. The hearing convened as scheduled. Mr. Mangieri again appeared *pro se*. Graig Schultz, Esquire appeared on behalf of PPL. Mr. Schultz presented one witness who sponsored three exhibits that were admitted into the record. A 44-page transcript of the hearing was made. The record in this proceeding closed on May 3, 2016 when the transcript was submitted to the Commission.

Mr. Mangieri's complaint is ready for disposition. For the reasons discussed below, the complaint will be denied.

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<sup>1</sup> PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on July 16, 2015.

## FINDINGS OF FACT

1. The Complainant in this case is Robert P. Mangieri.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 344 Haney Road, Kunkletown, PA.
4. The home at the service is an all-brick, well-insulated home. Tr. 8.
5. Mr. Mangieri lives at the service address on the weekend and conserves energy by, among other things, using limited electronic devices and keeping his thermostat set at 50 degrees. Tr. 8-9, 12.
6. Mr. Mangieri's home is heated with electric baseboard heating. Tr. 10.
7. Mr. Mangieri lives alone. Tr. 11.
8. Marilyn Nunez is a customer service representative for PPL for more than 16 years and receives calls for a variety of reasons such as billing and usage. Tr. 14.
9. The total balance on Mr. Mangieri's account as of the March 24, 2016 bill is \$295.88, which includes current charges of \$123.99 for service provided in March, 2016. Tr. 16-17, 20.
10. PPL Exhibit Number 1 is an account activity statement for Mr. Mangieri's account which includes the amount of the bill, who the charges are from, the meter reading and total kilowatt (kW) hours, among other things, for the period March, 2012 to April, 2016. Tr. 17-18; PPL Exh. No. 1.

11. PPL Exhibit Number 2 is the Account Contact History for Mr. Mangieri's account. Tr. 21-22; PPL Exh. No. 2.

12. PPL performed a field test at the service address on November 9, 2015 and the results of the field test showed 100.4% accuracy. Tr. 22-23; PPL Exh. No. 2.

13. PPL Exhibit Number 3 is a spreadsheet Ms. Nunez created summarizing information regarding Mr. Mangieri's account, including bill date, average daily temperature, days billed, electricity used, electricity costs and supplier. Tr. 23; PPL Exh. No. 3.

14. In February, 2014, Mr. Mangieri used 69 kw per day, in February, 2015 Mr. Mangieri used 67 kw per day and in February, 2016 Mr. Mangieri used 49 kw per day. Tr. 24-25; PPL Exh. No. 3.

15. For each month of March, 2014 through January, 2015, Mr. Mangieri's kWh per day decreased in the corresponding month from March, 2015 through January, 2016. Tr. 25-28; PPL Exh. No. 3.

16. From November 19, 2013 to April 10, 2015, Mr. Mangieri was enrolled with Talen Energy for electric generation supply. Tr. 32; PPL Exh. No. 3.

17. Since April 10, 2015, Mr. Mangieri has been enrolled with Smart Energy for electric generation supply. Tr. 32; PPL Exh. No. 3.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling

Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Mangieri averred that he has been overcharged by PPL and requests that he be reimbursed for the amount he was overcharged. Mr. Mangieri, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that 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. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Mr. Mangieri complained that there are incorrect charges on his bill and that he would like to receive a credit for the amount he was overcharged. In particular, Mr. Mangieri testified, among other things, that he only lives at the service address on the weekend and when he is there he substantially limits his use of electricity. Tr. 8-9. In response, PPL presented the testimony of Ms. Nunez who testified regarding details of Mr. Mangieri's electric usage. In particular, Ms. Nunez testified that a field study showed that the meter at the service address was 100.4% accurate. Tr. 22-23; PPL Exh. No. 2. Mr. Nunez also demonstrated that Mr. Mangieri's electric usage, in fact, has decreased for each month of March, 2014 through January, 2015, compared to the corresponding month from March, 2015 through January, 2016. Tr. 24-28; PPL Exh. No. 3.

Ms. Nunez also testified that Mr. Mangieri has been enrolled with two electric generation suppliers (EGSs) from the period of November 19, 2013 to the present. Tr. 32; PPL Exh. No. 3.

Mr. Mangieri's complaint will be denied because he has failed to satisfy his burden of demonstrating that PPL violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff with regard to the service provided to him.

In cases of alleged high billing, the Commission applies the Waldron rule, which provides that to establish a prima facie case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

In Milkie, *supra*, the Commonwealth Court of Pennsylvania further refined the Waldron rule by holding:

“[w]hile the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Thus as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal direct proof that his meter had malfunctioned. Gary and Doris Burleson v. Pennsylvania Public Utility Commission, 501 Pa. 433, 435-6, 461 A. 2d 1234, 1235 (1983).

Id. at 1219-1220. In Nehemiah Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Final Order entered November 15, 2011), the Commission explained that

[C]onsistent with our holding in Charisse 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.” *Id.* at 6 (emphasis added).

Id. at 5.

In this case, Mr. Mangieri testified that the number of occupants at the service address has not changed and that the potential for energy utilization was low. Tr. 8-11. Record evidence, however, also demonstrates that the billing history shows decreased usage at the service address, not increased usage. Tr. 25-28; PPL Exh. No. 3. Furthermore, PPL presented evidence that showed that the meter at the service address was 100.4% accurate. Tr. 22-23; PPL Exh. No. 2. These factors support denying Mr. Mangieri’s complaint. *See*, 52 Pa. Code § 57.20(c)(requiring meters to be +/- 2% accurate).

Significantly, however, Mr. Mangieri’s total bill was most affected by the *price* per kw he was being charged – not the total kw used. PPL Exhibit Number 3 demonstrates that the price per kWh increased in May, 2015 when Mr. Mangieri’s account was enrolled with Smart Energy for electric supply. PPL Exh. No. 3. More specifically, record evidence demonstrates that Mr. Mangieri’s prior EGS, Talen Energy, charged \$0.07 per kw from February, 2014 through March, 2015. Id. From April, 2015 to February, 2016, however, Smart Energy charged Mr. Mangieri a variable rate that ranged from \$0.0885 per kw to as high as \$0.13761 per kw. Id. As a result, the increase in Mr. Mangieri’s bills, despite his decreased usage, is directly related to the increase per kw he was being charged by his EGS during that time. This demonstrates why Mr. Mangieri’s monthly bills did not decrease on a corresponding basis according to his decrease in usage.

Of note, during the hearing, Mr. Mangieri argued that “if I use less electricity then the price of the electricity should be cheaper.” Tr. 31; *see also*, Tr. 29, 35. This argument, however, does not consider the change in EGS by complainant evidenced in PPL Exhibit Number 3. That is, regardless of usage, an EGS may charge varying rates if doing so is consistent with the terms of service. In this instance, Talen appeared to be charging a flat rate whereas Smart Energy was charging a variable rate. Variable rates are cheaper when they are lower than other EGS’s prices but they may also be more expensive at other times. That is the variable nature of the product being offered. For Mr. Mangieri, he chose an EGS who was charging a variable rate at a time when it was higher than the rate offered by his previous EGS. Mr. Mangieri’s enrollment with two EGSs explains the discrepancy in his monthly bills. None of these issues, however, reflect on the service provided by PPL.

As a result, the increase in Mr. Mangieri’s monthly bills despite his decreased usage is attributable to the change in price per kw charged by his EGS, and not by any action of PPL. Mr. Mangieri has, therefore, failed to demonstrate that PPL in anyway violated the Public Utility Code, a Commission Order or regulation or a Commission-approved company tariff with regard to the provision of service to him. Mr. Mangieri’s complaint should, therefore, be dismissed.

#### CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that 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. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

9. In cases of alleged high billing, to establish a *prima facie* case of overbilling, a complainant, must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a *prima facie* case, the burden of proof then shifts to the utility however; the ultimate burden of persuasion always remains with the

complainant. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

10. Even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case of overbilling by the utility by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).

11. Mr. Mangieri has failed to satisfy his burden of proof in this proceeding to demonstrate that PPL in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Robert P. Mangieiri against PPL Electric Utilities Corporation at Docket Number F-2015-2493094 dated June 14, 2015 is hereby dismissed.
2. That this matter be marked closed.

Date: June 22, 2016

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/s/  
Joel H. Cheskis  
Administrative Law Judge