

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David M. Quirk

v.

PPL Electric Utilities Corporation

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F-2015-2506992

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against his electric utility alleging that the utility overbilled him. This decision denies the complaint because the record evidence shows the customer has the potential to use the amount of electricity for which he was billed and because the customer's electric meter is accurately registering his usage.

**HISTORY OF THE PROCEEDING**

On October 15, 2015, David M. Quirk (Mr. Quirk or Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). The complaint is a timely appeal of the decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3324054. The Complainant checked the box on his complaint form indicating that there were incorrect charges on his bills. He also stated that his landlord had trouble with Mr. Quirk's house phone hookup. Subsequently, by letter filed with the Commission on November 9, 2015, Mr. Quirk provided additional detail about the alleged overbilling. The letter contained a month by month kilowatt

hour (kWh) usage comparison between his current address and his former address. When the complaint and letter are taken together, Mr. Quirk is alleging that the kWh for which he is being billed are higher than he is using. He claims that he uses the same amount of electricity now as he used in his previous apartment but he is being charged for higher kWh usage in the current apartment. Complainant requests a refund.

On October 26, 2015, the Respondent filed an answer and preliminary objections (POs). In its answer, PPL denies that there are incorrect charges on the Complainant's bills. In its POs, which were filed in response to only the original answer and not the subsequent letter, PPL argued that the Complainant did not allege any conduct by PPL that could be construed as a violation of any statute, regulation or order that the Commission has jurisdiction to administer.

By order dated January 5, 2016, I granted in part the POs to the extent PPL sought dismissal of any allegations concerning Complainant's phone service. I denied the POs to the extent PPL sought dismissal of the remainder of the complaint, on the basis that the Complainant raised allegations about incorrect charges on his bills for which he is entitled to a hearing.

By hearing notice dated March 30, 2016, the Commission scheduled a telephonic hearing in this proceeding for Tuesday, May 10, 2016, at 10:00 a.m. and assigned the case to me. I conducted the telephonic hearing on May 10, 2016, as scheduled. The Complainant appeared pro se and presented testimony and one exhibit in support of his complaint. Graig M. Schultz, Esquire, represented the Respondent, which presented one witness and two exhibits that were admitted into the record.

The initial hearing resulted in a transcript of 35 pages and three exhibits: Complainant Ex. 1; PPL Ex. 2A and PPL Ex. 4. The record closed on June 3, 2016, the date on which the transcript was received by the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

## FINDINGS OF FACT

1. The Complainant in this proceeding is David M. Quirk.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. The Complainant currently resides at 23 Front Street, Apartment 2, Cressona, PA, 17929. (Tr. 6).
4. The Complainant previously resided at 42 Water Street, Apartment 6, New Philadelphia, PA. (Tr. 7).
5. The Complainant moved out of the Water Street apartment in April of 2013 and into the Front Street apartment in November of 2013. (Tr. 7-8).
6. Complainant Ex. 1 is a kWh usage comparison prepared by the Complainant that shows his kWh usage for each month from January of 2011 through October of 2015. (Tr. 8; Complainant Ex. 1).
7. Kim Kee has been a Customer Service Representative with PPL for the past 20 years and testified on behalf of PPL. (Tr. 18).
8. PPL Ex. 2A is an account contact history for Mr. Quirks' account for the period from February 3, 2012 through May 3, 2016. (Tr. 25; PPL Ex. 2A).
9. PPL Ex. 4 is a meter accuracy report showing the results of a meter test performed by PPL on the Complainant's electric meter on May 3, 2016. (Tr. 26-27; PPL Ex. 4).
10. The Complainant's former Water Street apartment had five rooms. (Tr. 10).

11. In the Complainant's former Water Street apartment, he had a refrigerator, a stove, a microwave oven, a coffee pot, an air conditioner, a computer, a television set and a space heater. (Tr. 11-12).

12. The main source of heat in the Complainant's former Water Street apartment was coal, not electric. (Tr. 12).

13. The Complainant used his air conditioner in 2012 while in his former apartment. (Tr. 11; Complainant Ex. 1).

14. The Complainant's current Front Street apartment has four rooms. (Tr. 12).

15. In the Complainant's current Front Street apartment, he has a refrigerator, a stove, a microwave oven, a coffee pot, air conditioners, a computer, a television set and a space heater. (Tr. 12-13).

16. The Complainant used his air conditioner in 2014 in his current apartment. (Tr. 14; Complainant Ex. 1).

17. The Complainant did not use his air conditioner in his current apartment in 2015. (Tr. 13).

18. The Complainant has a space heater in his current apartment, but he does not use it much in the wintertime. (Tr. 13).

19. The Complainant contacted the Respondent in February of 2015 concerning his high electric bills. (Tr. 21; PPL Ex. 2A).

20. The Complainant complained that his bills in his current apartment were higher than the bills he received in his former apartment. (Tr. 6-7; PPL Ex. 2A).

21. During the February of 2015 contact, the Respondent initiated a high bill investigation to determine the accuracy of the Complainant's bills. (Tr. 19).

22. The high bill investigation included an initial analysis while on the phone with the customer to find out what electric appliances are in the home, the potential usage and whether there is anything that could be pulling off the meter. (Tr. 19, 23).

23. If any potential problems are detected, PPL will send a service technician to the residence to do a walkthrough of the home and test the electric meter. (Tr. 20).

24. The initial phone investigation was performed with Mr. Quirk on February 2, 2015. (Tr. 21).

25. Following its initial investigation, and based upon information provided by Mr. Quirk, PPL determined that the Complainant's potential usage was 10 kilowatt hours per day. (Tr. 24).

26. A service technician was sent to Mr. Quirk's house to investigate further on February 5, 2015. (Tr. 21).

27. The service technician checked for but did not find a foreign wiring condition at the Complainant's home. (Tr. 23).

28. PPL tested the Complainant's electric meter on May 3, 2016. (Tr. 26; PPL Ex. 4).

29. The meter test showed that the meter was 99.98% accurate. (Tr. 26; PPL Ex. 4).

30. The meter that was tested is the same meter that was on the house when Mr. Quirk moved there in November of 2013. (Tr. 28-29).

31. The PPL service technician determined at the time he conducted his investigation in February of 2015 that the Complainant was actually using an average of 7 kWh of electricity per day. (Tr. 24).

32. The Complainant's actual average daily usage was 3 kilowatt hours less than his potential usage determined by PPL during his initial call on February 2, 2015. (Tr. 24).

33. The Complainant's actual average daily usage on his April 26, 2016 bill was between 6 and 7 kilowatt hours. (Tr. 30).

### DISCUSSION

The 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 Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must prove his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his 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). Here the Complainant alleges that the Respondent overbilled him.

Since the Complainant's complaint alleges overbilling, the Complainant's burden of proof is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) (Waldron). In Waldron, the Commission concluded that a complainant may establish a prima facie overbilling 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 the evidence shifts to the Respondent. If the Respondent fails to rebut the Complainant's evidence, then the Complainant would prevail. If the Respondent places evidence into the record 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. PUC 528 (1980).

The Commonwealth Court broadened the Commission's ruling in Waldron in Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a 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.

Subsequent to the Milkie decision, the Commission has determined that in an overbilling case, it 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 (Opinion and Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011). The Waldron rule protects the Complainant from dismissal because of his inability to produce direct proof that his meter has malfunctioned.

As noted above, the burden of proof always remains with the Complainant and if the Respondent presents evidence that is co-equal or greater in weight than the Complainant's, the Complainant will not have met his 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 overbilling, citing Burleson v. Pa. Pub. Util. Comm'n, 461 A.2d 1234 (Pa. 1983).

In this case, the Complainant alleges that the Respondent overbilled him. Mr. Quirk testified that his kWh usage increased in his new apartment from what his usage was in his former apartment. I will first summarize the evidence on the overbilling issue before addressing the Complainant's contentions.

The Complainant resides at 23 Front Street, Apt. 2, Cressona, PA 17929. (Tr. 6). He testified that he moved into this apartment in November of 2013. (Tr. 7-8). Complainant's previous apartment was located at 42 Water Street, Apt. 6, New Philadelphia, PA 17959. (Tr. 7). He moved out of the Water Street apartment in April of 2013. (Tr. 7).

The Complainant testified that his previous Water Street apartment had five rooms and contained a refrigerator, a stove, a microwave oven, a coffee pot, an air conditioner, a computer, a television set and a space heater. (Tr. 11-13). He indicated that he used the air conditioner in 2012 and possibly in 2013. (Tr. 11).

Mr. Quirk testified that his current apartment has four rooms and contains a refrigerator, a stove, a microwave oven, a coffee pot, a computer, an air conditioner and a space heater. (Tr. 12-14). He indicated that he used the air conditioner in 2014, but not in 2015. (Tr. 13-14).

Mr. Quirk stated that his electric bills are higher in the new apartment than they were in the old apartment, but he wasn't using any more electricity in the new apartment. (Tr. 6). He simply believes the kWh usage for which he is being billed in the new apartment is too high when compared with his usage in his previous apartment. (Tr. 8, 14).

Mr. Quirk offered into evidence a month by month kWh usage comparison from January of 2011 through October of 2015. (Complainant Ex. 1). The usage shown from January of 2011 through April of 2013 is from the old apartment and the usage shown from November of 2013 through October of 2015 is from the new apartment. The kWh usage shown for the new apartment is generally a little higher in most months than the usage in corresponding months

while he lived in the old apartment, but is still within the 10 kWh per day potential usage determined during PPL's high bill investigation.

The kWh usage shown in the following chart was taken directly from Mr. Quirk's usage comparison and shows usage during certain months for the years 2011-2015.

	<u>2011</u>	<u>2012</u>	<u>2014</u>	<u>2015</u>
July	265	460	329	176
August	234	318	262	178
September	147	214	210	169
October	190	144	237	154

#### Complainant Ex. 1

A review of this usage reveals that there were several months during the summer of 2012 where his usage in the old apartment was higher than his usage in the new apartment for those same months. For example, in 2012 he showed the following usage: July – 460 kWh; August – 318 kWh; and September – 214 kWh. In 2014, after moving into the new apartment, his usage during those same months decreased as follows: July – 329 kWh; August – 262 kWh; and September – 210 kWh. A similar result is apparent when comparing certain months in 2011 with corresponding months in 2015. In 2011, he showed the following usage: July – 265 kWh; August – 234 kWh; September – 147 kWh; and October – 190 kWh. In 2015, while in the new apartment, his usage during those same months was as follows: July – 176 kWh; August – 178 kWh; September – 269 kWh; and October – 154 kWh. Accordingly, Mr. Quirk's own exhibit does not fully support his claim of overbilling in the new apartment when compared to his billing in the old apartment.

In response to the Complainant's evidence concerning overbilling, the Respondent presented the testimony of Kim Kee, a PPL Customer Service Representative. (Tr. 18). Ms. Kee testified that, in response to a contact from the Complainant about high bills, PPL initiated a high bill investigation on February 2, 2015. (Tr. 21). The investigation included

reviewing with the Complainant the various electric appliances in the home to make an initial determination of potential kWh usage in the home and if there is anything that may be throwing off the meter. (Tr. 19). Ms. Kee testified that the initial analysis determined that the potential kWh usage in the home at that time was 10 kilowatt hours per day. This determination was based upon the information provided by the Complainant. (Tr. 24).

Ms. Kee testified that, in addition to the initial analysis, PPL sent a service technician to Mr. Quirk's apartment on February 5, 2015, to perform a further investigation of the apartment. (Tr. 21-22). While at Mr. Quirk's residence, the technician checked for foreign wiring, but did not find any. (Tr. 23). Further, the technician's investigation and testing demonstrated that the Complainant's actual electric usage at that time was approximately 7 kWh per day. (Tr. 24). As Ms. Kee noted, Mr. Quirk's actual usage was 3 kWh less than his potential usage as determined by PPL's initial analysis. (Tr. 24). Ms. Kee further testified that Mr. Quirk's average kWh usage as shown on his April 26, 2016 bill was 6-7 kWh per day. (Tr. 30). This too is below the Complainant's potential usage of 10 kWh per day.

In addition to the activities involved in the February 2015 high bill investigation, PPL subsequently tested Mr. Quirk's electric meter on May 3, 2016. (Tr. 26; PPL Ex. 4). Ms. Kee testified that the meter tested 99.98% accurate. (Tr. 26; PPL Ex. 4). The meter that was tested was the same meter that was at the apartment when Mr. Quirk moved there in November of 2013. (Tr. 28-29).

It is PPL's position that Mr. Quirk's bills in his new apartment are correct as rendered.

The Complainant believes that the kWh usage for which he is being billed in the new apartment is too high when compared to his usage in the old apartment. He claims he is not using any more electricity now than he was previously. In support of this claim, he offered his usage comparison which shows his kWh usage from January of 2011 through October of 2015. Although his usage in a number of months while in the new apartment was somewhat higher than his usage in corresponding months while in the old apartment, this is not true across all

months. As noted above, there were several months during the summers of 2014 and 2015 where his usage in the new apartment was lower than the corresponding months while he lived in the old apartment. In addition, as noted above, PPL's high bill investigation showed a potential daily usage of 10 kWh. In almost every month shown on Complainant's usage comparison, including the months after he moved into the new apartment, his actual usage was well below this potential usage.

Other than the information shown on the usage comparison, the Complainant's evidence regarding the alleged overbilling consisted of mere unsupported assertions that the billing should not be as high as it is. These assertions, regardless of how honest or strong, cannot form the basis of a finding in his favor. Assertions, personal opinions or perceptions do not constitute factual 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 record evidence does not support the Complainant's position that his bills in his new apartment are incorrect or too high, when compared to the bills issued to him while he was in his previous apartment. Both the Respondent's high bill analysis and the Complainant's own kWh usage comparison support this conclusion. As noted, Complainant's actual usage is well within the potential usage as determined by the high bill investigation. His potential usage, based on the electric appliances in his apartment, was determined to be 10 kWh per day. His actual usage was found, in February of 2015 and April of 2016, to be 6-7 kWh per day.

In addition, the Respondent tested the meter at the Complainant's current apartment on May 3, 2016. The meter test indicated that the meter was 99.98% accurate. The meter's accuracy is within the 2% margin of error allowed by the Commission's regulations. 52 Pa.Code §§ 57.21.

Finally, it is problematic to evaluate the accuracy of usage in one residence based on usage from a completely different residence. Such things as the amount and quality of insulation and the efficiency of electric appliances may have a substantial impact on electricity consumption. Without having information on such characteristics, I do not believe that

evaluating usage in one location by comparing it to usage in another location is a practical approach for determining if high billing exists.

Given these facts, the Complainant has failed to demonstrate that the Respondent has over billed him. The Complainant's actual usage is well within his potential usage as determined by PPL's high bill analysis. Further, the Complainant's meter is accurately recording his electricity usage. I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent has overbilled him for electric service.

#### CONCLUSIONS OF LAW

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

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

3. The Complainant's burden of proof in this proceeding is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).

4. The Complainant failed to establish by a preponderance of the evidence that the Respondent has overbilled him for electric service because he has the potential to use the amounts of electricity for which he was billed and because his electric meter is accurately recording the amounts of electricity he is using. Waldron v. Philadelphia Electric Co., 54 Pa. P.U.C. 98 (1980); Milkie v. Pennsylvania Pub. Util. Com., 768 A.2d 1217 (Pa. Cmwlth. 2001).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of David M. Quirk against PPL Electric Utilities Corporation at Docket No. F-2015-2506992 is denied.
2. That the proceeding at Docket No. F-2015-2506992 is marked closed.

Date: August 1, 2016

/s/  
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Steven K. Haas  
Administrative Law Judge