

**+BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sia Meena	:	
	:	
v.	:	F-2016-2523604
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric distribution company alleging that she is being overbilled by the company. She argues that the billing does not reflect the actual usage in her apartment. She also requested a payment arrangement. This decision dismisses the complaint about incorrect billing because the record evidence shows that her electric meter is accurately registering her usage and that the customer has the potential to use the amount of electricity for which she is being billed. The decision also establishes a payment arrangement for payment of the Complainant’s outstanding balance with the utility.

HISTORY OF THE PROCEEDING

On January 7, 2016, Sia Meena (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). Ms. Meena’s formal complaint constitutes a timely appeal of the decision of the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3341568. The Complainant checked the boxes on her complaint form indicating that she would like a payment agreement and there are incorrect charges on her bills. By way of explanation, she averred that

the electric usage for which she is being billed is too high and does not reflect actual usage in her apartment.

On February 2, 2016, PECO filed an answer to the complaint. In its answer, PECO denied that there were incorrect charges on the Complainant's bills. PECO averred that it conducted a high bill investigation and determined that the meter was working correctly and that all charges billed to the Complainant were correct.

By Rescheduled Telephonic Hearing Notice dated June 24, 2016, the Commission scheduled a telephonic hearing in this proceeding for Thursday, July 21, 2016, at 10:00 a.m.¹ The telephonic hearing was held as scheduled. The Complainant appeared *pro se* and presented testimony in support of her complaint. Shawane Lee, Esquire, represented the Respondent, which presented two witnesses and five exhibits.

The hearing resulted in a 76 page transcript and five PECO exhibits, all of which were admitted into the record. The record closed on August, 17, 2016, upon my receipt of the transcript. For the reasons set forth below, I will dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this proceeding is Sia Meena.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant resides at 143 Long Lane, 2nd Floor, Upper Darby, PA, 19082, which is the address at which the disputed charges were incurred. (Tr. pp. 7-8).
4. Thomas Lerro, a High Bill Field Foreman who has worked for the company for 35 years, testified on behalf of PECO. (Tr. p. 24).

¹ The hearing in this proceeding was originally scheduled for March 17, 2016. By Order dated March 15, 2016, a joint request of the parties for a continuance was granted.

5. Michael Begley, a Regulatory Assessor who has worked for the company for 20 years, testified on behalf of PECO. (Tr. p. 59).

6. PECO Ex. No. 1 is an account statement for Ms. Meena's PECO account showing billing and payment information on the account from May of 2014 through July of 2016. (Tr. p. 35).

7. PECO Ex. No. 2 is a summary of payment arrangements that have been established for Ms. Meena by the company and the Commission. (Tr. p. 66).

8. PECO Ex. No. 3 includes PECO Case Detail Reports containing information about two informal complaints registered by the Complainant with the Commission's Bureau of Consumer Services against PECO at BCS Case Nos. 003289597, filed on September 25, 2014, and 003341568, filed on May 4, 2015. (Tr. pp. 67-68).

9. PECO Ex. No. 4 is a PECO residential High Bill Report containing information about a high bill investigation completed by a PECO Field Technician at Ms. Meena's apartment on October 16, 2014. (Tr. pp. 25-27).

10. PECO EX. No. 5 is a PECO residential High Bill Report containing information about a high bill investigation completed by a PECO Field Technician at Ms. Meena's apartment on May 11, 2016. (Tr. pp. 45).

11. Complainant's residence is a two bedroom apartment in which she has lived since 2011. (Tr. pp. 7-8).

12. The sole source of heat in the Complainant's residence is individual baseboard heaters. (Tr. 11).

13. The Complainant has the following electric appliances in her residence: refrigerator/freezer, stove/range, washer, dryer, television set, water heater, twelve foot

baseboard heater, 2 eight foot baseboard heaters, a window air conditioner and room lights. (Tr. pp. 12, 29-30; PECO Ex. 4).

14. The potential monthly kWh usage for each of the appliances is as follows: refrigerator/freezer – 200; stove/range – 150; washer – 3; dryer – 28; television set – 48; water heater – 250; baseboard heaters – 1440; window air conditioner – 588; and room lights – 50. (Tr. pp. 30-31; PECO Ex. 4).

15. Ms. Meena only turns on the baseboard heater unit that is in her bedroom. (Tr. p. 8).

16. Ms. Meena does not use the baseboard heater units in her bathroom and living room in an effort to keep her electric bills down. (Tr. p. 8).

17. Ms. Meena's monthly electric bills average less than \$200.00. (Tr. p. 8; PECO Ex. 1).

18. A PECO representative performed a high bill investigation at Ms. Meena's residence in October of 2014 in response to high bill complaints from her. (Tr. pp. 9, 25-26; PECO Ex. 4).

19. The high bill investigation included an appliance inventory and analysis, a check for foreign wiring and meter mix up, a passing load test and testing the accuracy of the meter at the residence. (Tr. p. 27-28).

20. The appliance analysis involves taking an inventory of the appliances in the home and determining their total potential electric usage so that this usage can be compared to the actual usage for which the customer has been billed. (Tr. p. 28).

21. The passing load test involves disconnecting all appliances but one to determine if the meter is accurately recording the known usage from that appliance. (Tr. p. 28).

22. The passing load test was performed on Ms. Meena's dryer, which has a known load of 4500 watts. (Tr. p. 40).

23. The actual load recorded on the dryer during the test was 4469 watts, which indicated that the meter was accurately recording actual usage. (Tr. p. 41).

24. No foreign load or meter mix up was found during the high bill investigation. (Tr. p. 42).

25. PECO estimated, based on the known load of the appliances in Ms. Meena's residence, that her potential monthly electricity usage is 958 kWh during warm weather months and 2169 kWh during cold weather months. (Tr. p. 32).

26. The difference in potential usage between warm months and cold months is primarily due to the use of baseboard heaters. (Tr. p. 32).

27. A baseboard heater unit may still use some electricity even if it is turned off or set on the lowest setting. (Tr. p. 33).

28. In order to assure that a baseboard heater unit is not using any electricity, the circuit breakers through which electricity is provided to the unit must be turned off. (Tr. p. 33).

29. In calculating the potential electricity usage in Ms. Meena's residence during cold weather months, the technician who conducted the high bill investigation in October of 2014 only calculated usage from one 8 foot baseboard heater unit. (Tr. p. 34).

30. The actual usage for Ms. Meena's residence reflects typical usage patterns of higher usage during cold weather months and less usage during warm weather months. (Tr. p. 36).

31. Ms. Meena's actual monthly electricity usage in her residence was below the potential usage figures calculated by PECO's technician as part of the October 2014 high bill investigation. (Tr. p. 39).

32. PECO performed a second high bill investigation in May of 2016. (Tr. p. 42; PECO Ex. 5).

33. The May 2015 investigation, which was a winter investigation, included an appliance inventory and analysis, a check for foreign load and meter mix up, and a test of Ms. Meena's electric meter. (Tr. p. 45; PECO Ex. 5).

34. The technician who conducted the May 2015 investigation factored into his calculation usage by all three of the Complainant's baseboard heaters for 12 hours per day, since there is the potential for that level of usage. (Tr. p. 46).

35. Since the May 2015 investigation calculated potential usage during cold weather months, the technician did not factor in potential usage from Ms. Meena's air conditioner. (Tr. p. 47).

36. The technician who conducted the May 2015 investigation calculated a potential monthly electricity usage in Ms. Meena's residence of 3247 kWh. (Tr. p. 48; PECO Ex. 5).

37. During the May 2015 investigation, Ms. Meena's meter tested 99.9% accurate at full load and 100.02% accurate at light load. (Tr. p. 50).

38. Electric baseboard heat is a very expensive type of heating system. (Tr. p. 58).

39. The Commission established a payment arrangement for the Complainant in its decision on her informal complaint at BCS Case No. 003341568, dated November 19,

2015, whereby she was directed to make monthly payments equal to her budget bill amount plus \$82.00. (Tr. p. 69; PECO Ex. 3).

40. In its decision at BCS Case No. 003341568, the BCS determined that Ms. Meena lives alone and her gross monthly income was \$1,516.67, thereby qualifying her as a level 2 customer for payment arrangement purposes. (Tr. p. 68; PECO Ex. 3).

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof in a proceeding upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

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 her 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 this 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 her for usage from approximately August 2014 to February 2015.

Since the complaint involves an allegation of 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.Cmwlt. 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 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 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 her. Ms. Meena testified that her monthly electric bills average approximately \$200.00, but she believes this amount is too high. In addition, she requested on her complaint form that a payment arrangement be established. I will first summarize the evidence on the overbilling issue.

Ms. Meena testified that her monthly electric bills are way over what they should be. (Tr. p. 8). She stated that her bills average around \$200.00 per month. (Tr. p. 8). She testified she lives alone in a two bedroom apartment and that she only uses the baseboard heater in one of the bedrooms in order to save electricity. (Tr. p. 9-10). She claims she does not know why her bills are so high. (Tr. p. 8). She further testified that she typically works from 8:00 a.m. to 6:00 p.m. on weekdays, but that her hours are reduced during the summer months and she is home more often because there are not as many kids at her work facility. (Tr. p. 13). As noted, she simply believes that her electric bills should not be as high as they are.

In response to high bill complaints from Ms. Meena, PECO conducted two high bill investigations at her residence to determine if there were any irregularities with her billing. The first was conducted in October of 2014, and the second was conducted in May of 2016. (Tr. pp. 27, 42; PECO Exs. 4-5). Each of these high bill investigations included an appliance inventory and analysis, a check for foreign wiring and meter mix up, a passing load test and testing the accuracy of the meter at Ms. Meena's residence. (Tr. p. 27-28, 49-50). The appliance analyses involved taking an inventory of the appliances in the home and determining their total potential electric usage so that this usage could be compared to the actual usage for which the customer has been billed. (Tr. p. 28). A passing load test involves disconnecting all appliances but one to determine if the meter is accurately recording the known usage from that appliance. (Tr. p. 28).

In the October 2014 high bill investigation, PECO calculated the potential monthly kWh usage of the various appliances in Ms. Meena's residence as follows: refrigerator/freezer – 200; stove/range – 150; washer – 3; dryer – 28; television set – 48; water heater – 250; baseboard heaters – 1440; window air conditioner – 588; and room lights – 50. (Tr. pp. 30-31; PECO Ex. 4). During this investigation, the technician calculated potential usage from only one 8 foot baseboard heater unit, since Ms. Meena indicated she only used the unit in

her bedroom. (Tr. p. 34). The total estimated potential usage during warm weather months was determined to be 958 Kwh, and the total estimated potential usage during cold weather months was 2169 kWh. (Tr. p. 32; PECO Ex. 4).

In the May 2016 high bill investigation, the technician calculated potential usage during winter months and factored in potential usage from all three baseboard heater units, since they were, in fact, available for use. (Tr. p. 46). The technician determined that the potential usage during cold weather months was 3247 kWh per month. (Tr. p. 48; PECO Ex. 5).

Mr. Lerro testified about Ms. Meena’s actual electricity usage during the winter and spring of 2014-2015 and the winter and spring of 2015-2016. The actual usage and billing for these two time periods was as follows:

<u>Billing Period</u>	<u>kWh Used</u>	<u>Bill Amount</u>
12/3/14 - 1/6/15	1361	\$186.75
1/6/15 – 2/5/15	1408	\$192.94
2/5/15 – 3/6/15	1251	\$167.09
3/6/15 – 4/6/15	848	\$115.56
4/6/15 – 5/5/15	538	\$75.90
5/5/15 – 6/4/15	402	\$65.20

(Tr. pp. 35-36; PECO Ex. 1).

<u>Billing Period</u>	<u>kWh Used</u>	<u>Bill Amount</u>
12/3/15 - 1/6/16	1714	\$228.10
1/6/16 – 2/5/16	1056	\$149.30
2/5/16 – 3/7/16	1242	\$169.30
3/7/16 – 4/5/16	751	\$105.82
4/5/16 – 5/4/16	867	\$120.83

(Tr. pp. 37-38; PECO Ex. 1).

As noted by Mr. Lerro during his testimony, the actual usage in Ms. Meena's residence during these two time periods was below the potential usage based on the appliances in the residence. (Tr. p. 39; PECO Ex. 1).

In addition to the potential vs. actual usage comparison illustrated above, Mr. Lerro testified about a passing load test performed at Ms. Meena's residence. He explained that in conducting this test, PECO turned off all appliances in the residence except one to determine if the meter is accurately recording usage. In this case, PECO used Ms. Meena's dryer. With only the dryer running, the meter recorded usage of 4469 watts. Mr. Lerro explained that the known electricity draw from her dryer was 4500 watts, so her meter was, in fact, recording accurately during the passing load test. (Tr. p. 40-41; PECO Ex. 4).

In addition, Mr. Lerro explained that there was no foreign wiring or meter mix up found during PECO's investigations. Mr. Lerro testified that Ms. Meena's meter was tested under both full load and light load. During the full load test, the meter tested at 99.9% accuracy. During the light load test, it tested at 100.02% accuracy. (Tr. p. 50).

Ms. Meena acknowledged that the sole source of heat in her residence is baseboard heater units. There is no central heat in her home. (Tr. p. 10-11). Mr. Lerro testified that electric baseboard heat is a very expensive type of heating system. (Tr. p. 58).

I find that the Complainant has not met her burden of proving that PECO's billing was inaccurate or otherwise reflected incorrect usage. Ms. Meena's evidence consisted merely of her assertions that she was being billed too much. She argued that she only used one baseboard heater unit and believed her bills should not be so high.

PECO, on the other hand, presented convincing evidence that it thoroughly investigated and tested the meter at Ms. Meena's residence and confirmed that it was accurately

recording her usage and that her bills were correct. It conducted two high bill investigations that compared the potential usage at her residence, based on the appliances she has, to the actual usage reflected on her bills. Mr. Lerro testified that her actual usage, for which she was billed, was below her potential usage. (Tr. p. 39). In addition, PECO's passing load test confirmed the accuracy of her billing. Further, PECO found no indication of foreign wiring or meter mix ups at her residence. (Tr. p. 42). As noted, Mr. Lerro stated that electric baseboard heat is a very expensive type of heating system. (Tr. p. 58). The evidence presented by PECO is much more convincing on the issue of the accuracy of PECO's bills than that presented by Ms. Meena.

I conclude, therefore, that the Complainant has failed to establish by a preponderance of the evidence that the Respondent has overbilled her for electric service and I find that the bills issued to her by PECO are correct as issued and that she is responsible for payment of all charges.

Ms. Meena also requested in her complaint that a payment arrangement be established. On this issue, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418 (Chapter 14), is applicable.

The Commission has the authority to investigate payment disputes and establish payment arrangements, pursuant to 66 Pa.C.S. § 1405(a), within the guidelines set forth in 66 Pa.C.S. § 1405(b), which states:

(a) General Rule.-The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

The Commission may establish a payment arrangement between a public utility and a customer or applicant within the limits established by 66 Pa.C.S. §§ 1401-1418.

The Complainant requested in her formal complaint that a payment arrangement be established. As noted, the BCS established a payment arrangement for Ms. Meena in her

informal complaint proceeding against PECO at BCS Case No. 003341568. (PECO Ex. 3). The BCS issued its decision on November 19, 2015, and found that Ms. Meena's gross monthly income was \$1,516.67, and that she lived alone. (PECO Ex. 3). Based on these determinations, she qualified for a level two payment arrangement under which she directed to pay her budget bill each month plus an additional \$82.00. (PECO Ex. 3). Under this arrangement, Ms. Meena's balance would have been paid off in 36 months.

A review of the Commission's records indicates that Ms. Meena's formal complaint was a timely appeal of the BCS decision. Accordingly, the portion of the instant formal complaint seeking a payment arrangement must be reviewed on a *de novo* basis in order to determine an appropriate arrangement. 52 Pa.Code §56.173(a).

Chapter 14 sets forth the various lengths of time the Commission may provide a customer to pay off an outstanding balance, depending on the customer's income. 66 Pa.C.S. § 1405(b) states, in relevant part, as follows:

(b) Length of payment arrangements. – The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the Commission and is entered into by a public utility and a customer shall not exceed:

- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

The BCS found that Ms. Meena had a gross monthly income of \$1,516.67, and that there was only one person living in her household. (PECO Ex. 3). This equates to a total gross annual income of approximately \$18,200.04, which falls between 150% and 250% of the Federal poverty guidelines. There is no record evidence indicating that her income or the number of people living in her household has changed.

Section 1405(b)(2) provides that a payment arrangement may not exceed 3 years where the household income level exceeds 150% but does not exceed 250% of the Federal

poverty level guidelines. This is the arrangement ordered by the BCS in its decision on Ms. Meena's informal complaint. (PECO Ex. 3). 66 Pa.C.S. § 1405(b)(2) does not allow the Commission to order a payment arrangement over a longer period of time. Accordingly, I will affirm the BCS decision and establish a payment arrangement whereby Ms. Meena will be required to make monthly payments equal to her current monthly charges plus at least 1/36 of the outstanding balance on her account.

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 overbilled her for electric service because she has the potential to use the amounts of electricity for which he was billed and because her electric meter is accurately recording the amounts of electricity she 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).

5. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1418.

6. The Public Utility Code authorizes the Commission to establish payment arrangements between a public utility and its customers within prescribed limits. 66 Pa.C.S. § 1405(a).

7. 66 Pa.C.S. § 1405(b)(2) provides that a payment arrangement may not exceed 3 years where the household income level exceeds 150% but does not exceed 250% of the Federal poverty level guidelines.

8. The Complainant is allowed 36 months to bring her account current.
66 Pa.C.S. § 1405(b)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Sia Meena against PECO Energy Company at Docket No. F-2016-2523604 is denied to the extent it seeks a determination that Ms. Meena was incorrectly billed by PECO.

2. That the formal complaint of Sia Meena against PECO Energy Company at Docket No. F-2016-2523604 is sustained to the extent it seeks a payment arrangement for the payment of outstanding charges on Ms. Meena's PECO account.

3. That Sia Meena shall make monthly payments consisting of her current charges plus at least 1/36 of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

4. That as long as Sia Meena complies with the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate her utility service, except for valid safety or emergency reasons, or assess late payment or finance charges against her account.

5. That if Sia Meena does not comply with the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate her utility service in accordance with the Public utility Code and the Commission's statute and regulations.

6. That the Secretary mark this docket closed.

Date: November 22, 2016

/s/

Steven K. Haas
Administrative Law Judge