

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tina Myers	:	
	:	
v.	:	C-2016-2539245
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Andrew M. Calvelli
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 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 April 6, 2016, Tina Myers (Ms. Myers or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against West Penn Power Company (West Penn Power) at Docket Number C-2016-2539245. In her Complaint, Ms. Myers indicated that there are incorrect charges on her bill and that she would like to receive credit for the electricity that she was charged for but did not use. The Complaint was served on West Penn Power electronically by the Commission's Secretary on April 11, 2016.

On April 27, 2016, West Penn Power filed an Answer to Ms. Myers' Complaint. In its Answer, West Penn Power admitted or denied the various averments made by Ms. Myers. In particular, West Penn Power denied that Ms. Myers was charged for electric usage in excess of what she actually used. West Penn Power concluded its Answer by requesting that the Complaint be denied.

By Telephonic Hearing Notice dated October 7, 2016, an initial telephonic hearing was scheduled in this matter for Thursday, November 3, 2016, at 10:00 a.m. and I was assigned as the Presiding Officer. A Prehearing Order was issued on October 7, 2016 setting forth various rules that would govern the hearing.

The hearing convened on November 3, 2016 as scheduled. Ms. Myers appeared *pro se*. John Munsch, Esquire appeared on behalf of West Penn Power. Prior to commencing the hearing, the parties were offered an opportunity to engage in settlement discussions, but declined on the basis that they had prior discussions and did not believe that further discussions would prove successful.

Ms. Myers sponsored as exhibits the documents she had previously attached to her Complaint. Mr. Munch presented one witness who sponsored six exhibits. The exhibits of Ms. Myers and West Penn Power were admitted into the record. A 50 page transcript of the hearing was made. The record in this proceeding closed on November 28, 2016 when the transcript was submitted to the Commission.

Ms. Myers's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Tina Myers.
2. The Respondent in this case is West Penn Power Company.

3. The service address is 2557 Springhill Furnace Road, Lake Lynn, PA, 15451.
4. Ms. Myers moved into the service address in January 2014. Tr. 9, 10.
5. Ms. Myers lives alone. Tr. 11.
6. The home at the service address is a trailer. Tr. 11.
7. Ms. Myers' home is heated with electric heat. Tr. 15.
8. Ms. Myers had new skirting placed on the trailer to conserve energy. Tr. 11.
9. Ms. Myers had new furnace builders and a new meter installed to conserve energy and receive accurate meter readings. Tr. 11.
10. Ms. Myers works full time, working 8 to 9 hours per day. Tr. 14.
11. When Ms. Myers is at work, she shuts everything off in her home. Tr. 14.
12. When Ms. Myers is home, she uses her electric stove, although not very often, and she also uses the refrigerator, TV and heat. Tr. 15.
13. Ms. Myers first contacted West Penn Power to place service in her name at the service address on January 15, 2014, with service to begin on January 20, 2014. Tr. 29.
14. West Penn Power started Ms. Myers' service account with a zero balance, and did not carry over any amounts billed to the prior tenants of the service address. Tr. 29.
15. Tammy Taylor has been employed by West Penn Power for 33 years, and currently works as the senior customer services compliance specialist. Tr. 28.

16. Ms. Taylor's job includes receiving, investigating and responding to formal complaints filed with the Commission. Tr. 28.

17. Ms. Taylor has access to customer account records as part of her job duties. Tr. 28.

18. Ms. Taylor is familiar with the account of Ms. Myers as it relates to this proceeding. Tr. 28.

19. West Penn Power Exhibit Number 1 is a detailed statement of account for Ms. Myers' service account with West Penn Power. Tr. 30, West Penn Power Ex. 1.

20. The balance on Ms. Myers' West Penn Power account was \$974.52 as of November 3, 2016, the date of the hearing in this case.

21. West Penn Power Exhibit Number 3 is a year to year usage comparison for Ms. Myers' account. Tr. 36; West Penn Power Ex. 3.

22. The usage comparison shows that Ms. Myers' billed usage was almost identical for the periods of February through September 2014 compared to February through September of 2015. Tr. 37.

23. The usage comparison shows an increase in billing from the period of February through September 2015 compared to February through September 2016, with the billed amount being \$1,548.71 in the 2015 timeframe and \$1,851.08 in the 2016 timeframe. Tr. 37.

24. West Penn Power had a base rate increase in April or May of 2015 that increased the average customer's bill by approximately 13 percent. Tr. 38.

25. Ms. Myers contacted West Penn Power to state that she was receiving bills for the prior tenants and that she believed those bills were being added to her own bills. Tr. 18.

26. West Penn Power advised Ms. Myers that the prior tenants' bills were not being added to her own bills. Tr. 18.

27. West Penn Power replaced the meter at Ms. Myers' property on April 15, 2016 in response to Ms. Myers' concern with high usage. Tr. 41, 42.

28. West Penn Power Exhibit Number 4 is the meter test result for the new meter that West Penn Power installed at Ms. Myers' property on April 15, 2016. Tr. 39.

29. West Penn Power Exhibit Number 5 is the meter test result for the meter that was at Ms. Myers' property from the beginning of her service on January 20, 2014 until it was replaced on April 15, 2016. Tr. 39.

30. The meter that was on Ms. Myers' property when she began service in her name tested at a weighted accuracy average of 100.2 percent. Tr. 41; West Penn Power Ex. 5.

31. The meter that was placed on Ms. Myers' property on April 15, 2016 was tested at a weighted accuracy average of 100.12 percent. Tr. 42; West Penn Power Ex. 4.

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, Ms. Myers averred that she has been overcharged by West Penn Power and requests that she be reimbursed for the amount she was overcharged. Ms. Myers, 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.Cmwlt. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

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, Ms. Myers complained that there are incorrect charges on her bill and that she would like to receive a credit for the amount she was overcharged. In particular, Ms. Myers testified that she works full time and shuts off all energy sources while at work and that she has taken other measures to conserve energy. Ms. Myers also stated her belief that she was being charged for electricity used by the prior tenants at the service address.

In response, West Penn Power presented the testimony of Ms. Taylor, who testified regarding Ms. Myers electric usage. In particular, Ms. Taylor testified that the meter at Ms. Myers’ property when she began service in her name tested at a weighted accuracy average of 100.2 percent, while the meter that was placed on Ms. Myers’ property on April 15, 2016 was tested at a weighted accuracy average of 100.12 percent. Tr. 41, 42; West Penn Power Ex. 4, 5. Ms. Taylor testified that the test results were within the accuracy standards established by the Commission at 52 Pa. Code §57.20, which provides that meters must be within plus or minus two percent of 100 percent accuracy. Tr. 41, 42.

Ms. Taylor also demonstrated that Ms. Myers’ billed usage was almost identical for the periods of February through September 2014 compared to February through September of 2015. Tr. 37. Ms. Taylor further demonstrated that Ms. Myers’ billed usage increased for the same period of

2016 because West Penn Power was granted a Commission approved rate increase in April or May of 2016. Tr. 38.

The record evidence demonstrates that Ms. Myers' increased billed usage is attributable to a rate increase that occurred in April or May of 2016. The record evidence further demonstrates that Ms. Myers was not charged for any usage of the prior tenants at her service address. Finally, the record evidence demonstrates that the meters at Ms. Myers' service address, both before and after replacement, were functioning in accordance with Commission regulations for accuracy.

Although Ms. Myers seemed firmly convinced that her electric bills are too high and must be changed, she has failed to produce competent evidence to substantiate her beliefs in that regard. In Richard Kirby v. PPL Electric Utilities Corporation, the Commission ruled that the

Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Richard Kirby v. PPL Electric Utilities Corporation, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing PA Bureau of Corrections v. City of Pittsburgh, 532 A. 2d 12 (1987)). Given these legal parameters, and the lack of competent evidence produced by Ms. Myers, the matters complained of in this case must be denied, as Ms. Myers has failed to carry her burden of proof in this proceeding.

As Ms. Myers has failed to demonstrate that West Penn Power violated the Public Utility Code, a Commission Order or regulation or a Commission-approved company tariff with regard to the provision of service to her, her Complaint is hereby 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. "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).
4. 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).
5. 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).
6. Ms. Myers has failed to satisfy her burden of proof in this proceeding to demonstrate that her bills were not accurate or that West Penn Power violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

