

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margaret M. Fiander	:	
	:	
v.	:	C-2016-2581046
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a formal Complaint brought by Margaret M. Fiander (Complainant) against PPL Electric Utilities Corporation (Respondent or PPL). Complainant failed to meet her burden of demonstrating by a preponderance of the evidence that PPL violated the Pennsylvania Public Utility Code or any rule or regulation of the Commission.

HISTORY

On December 19, 2016, Complainant filed a formal Complaint against PPL. In that Complaint, the Complainant alleged that PPL is billing her for more power than she is using. Complainant asked that the matter be investigated and that she receive reimbursement for her claimed overcharges.

On January 11, 2017, PPL filed an Answer to the Complaint in which PPL addressed with specificity each allegation, denying the same.

On February 9, 2017, a hearing Notice was issued, setting March 10, 2017, as the date for a telephonic hearing in this case.

On March 10, 2017, the hearing convened as scheduled, originating from the Commission's office in Harrisburg, Pennsylvania. Counsel for PPL, Kimberly G. Krupka, Esquire, appeared on behalf of PPL. Complainant appeared and represented herself. Complainant testified and offered four exhibits that were received into evidence: Complainant's Exhibit 1, an invoice dated October 4, 2016; Complainant's Exhibit 2, an invoice dated February 24, 2017; Complainant's Exhibit 3, a PPL Electric Utilities Energy Survey; and, Complainant's Exhibit 4, an invoice from Rodney Shoemaker Plumbing, Inc. PPL presented the testimony of Lucinda Erdman, a Senior Customer Service Representative with PPL. PPL offered three exhibits that were received into evidence: PPL Exhibit 1, an Account Activity Statement; PPL Exhibit 2, an Account Contact History; and PPL Exhibit 6, a copy of a High Bill Investigation performed in April, 2014.

On March 21, 2017, a 58 page transcript and all admitted exhibits with the exception of Complainant's Exhibit 4 were filed with the Secretary of the Commission. The record in this case closed on March 22, 2017, with the post-hearing filing of Complainant's Exhibit 4. PPL did not object to the admission of that exhibit.

This matter is ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Margaret M. Fiander, whose service address is 136 East Park Avenue, Apartment 4, Sellersville, Pennsylvania.
2. The Respondent in this case is PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution company.

3. Complainant and her husband occupy a two bedroom apartment of less than 1,200 square feet at the service address. N.T. at 7.

4. Beginning in December, 2013, Complainant saw an increase in her bill. Tr. at 7-8.

5. Complainant's perception is that her bills inexplicably increase in the winter. Tr. at 9, 24.

6. PPL performed two separate High Bill Investigations at the residence and a meter test in 2014 and found no evidence that Complainant was being overcharged or that the meter was inaccurate. Tr. at 21.

7. Subsequently, PPL offered to perform another meter test, but at a cost of \$35.00, refundable to Complainant if a problem is found with the meter. Tr. at 23.

8. Complainant declined to pay for a second meter test. Tr. at 23.

9. In December, 2013, Complainant used 731 kilowatt hours (KwH) of electricity; in December, 2014, Complainant used 784 KwH; in December, 2015, Complainant used 727 KwH; in December, 2016, Complainant used 656 KwH. Tr. at 29-30, PPL Exhibit 1.

10. In July 2013, Complainant used 1032 KwH of electricity; in July, 2014, Complainant used 1006 KwH; in July, 2015, Complainant used 1056 KwH, and in July, 2016, Complainant used 915 KwH. Tr. at 31; PPL Exhibit 1.

11. PPL did not do a meter change at the residence during the period of the Complaint. Tr. at 32.

12. On April 22, 2014, PPL performed a High Bill Investigation and a meter test at the residence. Tr. at 32-34; PPL Exhibit 2.

13. The meter test in April 22, 2014, produced a reading of 99.8290. Tr. at 33.

14. On January 8, 2015, PPL performed a Foreign Wiring Investigation at the residence, and no foreign wiring was found. Tr. at 35; PPL Exhibit 2.

15. During the period covered by the Complaint, Complainant had different Electric Generation Suppliers. Tr. at 44.

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).

Complainant asserts incorrect charges on her bill. Since the Complaint alleges a high bill, 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 an 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).

Complainant did meet the requirements of *Waldron* in that she established that the number of occupants of the household has not changed; the potential for energy utilization is low; and, the prior billing history shows no previous abnormalities raised by either party. Complainant

did record her usage in October and November, 2016, but the accuracy of her recording was not established, and data from two months in autumn does not refute the amount of usage reflected in PPL Exhibit 1 which spans four years. Complainant also presented extensive but uncorroborated hearsay about representations supposedly made by various service people or PPL employees.

PPL did rebut Complainant's case. PPL offered much more than a meter test in support of its argument that Complainant's usage, as recorded and billed, is accurate. PPL conducted two High Bill Investigations that established that Complainant's usage potential was below that which was possible, and convincingly demonstrated at hearing that Complainant's usage during the peak months of July and December was consistent from 2013 through 2016. Finding of Fact 10. This, in conjunction with the meter test which showed the accuracy of the meter in use at the residence, and the negative finding in a foreign wiring/foreign load investigation, demonstrated that while usage and cost may have risen from December, 2013, the increase is not attributable to misbilling.

The basis of the Complaint is that Complainant believes that she is being overbilled for electric use in an apartment, and I do not question the sincerity of that belief. Tr. at 13-14. She also stated her belief that electric bills do not go up in the winter. Tr. at 24. Complainant was dismissive of the argument that variations of weather and the use of alternate electric generation suppliers could have affected her usage and billing. Tr. at 13-14, 24. But Complainant conceded that she is paying more to her current supplier than would be available under the standard residential rate offered by PPL. Tr. at 24. These are all very definitely substantial factors when considering the consumption and cost of energy.

The assertions of Complainant, no matter how 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). Accordingly, I find the Complainant failed to carry her burden of proving by a preponderance of evidence that PPL is misbilling her.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. §§ 701, 1501.

2. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F 00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. The Complainant, as the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Margaret M. Fiander filed against PPL Electric Utilities Corporation at Docket No. C-2016-2581046 is dismissed.

2. That the Secretary's Bureau mark Docket No. C-2016-2581046 closed.

Date: May 4, 2017

/s/
Dennis J. Buckley
Administrative Law Judge