

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ivaylo Georgiev YOLOV	:	
	:	
v.	:	F-2016-2551599
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility alleging that the utility improperly included charges from a previous occupant on his bill, and overbilled him during the time he actually resided at the property in question. This decision denies the complaint because the record evidence shows that no previous charges were included on the Complainant's bills, and he has not proven that his bills were excessive.

HISTORY OF THE PROCEEDING

On June 9, 2016, Ivaylo Georgiev YOLOV (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent). The complaint is a timely appeal of the decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3415201. The Complainant checked the box on his complaint form indicating that there were incorrect charges on his bills. In his complaint, Mr. YOLOV alleged that charges from the prior occupant of the residence at issue were included on his bills after he established service, and that he was overcharged for the electricity he consumed during the time he resided at the residence. The

Complainant is seeking a refund in the amount of \$302.85, which is the amount he believes he overpaid to PPL.

On July 7, 2016, the Respondent filed an answer to the complaint. In its answer, PPL denied that there were any incorrect charges on the Complainant's account. PPL averred that the usage for which the Complainant was billed was in line with prior usage. PPL requested that the complaint be denied.

By hearing notice dated September 2, 2016, the Commission scheduled a telephonic hearing in this proceeding for Tuesday, October 11, 2016, at 10:00 a.m. and assigned the case to me. The telephonic hearing was conducted as scheduled on October 11, 2016. The Complainant appeared *pro se* and presented testimony and five exhibit in support of his complaint. Graig M. Schultz, Esquire, represented the Respondent, which presented one witness and three exhibits that were admitted into the record.

The initial hearing resulted in a transcript of 54 pages and eight exhibits. The record closed on January 26, 2017, 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 Ivaylo Yolov.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. The service address at issue in this proceeding is 5539 Rolo Court, Mechanicsburg, PA 17055 (Tr. p. 6).
4. Marilyn Nunez has been a Customer Service Representative with the Respondent for 17 years and testified on behalf of PPL. (Tr. p. 33).

5. Yolov Ex. 1 contains copies of invoices and other information related to a new air conditioning and heat pump unit installed by Mr. Yolov at the Rolo Court property in the Spring of 2015.

6. Yolov Ex. 2 is a copy of a letter from PPL to Nikolay Ivanov, dated March 3, 2016, that explains certain procedures necessary to establish new service.

7. Yolov Ex. 3 is a copy of letter from PPL to Mr. Yolov, dated October 12, 2015, explaining a meter inspection project the company undertook in his service area.

8. Yolov Ex. 4 is a copy of a page from the Complainant's February 11, 2016 PPL bill.

9. Yolov Ex. 5 is a copy of the Complainant's final bill for service to the Rolo Court property.

10. PPL Ex. 1A is an account statement showing billing and consumption information for the Complainant's February 11, 2016 bill and his February 22, 2016 final bill.

11. PPL Ex.2A is a printout of a summary of contacts between PPL and the Complainant related to service provided to the Rolo Court property.

12. PPL Ex. 4 is a copy of the meter test report showing the results of the June 23, 2016 test on the Complainant's electric meter.

13. Mr. Yolov is the owner of the Rolo Court property. (Tr. p. 7).

14. In the Spring of 2015, Mr. Yolov had a new electric air conditioning and heat pump system installed at the Rolo Court house. (Tr. p. 18; Yolov Ex. 1).

15. The Rolo Court house had baseboard heat prior to the installation of the new system in the Spring of 2015. (Tr. p. 18).

16. Mr. Yolov resided at the Rolo Court property up until sometime in December of 2015, at which time he moved back to a house he owns in Harrisburg. (Tr. pp. 7-8).

17. In December of 2015, the Complainant rented the Rolo Court property to three tenants, Nikolay Ivanov, Stanslav Ivanov and Vasyl Ivanov. (Tr. pp. 8, 27).

18. The Ivanovs lived in the Rolo Court house until approximately January 23, 2016. (Tr. p. 27).

19. On January 23, 2016, Mr. Yolov moved back into the Rolo Court property and restored the electric service in his name. (Tr. pp. 8, 35).

20. Mr. Yolov resided in the Rolo Court house until February 19, 2016, at which time he terminated service and moved out. (Tr. 14-15, 36).

21. The first bill Mr. Yolov received for the time he lived in the property from January 23, 2016 to February 19, 2016 was dated February 11, 2016 in the amount of \$306.93. (Tr. pp. 9, 40; Yolov Ex. 4).

22. The February 11, 2016 bill reflected total usage of 2407 kilowatt hours. (Tr. p. 40).

23. The February 11, 2016 bill was for 19 days of service and broke down to approximately \$16.54 per day. (Tr. p. 9).

24. The second bill received by Mr. Yolov was his final bill issued after he terminated service, dated February 22, 2016, in the amount of \$184.92. (Tr. pp. 22, 41-42; Yolov Ex. 5).

25. The February 22, 2016 bill reflected total usage of 1465 kilowatt hours. (Tr. p. 41-42).

26. The final bill was for 8 days of service and broke down to approximately \$23.12 per day. (Tr. p. 22).

27. No charges for service to the house incurred prior to January 23, 2016 were included on Mr. Yolov's bills. (Tr. p. 41).

28. When Mr. Yolov resided at the property between January 23, 2016 and February 19, 2016, he varied the temperature setting on the heat pump unit to between 62 and 66 degrees. (Tr. p. 37; PPL Ex. 2A).

29. When the temperature setting on an electric heat pump is raised more than two degrees at a time, it causes an auxiliary heating mechanism to turn on which uses approximately three times as much electricity as normal. (Tr. p. 37).

30. The auxiliary heat mechanism on an electric heat pump system will engage if the outdoor temperature drops below 30-35 degrees. (Tr. p. 37).

31. The average outdoor temperature of the days included on Mr. Yolov's February 11, 2016 bill was 31 degrees. (PPL Ex. 2A).

32. The average outdoor temperature of the days included on Mr. Yolov's February 22, 2016 final bill was 24 degrees. (PPL Ex. 2A).

33. The meter at the Rolo Court house, meter number 98676954, was tested by PPL on June 28, 2016, in response to complaints from Mr. Yolov about high bills. (Tr. p. 44).

34. The meter tested at 99.684% accurate. (Tr. p. 45).

35. Meter number 98676954 is the meter that was on the Rolo Court house during the time Mr. Yoloz resided there from January 23, 2016 to February 19, 2016. (Tr. p. 45).

DISCUSSION

As the Complainant in this proceeding, Mr. Yolov has the burden of proving that the Respondent is responsible or accountable for problems 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 improperly included on his bills charges from a previous service that was not his. He further alleges that he was overbilled during the time he resided at the Rolo Court address and the service was in his name. Mr. Yolov wants a refund for the charges he believes are improper.

I will first address the allegation that charges from a previous service that were not his were included on his bills. Mr. Yolov testified that he rented the Rolo Court house to three people in December of 2015. (Tr. pp. 7-8). He stated that he subsequently moved back into the property on January 23, 2016 and established service in his name at that time. (Tr. pp. 8, 14, 27). Mr. Yolov received an initial bill from PPL, dated February 11, 2016, in the amount of \$306.93. (Tr. p. 9). He testified this bill was wrong and that he was billed by PPL for the service provided to the property from December 2015 to January 23, 2016, before he moved back into the property. (Tr. pp. 7, 16, 19-20). He stated he should not have been billed for the service provided prior to his moving into the house on January 23, 2016. (Tr. p. 16).

PPL's witness testified that service was established in Mr. Yolov's name on January 23, 2016 and was terminated at his request on February 19, 2016. (Tr. pp. 35-36). She stated the first bill issued to Mr. Yolov was dated February 11, 2016 and totaled \$306.93. (Tr. p. 40; PPL Ex. 1A). She further testified that the second bill issued to Mr. Yolov was his final bill. It was sent out on February 22, 2016 and totaled \$184.92. (Tr. pp. 41-42; PPL Ex. 1A). PPL's witness testified that there were no charges from prior to January 23, 2016 included on either the

February 11, 2016 or February 22, 2016 bills. (Tr. p. 41). This testimony is corroborated by PPL Ex. 1A, which shows that the February 11, 2016 bill included charges for only 19 days of service, which would have begun on January 23, 2016.

The record evidence supports the conclusion that Mr. Yolov was not billed for any charges incurred for service to the house prior to January 23, 2016. Mr. Yolov merely asserts his belief that his initial bill included charges from the prior occupant of the residence. He offers no other supporting or corroborating evidence in support of this assertion. His assertions, no matter how honest or strong, cannot form the basis of a finding in his favor. Assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987).

PPL, on the other hand, offered into evidence PPL Ex. 1A, which is an account statement for Mr. Yolov's account from January 23, 2016 through February 19, 2016. It includes billing, consumption and payment information on the account. (Tr. pp. 39-40). As explained by PPL's witness, PPL Ex. 1A shows that Mr. Yolov's bill includes only charges incurred after the time the account was established on January 23rd. There is no credible evidence in the record to counter the evidence presented by PPL. I find, therefore, that Mr. Yolov has failed to meet his burden of proof on this issue.

Mr. Yolov next argues he was billed more than he should have been during the time he resided in the Rolo Court house from January 23, 2016 to February 19, 2016. Since the complaint also includes 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.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).

The Complainant alleges, as an alternative to his allegation that his bills from January 23, 2016 through February 19, 2016 included charges incurred prior to the time he

resided in the Rolo Court house, that the Respondent overbilled him while he lived there. In support of this allegation, he testified that his bills for the winter of 2015-2016 were higher than his bills during previous winters. (Tr. pp. 24-25). Mr. Yolov stated that his February 11, 2016 and February 22, 2016 bills totaled \$491.85. He calculated that the daily charge during that time period was \$18.21. (Tr. p. 22). By contrast, he stated that his bills for the months of January, February and March of 2014 (which would be the winter of 2013-2014), averaged \$9.89 per day, and the bills for the year before 2014 (which would be the winter of 2012-2013), averaged \$9.08 per day. (Tr. p. 24). He testified that he lived in the house during the winter of 2013-2014. (Tr. p. 24). He acknowledged that, during the winter of 2014-2015, he lived in the house at times but rented the house to other people at other times. (Tr. p. 25). He stated he moved back and forth between his two properties during that winter. (Tr. p. 25). Mr. Yolov also testified that he installed a new heating and air conditioning system in the house in June of 2015. The new system was an electric heat pump system. (Tr. p. 18, 28-29; Yolov Ex. 1). He believes that the new system should have reduced the electric consumption at the house. (Tr. p. 18).

Mr. Yolov testified that he believes he overpaid PPL approximately \$302.85 for electric service to the Rolo Court house. (Tr. p. 29). When asked what portion of the \$302.85 overpayment he believes was attributable to charges incurred prior to January 23, 2016, and what portion was attributable to excessive charges billed while he lived there, he stated he did not know, but estimated the amounts to be split approximately 50/50. (Tr. p. 32). He acknowledged that he was unable to provide the correct answer. (Tr. p. 32).

As noted, Mr. Yolov installed an electric heat pump system at the Rolo Court house in 2015. (Tr. p. 18; Yolov Ex. 1). PPL's witness testified that Mr. Yolov stated during a contact with a PPL representative that he varied the heat setting in the Rolo Court house between 62 and 66 degrees during the time he resided there. (Tr. p. 37). The representative informed Mr. Yolov during that contact that increasing the temperature setting by more than 2 degrees at a time on a heat pump system causes the auxiliary heat setting on the system to engage. (Tr. p. 37; PPL Ex. No. 2A). PPL's witness testified the auxiliary heat function will also engage when outside temperatures are below 30-35 degrees. (Tr. pp. 37-38; PPL Ex. No. 2A). She testified that the average outdoor temperature of the days included on Mr. Yolov's February 11, 2016 bill was 31 degrees, and the average outdoor temperature of the days included on Mr. Yolov's

February 22, 2016 final bill was 24 degrees. (PPL Ex. 2A). The witness stated that the auxiliary heat function uses up to three times the amount of electricity used during the normal function of the system. (Tr. p. 37).

PPL's witness also testified that the company performed a meter test on the electric meter at the Rolo Court house in response to a complaint from Mr. Yolov about high bills. (Tr. pp. 42-43). The purpose of the test was to determine the accuracy of the meter. (Tr. p. 43). The witness stated that the test was performed on June 23, 2016 and indicated that the meter registered at 99.68% accuracy, which is well within the Commission's regulations. (Tr. p. 45; PPL Ex. No. 4). She testified that the meter that was tested was the meter that was in service at the Rolo Court house during the time Mr. Yolov resided there between January 23, 2016 and February 19, 2016. (Tr. p. 45).

I cannot conclude from the record evidence that Mr. Yolov proved by a preponderance of the evidence that he was improperly billed by PPL between January 23, 2016 and February 19, 2016. As noted, Mr. Yolov presented alternative explanations in support of his allegation that he was overbilled during the time he resided at the Rolo Court house from January 23, 2016 to February 19, 2016. He first argues that the bills issued to him for that time period included charges incurred prior to January 23, 2016. He also argues that the charges on the two bills he received, dated February 11, 2016 and February 22, 2016, were excessive for that time period. He believes he was overbilled in the amount of \$302.85. (Tr. p. 29). When asked if he had calculated what portion of the total was attributable to usage prior to January 23, 2016 and what portion was attributable to excessive billing while he lived there, he did not know the answer. (Tr. p. 32).

Mr. Yolov supported his allegation of excessive billing by arguing that the two bills he received in February of 2016 were higher than the bills he received in previous winters. He stated his February 11, 2016 and February 22, 2016 bills totaled \$491.85, which averaged to a daily charge of \$18.21. (Tr. p 22). By contrast, he stated that his bills for the months of January, February and March of 2014 (which would be the winter of 2013-2014), averaged \$9.89 per day, and the bills for the year before 2014 (which would be the winter of 2012-2013), averaged \$9.08 per day. (Tr. p 24). He testified that he lived in the house during the winter of

2013-2014. (Tr. p. 24). He acknowledged that, during the winter of 2014-2015, he lived in the house at times but rented the house to other people at other times. (Tr. p. 25). He stated he moved back and forth between his two properties during that winter. (Tr. p. 25). He concluded from this evidence that the two bills he received in February of 2016 were excessive.

First, I note that any reference by Mr. Yolov to bills for service to the Rolo Court house during the winter of 2014-2015 is entirely unpersuasive since, as he acknowledged, other people resided in the house during portions of that winter. There is no evidence indicating how low or high those other people kept the temperature in the house while they lived there. It is possible that they kept the temperatures extremely low, thereby resulting in lower than normal bills. There simply is no way of knowing from the record evidence in this proceeding. Accordingly, this testimony offers no support to Mr. Yolov's position.

I believe, however, that PPL presented credible evidence to counter that of Mr. Yolov and provide a plausible explanation for why his bills from January 23, 2016 through February 19, 2016 were higher than he believed they should have been. PPL's witness explained that a heat pump's auxiliary heat system will engage when the heat setting is increased by two degrees or more at a time, or when the temperature outside is below the 30-35 degree range. (Tr. pp. 37-38). The witness stated that the auxiliary heat system, when engaged, uses approximately three times the electricity of a heat pump in normal heat mode. (Tr. p. 37). She testified that Mr. Yolov informed a PPL representative that he varied the heat setting in the Rolo Court house between 62 and 66 degrees during the time he resided there. (Tr. p. 37). She also testified that the average outdoor temperature of the days included on Mr. Yolov's February 11, 2016 bill was 31 degrees, and the average outdoor temperature of the days included on Mr. Yolov's February 22, 2016 final bill was 24 degrees. (PPL Ex. 2A). These conditions could cause the auxiliary heat function to remain engaged for extended periods of time, thereby increasing electricity consumption. I believe that this evidence presented by PPL offers an explanation as to why his bills during the relevant time period may have been higher than he believes they should have been.

Additionally, PPL's witness testified that the electric meter at the Rolo Court house tested at 99.68% accurate, which is well within the Commission's meter accuracy

regulations. (Tr. p. 45; PPL Ex. No. 4). This evidence further supports PPL's position that Mr. Yolov was billed accurately during the time he resided in the house.

Given these facts, I conclude that the Complainant has failed to prove by a preponderance of the evidence that prior charges were included on his bills or that the Respondent over billed him between January 23, 2016 and February 19, 2016.

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 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).

4. The Complainant's burden of proof on the excessive billing issue in this proceeding is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).

5. 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).

6. 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 Ivaylo Georgiev Yolov against PPL Electric Utilities Corporation at Docket No. F-2016-2551599 is denied.
2. That the proceeding at Docket No. F-2016-2551599 is marked closed.

Date: June 29, 2017

/s/

Steven K. Haas
Administrative Law Judge