

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Matt Bernardini	:	
	:	
v.	:	C-2017-2605686
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

The customer filed a complaint against his electric utility alleging that there were incorrect charges on his bills. This decision denies the customer’s complaint because the customer is capable of using the amounts of electricity shown on his bill and the meter is accurately recording the amounts of electricity the customer used.

HISTORY OF THE PROCEEDING

On May 9, 2017, Matt Bernardini (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). The complaint alleges that there are incorrect charges on the Complainant’s electric bills.

The complaint asserts that the Complainant’s electric meter readings were too high during the time that he lived at his residence. According to the complaint, the Complainant only occupied the residence four nights per week. The complaint contends that the meter was defective. The complaint requests that the Commission order the Respondent to admit that its

meter was defective and order the Respondent to remove the incorrect charges from the Complainant's bill.

The Respondent filed an answer on June 12, 2017. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint. The answer denies that there are incorrect charges on the Complainant's bills.

The answer indicates that the Respondent replaced the meter at the Complainant's residence on April 17, 2017. The answer denies that the meter readings obtained by the Respondent are too high. According to the answer, the Respondent has tested the Complainant's electric meter and the test indicates that the meter is accurately registering the Complainant's electric usage. The answer requests that the Commission dismiss the complaint or alternatively, refer the matter to the Office of Administrative Law Judge's (OALJ's) Mediation Unit.

By hearing notice dated September 12, 2017, the Commission scheduled a telephonic hearing for this matter on October 31, 2017 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated September 21, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on October 31, 2017. Matt Bernardini appeared pro se and presented testimony in support of his complaint. Teresa Harrold, Esquire represented the Respondent, which presented two witnesses who sponsored three exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 44 pages. The record closed on November 3, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Matt Bernardini. N.T. 6.

2. The Respondent in this case is Pennsylvania Electric Company. N.T. 9.
3. The Complainant's complaint concerns the residence at 211 High Street, Shippensburg, Cumberland County. N.T. 8.
4. The Complainant resided alone at 211 High Street from November 2016 through May 2017. N.T. 8-9, 11.
5. Initially, the electric service account for 211 High Street was in the name of the Complainant's landlord. N.T. 25.
6. In January 2017, the Complainant established the service account for 211 High Street in his name. N.T. 9, 25.
7. The residence at 211 High Street is a house that the Complainant rented. N.T. 8.
8. During the period he resided at 211 High Street, the Complainant worked from 9:00 a.m. to 5:00 p.m. N.T. 9.
9. He did not stay at 211 High Street during weekends. N.T. 9.
10. The house at 211 High Street has a kitchen, living room, three bedrooms, and a bathroom. N.T. 10.
11. The residence at 211 High Street has a microwave, dishwasher, computer, refrigerator, washer, dryer, television, hot water heater, electric heat and a window air conditioner. N.T. 11-12.
12. The Complainant contacted the Respondent in March to complain about his high usage. N.T. 13.

13. After receiving this contact, the Respondent informed the Complainant that his electric heat was causing the high bills and offered him information on lowering his electricity usage. N.T. 13.

14. The Complainant contacted the Respondent again in April. N.T. 13-14.

15. The Respondent removed the meter from the residence at 211 High Street and tested it. N.T. 13-14.

16. The Respondent informed the Complainant that the meter was registering his usage accurately. N.T. 14.

17. The Complainant moved from 211 High Street in May 2017. N.T. 15.

18. The Complainant established service at 211 High Street on January 24, 2017. N.T. 20.

19. The Complainant terminated service and moved from 211 High Street on May 9, 2017. N.T. 20.

20. After the Complainant paid a security deposit, he made no payments on his account for 211 High Street. N.T. 22, Ex. 1.

21. The Complainant's account balance as of the date of the hearing was \$344.41. N.T. 22, Ex. 1.

22. The Respondent installed a new meter at 211 High Street on December 21, 2016. Ex. 1.

23. That meter was exchanged for a new meter April 16, 2017. Ex. 1.

24. The Complainant enrolled with Next Era Energy Service, an electric generation supplier (EGS), on January 27, 2017. Ex. 1.
25. The Complainant first contacted the Respondent concerning a high bill on March 21, 2017. N.T. 23, Ex. 2, p. 5.
26. On April 11, 2017, the Complainant contacted the Respondent concerning a high bill. N.T. 23, Ex. 2, p. 4.
27. The Respondent offered to perform a customer billing analysis but the Complainant declined. N.T. 23, Ex. 2, p. 4.
28. The Respondent also offered energy saving information, a payment arrangement and a meter test. N.T. 23, Ex. 2, p. 4.
29. The meter which had been installed at 211 High Street on December 21, 2016 had been tested on November 3, 2016, prior to its installation. N.T. 32, Ex. 3, p. 1.
30. The meter test showed that the meter was 100.032% accurate, based on a weighted average. N.T. 32, Ex. 3, p. 1.
31. The meter that was installed on December 21, 2016 was removed on April 16, 2017 and tested on April 19, 2017. N.T. 33, Ex. 3, p. 2.
32. The meter test showed that the meter was 99.97% accurate, based on a weighted average. N.T. 33, Ex. 3, p. 2.
33. The new meter that was installed at 211 High Street on April 16, 2017 had been tested on March 1, 2017, prior to its installation. N.T. 34, Ex. 3, p. 3.
34. The meter test showed that the meter was 100.022% accurate, based on a weighted average. N.T. 34, Ex. 3, p. 3.

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 establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 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).

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's complaint alleges that the Respondent overbilled him. I will provide some background information taken from the evidence presented at the hearing before addressing the Complainant's contentions and the merits of the case.

The Complainant's complaint concerns the residence at 211 High Street, Shippensburg, Cumberland County. N.T. 8. The Complainant testified that he resided alone at this address from November 2016 through May 2017. N.T. 8-9, 11.

Initially, the electric service account for 211 High Street was in the name of the Complainant's landlord. N.T. 25. In January 2017, the Complainant established the service account for 211 High Street in his name. N.T. 9, 25.

The residence at 211 High Street is a house that the Complainant rented. N.T. 8. The Complainant stated that during the period from January to May 2017, the Respondent billed him approximately \$300.00 per month for electric service. N.T. 9. During the period he received these bills, the Complainant worked from 9:00 a.m. to 5:00 p.m. He did not stay at this address during weekends. N.T. 9.

The house at 211 High Street has a kitchen, living room, three bedrooms, and a bathroom. N.T. 10. The residence has a microwave, dishwasher, computer, refrigerator, washer, dryer, television, hot water heater, electric heat and a window air conditioner. N.T. 11-12.

The Complainant testified that his electric bills are too high. N.T. 9. According to the Complainant, his bills are higher than the bills of his next-door neighbors where three people reside. N.T. 9.

The Complainant contacted the Respondent in March to complain about his high usage. N.T. 13. After receiving this contact, the Respondent informed the Complainant that his electric heat was causing the high bills and offered him information on lowering his electricity usage. N.T. 13.

According to the Complainant, when he contacted the Respondent again in April, the Respondent removed the meter from the residence at 211 High Street and tested it. N.T. 13-14. The Respondent informed the Complainant that the meter was registering his usage accurately. N.T. 14.

The Complainant testified that after the Respondent installed a new meter at 211 High Street, his electricity usage dropped. N.T. 14. The Complainant moved from 211 High Street in May 2017. N.T. 15.

In response to the Complainant's evidence concerning overbilling, the Respondent presented the testimony of Laurie Parker, an advanced business analyst. N.T. 17. Ms. Parker's testimony corroborated some of the Complainant's testimony. The Respondent's records indicated dates of events that differed from the time frames recalled by the Complainant. Where the evidence differs as to when certain events occurred, I will give more weight to the Respondent's records since the Complainant could only testify to approximately when certain events occurred.

Ms. Parker reviewed the account statement for the Complainant's account for the period from January 23, 2017 through May 17, 2017. N.T. 20, Ex. 1. The Respondent's records indicate that the Complainant established service at 211 High Street on January 24, 2017. N.T. 20. The Respondent's records indicate that Complainant terminated service and moved from 211 High Street on May 9, 2017. N.T. 20.

The Respondent's records indicate that after the Complainant paid a security deposit, he made no payments on his account for 211 High Street. N.T. 22, Ex. 1. The Complainant's account balance as of the date of the hearing was \$344.41. N.T. 22, Ex. 1.

The account statement for the Complainant's account indicates that the Respondent installed a new meter at 211 High Street on December 21, 2016. Ex. 1. That meter was exchanged for a new meter April 16, 2017. Ex. 1.

The Respondent's records show that the Complainant enrolled with Next Era Energy Service, an electric generation supplier (EGS), on January 27, 2017. Ex. 1.

Ms. Parker reviewed the contacts it had with the Complainant. N.T. 22, Ex. 2. According to the Respondent's records, the Complainant first contacted the Respondent concerning a high bill on March 21, 2017. N.T. 23, Ex. 2, p. 5. According to the Respondent's records, the Complainant claimed that the smart meter installed at 211 High Street was the cause of his high bills. N.T. 23.

The Respondent's records indicated that on April 11, 2017, the Complainant contacted the Respondent concerning a high bill. N.T. 23, Ex. 2, p. 4. The Respondent offered to perform a customer billing analysis but the Complainant declined. N.T. 23, Ex. 2, p. 4. The Respondent also offered energy saving information, a payment arrangement and a meter test. N.T. 23, Ex. 2, p. 4.

The Respondent also presented the testimony of Jordan Pineiro, a supervisor at the Respondent's Bethel meter test facility. N.T. 29. Mr. Pineiro testified that the Respondent tests its meters using a test board. N.T. 31. A meter is placed on a test board and the test board tests the accuracy of the meter by applying various levels of current and voltage. N.T. 31. The test boards are tested for accuracy every three months. N.T. 32.

Mr. Pineiro testified that the meter which had been installed at 211 High Street on December 21, 2016 had been tested on November 3, 2016, prior to its installation. N.T. 32, Ex. 3, p. 1. The meter test showed that the meter was 100.032% accurate, based on a weighted average. N.T. 32, Ex. 3, p. 1.

Mr. Pineiro stated that after the meter that was installed on December 21, 2016 was removed on April 16, 2017, it was tested on April 19, 2017. N.T. 33, Ex. 3, p. 2. The meter test showed that the meter was 99.97% accurate, based on a weighted average. N.T. 33, Ex. 3, p. 2.

The new meter that was installed at 211 High Street on April 16, 2017 had been tested on March 1, 2017, prior to its installation. N.T. 34, Ex. 3, p. 3. The meter test showed that the meter was 100.022% accurate, based on a weighted average. N.T. 34, Ex. 3, p. 3.

On cross examination, Mr. Pineiro stated that the different test results for the meter installed December 21, 2016, before it was installed and after it was removed, could be from the meter being tested on different test boards. N.T. 37.

Having provided a summary of the testimony of the Complainant and the Respondent, I will now address the Complainant's arguments about the alleged overbilling by

the Respondent. During the hearing, the Complainant insisted that his electric bills were too high and that he could not have possibly used the amount of electricity shown on his bills. The Complainant also insisted that the Respondent's meter had malfunctioned and miscalculated his electric usage. The Complainant also alleged that his bills are higher than the bills of his next-door neighbors where three people reside. N.T. 9.

The Complainant did not provide any evidence regarding his electricity usage other than general assertions that his bills were too high. The Complainant's evidence regarding the alleged overbilling consisted mostly of unsupported assertions. 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 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.Cmwlt 1984); Vann v. Unemployment Comp. Bd. of Review, 494 A.2d 1081 (Pa. 1985).

Contrary to the Complainant's assertions, the evidence presented shows that there are enough appliances in the residence using electricity to establish that the Complainant's potential for energy usage was not low.

In addition, the Respondent installed a new meter at 211 High Street on December 21, 2016. Prior to installing the new meter, the Respondent tested it. The meter test indicated that the new meter was accurate. The meter's accuracy was within the 2% margin of error allowed by the Commission's regulations. 52 Pa.Code §§ 57.20 and 57.24.

The Respondent removed the meter on April 16, 2016 and tested it. The meter test indicated that the meter was accurate. The meter's accuracy was within the 2% margin of error allowed by the Commission's regulations. 52 Pa.Code §§ 57.20 and 57.24. Therefore, the Complainant's meter was accurately recording the amounts of electricity the Complainant was using.

Concerning the Complainant's assertion that his electric bills were higher than his neighbor's, I can give this evidence no weight since the Complainant did not produce either his neighbors or their bills to support his assertion.

In addition, there is no evidence that the neighbor's home is the same size as the Complainant's or that the neighbor's home has the same electric appliances. Dissimilarities in the size of the home and number of appliances could lead to a different level of usage.

Furthermore, there is no evidence that the Complainant's neighbor was enrolled with the same EGS as the Complainant. Different EGSs charge different rates for electric generation service. Different rates could lead to higher or lower bills even if the usage in the two homes was similar.

Given these facts, the Complainant has failed to demonstrate that the Respondent has over billed him. The Complainant's potential for electricity usage was not low. The Complainant's meter accurately recorded 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 his potential for energy usage

is not low and because his electric meter is accurately recording the amounts of electricity he is using. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980); Milkie v. Pennsylvania Pub. Util. Com., 768 A.2d 1217 (Pa.Cmwlth. 2001).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Matt Bernardini against Pennsylvania Electric Company at Docket No. C-2017-2605686 is denied.
2. That the docket at Docket No. C-2017-2605686 is marked closed.

Date: November 7, 2017

/s/

David A. Salapa
Administrative Law Judge