

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa McLean	:	
	:	
v.	:	C-2017-2607807
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric utility alleging that the utility has been overcharging her by billing her twice for every kilowatt used for approximately five years. This decision denies the complaint because the record evidence does not support the Complainant's allegation that she has been double billed. The evidence also shows that the customer has the potential to use the amount of electricity for which she was billed.

HISTORY OF THE PROCEEDING

On May 25, 2017, the Complainant, Lisa McLean, filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec). The Complainant checked the box on her complaint form indicating that there were incorrect charges on her bills. By way of explanation, she avers that she has been charged twice for every kilowatt she has used for approximately five years and that Penelec refuses to admit its mistake.

On June 26, 2017, Penelec filed an answer to Ms. McLean's complaint. In its answer, Penelec denies that there are incorrect charges on her bills. The Respondent avers that Ms. McLean's account balance is \$10,672.04, and that she has made only two payments in the past 24 months. Penelec requests that Ms. McLean's complaint be dismissed with prejudice.

By hearing notice dated June 27, 2017, the Commission scheduled a telephonic hearing in this proceeding for Tuesday, August 15, 2017, at 10:00 a.m. and assigned the case to me. I conducted the telephonic hearing as scheduled on August 15, 2017. The Complainant appeared pro se and presented testimony in support of her complaint. Teresa K. Harrold, Esquire, represented the Respondent, which presented one witness and five exhibits that were admitted into the record.

The record consists of a 36-page transcript and five Penelec exhibits. The record closed on September 1, 2017, upon my receipt of the transcript. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this proceeding is Lisa McLean.
2. The Respondent in this proceeding is Pennsylvania Electric Company.
3. The Complainant currently resides at 771 Central Avenue, Johnstown, Pennsylvania. (Tr. 6).
4. Gina Dietrich is an Advanced Business Analyst with First Energy and has worked for the company for 15 years. (Tr. p. 16).
5. Penelec Ex. 1 is a summary of contacts between Ms. McLean and Penelec for the past three years. (Tr. p. 18).

6. Penelec Ex. 2 is an account statement that shows consumption, billing and payment information for the past 24 months. (Tr. p. 20).

7. Penelec Ex. 3 is a usage comparison containing consumption and billing information from August 2015 to June 2017. (Tr. p. 22).

8. Penelec Ex. 4 is a customer billing analysis, dated August 15, 2016, that shows potential electricity usage in the Complainant's residence based on the home's size, heating sources and appliances. (Tr. p. 23).

9. Penelec Ex. 5 is a copy of the decision from the Commission's Bureau of Consumer Services (BCS) for an informal complaint filed by the Complainant on December 8, 2016, at BCS Case No. 3475027. (Tr. pp. 26-27).

10. Penelec established service for Ms. McLean at 773 Central Avenue, Johnstown, PA on April 15, 2013. (Tr. p. 18).

11. Ms. McLean's current address is 771 Central Avenue, Johnstown, PA. (Tr. p. 7).

12. The two addresses were originally two separate units, but were combined by Ms. McLean into one larger unit with the address of 771 Central Avenue. (Tr. p. 7).

13. Ms. McLean's electricity bills began to increase after she moved into the larger combined residence with the 771 Central Avenue address. (Tr. p. 10-11).

14. Ms. McLean first contacted Penelec to complain about high bills on August 17, 2015. (Penelec Ex. 1; Tr. p. 19).

15. During the August 17, 2015 contact, Ms. McLean informed Penelec that she sometimes uses electric baseboard heat in addition to kerosene heat. (Penelec Ex. 1; Tr. pp. 20, 32-33).

16. Ms. McLean switched to Respond Power, an alternative electricity supplier, on March 3, 2016. (Penelec Ex. 2; Tr. p. 27).

17. Ms. McLean switched back to Penelec as her electricity supplier on March 23, 2016. (Penelec Exs.1-2; Tr. p. 27).

18. Ms. McLean was with Respond Power as her electricity supplier for 20 days. (Penelec Exs. 1-2; Tr. p. 28).

19. Ms. McLean contacted Penelec again on August 15, 2016 with another high bill complaint. (Tr. p. 20).

20. Penelec conducted a customer billing analysis for Ms. McLean on August 15, 2016. (Penelec Ex. 4; Tr. p. 20).

21. Customer billing analyses are used by Penelec to estimate potential electricity usage in a residence. (Tr. p. 20).

22. A customer billing analysis considers the size of the residence, its heat sources, the number of occupants and the various appliances or other electric consuming devices, and then estimates potential usage based on those factors. (Penelec Ex. 4; Tr. p. 24).

23. The estimated potential consumption amount for Ms. McLean's residence, as determined by the customer billing analysis, for the month of January was between 6,638 and 8,114 kilowatt hours. (Penelec Ex. 4; Tr. p. 25).

24. Ms. McLean's actual consumption amount on her December 22, 2015 bill was 1,373 kilowatt hours. (Penelec Ex. 4).

25. Ms. McLean's actual consumption amount on her January 20, 2016 bill was 1,746 kilowatt hours. (Penelec Ex. 4).

26. Based on the consumption estimate determined by the customer billing analysis, and considering the usage of electric baseboard heat in the winter time, there was nothing unusual about Ms. McLean's consumption levels and bills. (Tr. pp. 25-26).

27. Ms. McLean's informal complaint was opened by the BCS on September 8, 2016 and was closed on January 24, 2017, with the BCS issuing a decision dismissing the complaint on the basis that all bills were correct as rendered. (Penelec Ex. 5; Tr, p. 27).

28. Ms. McLean's consumption and billing amounts from August 2015 through July 2016 were as follows:

<u>Month</u>	<u>Kwh Usage</u>	<u>Bill Amount</u>
August 2015	1,538	\$230.36
September 2015	517	\$83.51
October 2015	1,391	\$207.21
November 2015	1,305	\$195.08
December 2015	1,373	\$206.04
January 2016	1,746	\$261.27
February 2016	1,439	\$217.69
March 2016	3,484	\$544.56
April 2016	1,753	\$226.07
May 2016	2,508	\$350.31
June 2016	1,049	\$149.63
July 2016	883	\$125.35

(Penelec Exs. 2-3).

29. Ms. McLean's consumption and billing amounts from August 2016 through July 2017 were as follows:

<u>Month</u>	<u>Kwh Usage</u>	<u>Bill Amount</u>
August 2016	1,375	\$189.01
September 2016	446	\$72.48
October 2016	1,110	\$173.71
November 2016	1,029	\$161.80
December 2016	3,556	\$516.29
January 2017	414	\$67.68
February 2017	2,672	\$414.13
March 2017	3,571	\$546.81
April 2017	2,023	\$308.80
May 2017	1,857	\$283.62
June 2017	1,009	\$160.33
July 2017	1,094	\$173.07

(Penelec Exs. 2-3).

30. Ms. McLean's Penelec account balance as of July 2017 was \$11,005.44.
(Penelec Ex. 2; Tr. P. 21).

31. From August 2015 through July 2017, Ms. McLean has made only two payments toward the charges on her account. (Penelec Ex. 2; Tr. P. 22).

DISCUSSION

As the Complainant in this proceeding, Ms. McLean 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.Cmwlt. 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.

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). 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).

In this case, the Complainant alleges that the Respondent overbilled her. More specifically, Ms. McLean alleges that she has been double billed by Penelec for several years and that Penelec refuses to admit its mistake. I will first summarize the evidence on the double billing issue.

Ms. McLean testified that she moved into her current residence during the summer of 2014. (Tr. p. 8). She testified that there were salespeople in her neighborhood around the time she moved who were working on behalf of electricity suppliers. (Tr. p. 8). Ms. McLean testified she signed up with an alternate electricity supplier at that time, but she could not remember the name of the supplier. (Tr. pp. 8, 12). She stated that her electric bills increased after she signed up with the supplier. (Tr. p. 9). Ms. McLean testified that she has been billed twice for her electricity usage since she signed up with the new supplier. (Tr. p. 9). She believes she is being billed twice by Penelec. (Tr. p. 9). She testified that her bills were higher than they were in 2012 and 2013, but she was unable to find her bills from those years to see if the double billing had been happening then. (Tr. pp. 9-10).

Ms. McLean testified that she originally lived at 773 Central Avenue, Johnstown, Pennsylvania, but currently lives at 771 Central Avenue. She stated that these were originally two separate units that were later combined into one bigger unit with the address 771 Central Avenue. (Tr. p. 7). She stated that her bills increased around the same time she moved into the bigger combined unit. (Tr. p. 11).

Gina Dietrich testified on behalf of Penelec. Ms. Dietrich has been an Advanced Business Analyst with Penelec for the past 15 years. (Tr. p. 16). She testified that service was

first established for Ms. McLean when she was at the 773 Central Avenue address on April 15, 2013. (Tr. p. 18). Ms. Dietrich also testified about Ms. McLean’s switch to an alternate electricity supplier. She stated that Ms. McLean switched to Respond Power on March 3, 2016, and switched back to Penelec as her supplier on March 23, 2016. (Tr. p. 27). This information is reflected in Penelec Ex. 2, which is a statement of account showing billing, consumption, payment and other account information. Penelec Ex. 2 includes entries showing that Ms. McLean was switched to Respond Power on March 3, 2016 and returned to Penelec on March 23, 2016. (Penelec Ex. 2). Ms. Dietrich testified that Ms. McLean’s service was only with Respond Power as her supplier for 20 days in March of 2016. (Tr. p. 28).

Ms. Dietrich testified that Penelec received a contact from Ms. McLean on August 15, 2016, during which Ms. McLean complained of high bills. (Tr. pp. 20, 23). In response to this contact, Penelec performed a customer billing analysis. Ms. Dietrich explained that a customer billing analysis is used by Penelec to estimate potential electricity usage in a residence. (Tr. p. 20). A customer billing analysis considers the size of the residence, its heat sources, the number of occupants and the various appliances or other electric consuming devices, and then estimates potential usage based on those factors. (Penelec Ex. 4; Tr. p. 24). The customer billing analysis performed at Ms. McLean’s residence indicated that she had the potential to use between 6,638 and 8,114 Kwh during a January month. (Penelec Ex. 4). Penelec Ex. 3, which is an account billing summary showing monthly billing information for each month from August 2015 through July 2017, shows that Ms. McLean used 1,373 Kwh of electricity in December 2015 and 1,746 Kwh of electricity in January 2016.

Penelec Exs. 2 and 3 show monthly billing and consumption information on Ms. McLean’s account. Ms. McLean’s consumption and billing amounts from August 2015 through July 2016 were as follows:

<u>Month</u>	<u>Kwh Usage</u>	<u>Bill Amount</u>
August 2015	1,538	\$230.36
September 2015	517	\$83.51
October 2015	1,391	\$207.21
November 2015	1,305	\$195.08
December 2015	1,373	\$206.04

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(Penelec Exs. 2-3).

Ms. McLean’s consumption and billing amounts from August 2016 through July 2017 were as follows:

<u>Month</u>	<u>Kwh Usage</u>	<u>Bill Amount</u>
August 2016	1,375	\$189.01
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November 2016	1,029	\$161.80
December 2016	3,556	\$516.29
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February 2017	2,672	\$414.13
March 2017	3,571	\$546.81
April 2017	2,023	\$308.80
May 2017	1,857	\$283.62
June 2017	1,009	\$160.33
July 2017	1,094	\$173.07

(Penelec Exs. 2-3).

Having reviewed the evidence presented by the parties concerning Ms. McLean’s double billing allegation, I will now address the merits of her allegation. I note first that Ms. McLean’s evidence consists largely of unsupported assertions that the billing should not be as high as it is. She did not present any bills showing what her bills had been prior to her moving into the larger residence or her switch to an alternate electricity supplier. She merely asserted her belief that she was double billed after these events occurred. Mere assertions, regardless of how honest or strong, cannot form the basis of a finding in her 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 record evidence does not support the Complainant's position that her bills were improperly high or that she was double billed after switching to a new supplier. Ms. McLean alleges that her bills increased after she moved into the Central Avenue location and signed up with a new electricity supplier. She testified she noticed that her bills were getting higher than \$200.00 and believed she was being double billed by Penelec. (Tr. pp. 9, 11). She testified that she moved into this location in the summer of 2014. (Tr. p. 8).

Penelec, on the other hand, presented evidence inconsistent with that of Ms. McLean. Penelec's witness testified that Ms. McLean did not switch to Respond Power as her electricity supplier until March 3, 2016, and that she subsequently switched back to Penelec on March 23, 2016, a total of 20 days. (Penelec Ex. 2; Tr. pp. 27-28). The switch to Respond Power and subsequent return to Penelec is reflected on Penelec Ex. 2, which is a detailed statement of account for Ms. McLean's account, a business record developed in the normal course of the company's business activities. (Tr. p. 17). Ms. McLean did not refute this evidence after it was presented by Penelec. I find Penelec's evidence on this issue to be more credible, since it is reflected in the company's routine business records for Ms. McLean's account and because she did not refute or otherwise challenge it once presented by the company.

Regardless of the time period during which Ms. McLean was with Respond Power, the record evidence does not support her allegation that her bills suddenly increased, due to double billing, after the switch to Respond Power. Ms. McLean testified it was when her bills started going above \$200.00 following the switch that she thought she was being double billed. (Tr. p. 9). As reflected in the above consumption and billing summary charts, however, there were several months prior to March 2016 when her bills were higher than \$200.00, and many months after March of 2016 when her bills were below \$200.00. For example, her bills in August 2015, October 2015, December 2015, January 2016 and February 2016, prior to the switch, were all above \$200.00. Her bills in June 2016, July 2016, August 2016, September 2016, October 2016, November 2016, January 2017, June 2017 and July 2017, after the switch, were all under \$200.00. (Penelec Ex. 3). This evidence contradicts Ms. McLean's allegation that her bills increased to over \$200.00 and she was double billed after the switch in March of 2016.

I also find that Ms. McLean's own testimony that her bills increased after she moved into the larger residence offers a credible alternative explanation to her allegation that her bills increased due to double billing after the switch to Respond Power. When asked if the months she was complaining about came after she moved to the bigger location, she testified, "Yes. Most of the outrageous bills occurred after I moved." (Tr. p. 11). Penelec Ex. 3 shows that there were, in fact, many months after March of 2016 when her bills were above \$200.00. Examples of this are: April 2016 - \$226.07; May 2016 - \$350.31; December 2016 - \$516.29 and February 2017 - \$414.13; March 2017 - \$546.81; April 2017 - \$308.80 and May 2017 - \$283.62. (Penelec Ex. 3). As noted, many monthly bills issued after the switch were under \$200.00. The fact that there were a number of bills over \$200.00 after the switch may be explained by the fact that she was in a much bigger residence after the switch. I find this explanation more likely than her mere assertion that she believes she was double billed. Ms. McLean simply provided no credible proof that she was ever double billed by Penelec.

Finally, to the extent that Ms. McLean may be generally suggesting that her bills were higher than they should have been, independent of the double billing allegation, the customer billing analysis performed in August of 2016 demonstrates that her actual consumption was well below her potential usage, given the size of the home and the appliances and electrical devices contained therein. The analysis concluded that Ms. McLean had the potential to use between 6,638 and 8,114 Kwh during winter months. (Penelec Ex. 4). Penelec Ex. 3 shows, however, that her actual consumption during winter months in 2015, 2016 and 2017 was well below the potential range. Examples of this are: December 2015 – 1,373 Kwh; January 2016 – 1,746 Kwh; February 2016 – 1,439; December 2016 – 3,556 Kwh; January 2017 – 414 Kwh; February 2017 – 2,672 Kwh. These actual consumption amounts are significantly below the potential usage reflected in Penelec Ex. 4.

Considering all of the record evidence discussed above, I conclude that the Complainant has failed to establish by a preponderance of the evidence that she was overbilled by the Respondent 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 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).
4. 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).
5. A complainant may establish a prima facie overbilling case by showing such things as: (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. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).
6. If a utility has presented evidence that the customer's meter is accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).
7. In an overbilling case, 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 (Opinion and Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

