

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. Raymond Kochis	:	
	:	
v.	:	C-2017-2601038
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies the complaint requesting the Public Utility Commission find Duquesne Light Company overcharged A. Raymond Kochis for electric service he did not use in 2015 and 2017.

HISTORY OF THE PROCEEDING

On April 26, 2017, A. Raymond Kochis (Complainant or Mr. Kochis) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light, or DLC) alleging Respondent threatened to shut off his electric service and had incorrect charges on his billing statements. As relief, Complainant requested that the Commission order DLC not to charge him for unused electricity when he visited his daughters from January 2015 through April 2015, in October 2015¹, and from December 7, 2016 through April 11, 2017.

¹ Complainant did not present evidence of when he was absent from the service address in October 2015.

Mr. Kochis also alleged DLC's installation of a new meter caused his furnace to turn on while he was out of town, and DLC's representatives refused to talk with him until he provided identifying information.

On May 17, 2017, Respondent filed an Answer in which DLC generally denied the allegations. DLC denied it had threatened to terminate electric service and denied there were incorrect charges on the billing statements. Respondent denied the installation of the new advanced meter on November 17, 2016, caused Mr. Kochis' furnace to turn on. DLC acknowledged numerous telephone calls from Complainant in which Complainant refused to provide his account password or identifying information.

On May 17, 2017, Respondent also filed Preliminary Objections against Complainant and sought dismissal of the entire formal complaint, or in the alternative to strike the request for relief as impertinent. Complainant did not respond to DLC's Preliminary Objections.

On July 6, 2017, the presiding officer issued the Interim Order in which Respondent's Preliminary Objections were granted in part and denied in part. The presiding officer dismissed the allegations that Duquesne Light violated federal statutes and/or regulations, but left intact Mr. Kochis' complaints concerning customer service and possible safety violations.

By Call-In Telephone Hearing Notice dated July 6, 2017, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was scheduled for Monday, August 7, 2017 at 10:00 a.m. On July 11, 2017, the presiding officer issued a Prehearing Order setting forth various procedural matters, including how parties may request a continuance.

On July 21, 2017, Mr. Kochis hand-delivered a written request to have the hearing rescheduled due to a previously-scheduled medical appointment, and requested the

initial hearing be conducted in person instead of telephonically. On July 25, 2017, the presiding officer issued the Second Interim Order which granted Complainant's request.

Thereafter, by Hearing Notice dated August 10, 2017, the Office of Administrative Law Judge notified the parties an initial hearing in this case was scheduled for Wednesday, October 4, 2017 at 10:00 a.m. in the Commission's hearing room in the Piatt Building, 301 Fifth Avenue, Pittsburgh, Pennsylvania.

The presiding officer convened the initial hearing as scheduled on October 4, 2017. Complainant appeared *pro se* and testified on his own behalf. He offered no exhibits. Respondent was represented by Jeremy V. Farrell, Esquire. Attorney Farrell presented the testimony of one witness, and offered fourteen (14) exhibits, which were marked Duquesne Light Exhibits A, B, D, E, G, H, I, J, K, L, M, N, O and V, and admitted into evidence. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

The transcript of the hearing, containing 159 pages, was received in the presiding officer's office on November 1, 2017. On November 2, 2017, the presiding officer issued the Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, A. Raymond Kochis, resides at 416 Commonwealth Avenue, West Mifflin, Pennsylvania (service address). (Tr.1).
2. In 1969, Complainant purchased the service address, which is a single-family home where he resides alone. (Tr. 11, 12).
3. Respondent, Duquesne Light Company, provides electric service to the service address. (Tr. 12; Duquesne Light Exhibit 1).

4. Every year and especially during the winter, Complainant visits one or both of his daughters in either Austin, Texas, or Sharon, Pennsylvania, for weeks or months at a time. (Tr. 13-19).

5. When Complainant leaves the service address to visit his daughters, he turns off the refrigerator, drains the water pipes, drains the hot water heater, and unplugs all electrical units in the service address except for two clocks. (Tr. 22, 28, 32-35).

6. While Complainant was away from the service address during the winter, Complainant's daughter arranged to have the utility bills paid automatically by Complainant's bank. (Tr. 15-19).

7. Duquesne Light's monthly billing statements include three types of charges: supplier charges, consumption charges, and customer charges. (Tr. 70-75).

8. Supplier charges are the charge for the electric commodity consumed at the service address. (Tr. 70).

9. Consumption charges are the costs, based on consumption, for distribution service to bring the electricity into the service address, including transmission costs, wires, and equipment. (Tr. 71-75).

10. Customer charges are the prorated cost to every customer to pay for the implementation and installation of smart meters, meter reading, employee costs, related technologies and other expenses. (Tr. 71-74).

11. From late December 2014 until late March 2015, Complainant stayed with his daughter, Mary Beth, in Texas. (Tr. 13-19, 38-40).

12. In January 2015, Duquesne Light charged Complainant \$24.60 in supplier charges, \$11.40 in consumption charges and \$11.99 in customer charges for a total bill of \$47.99. (Tr. 73; Duquesne Light Supplemental Exhibit B).

13. In February 2015, Duquesne Light charged Complainant \$14.29 in supplier charges, \$8.12 in consumption charges and \$14.69 in customer charges for a total bill of \$37.10. (Tr. 73; Duquesne Light Supplemental Exhibit B).

14. In March 2015, Duquesne Light charged Complainant \$4.38 in supplier charges, \$3.22 in consumption charges and \$14.69 in customer charges for a total bill of \$22.29. (Tr. 73; Duquesne Light Supplemental Exhibit B).

15. In April 2015, Duquesne Light charged Complainant \$21.91 in supplier charges, \$11.91 in consumption charges and \$14.53 in customer charges for a total bill of \$48.35. (Tr. 73; Duquesne Light Supplemental Exhibit B).

16. From December 8, 2016 to April 11, 2017, Complainant stayed with his daughter, Colleen, in Sharon, Pennsylvania. (Tr. 19-21, 31, 39).

17. In December 2016, Duquesne Light charged Complainant \$7.69 in supplier charges, \$12.51 in consumption charges and \$13.84 in customer charges for a total bill of \$34.04. (Tr. 73; Duquesne Light Supplemental Exhibit B).

18. In January 2017, Duquesne Light charged Complainant \$9.85 in supplier charges, \$16.48 in consumption charges and \$14.01 in customer charges for a total bill of \$40.34. (Tr. 73; Duquesne Light Supplemental Exhibit B).

19. In February 2017, Duquesne Light charged Complainant \$1.00 in supplier charges, \$2.82 in consumption charges and \$15.55 in customer charges for a total bill of \$19.37. (Tr. 73; Duquesne Light Supplemental Exhibit B).

20. In March 2017, Duquesne Light charged Complainant \$0.99 in supplier charges, \$2.78 in consumption charges and \$15.55 in customer charges for a total bill of \$19.32. (Tr. 73; Duquesne Light Supplemental Exhibit B).

21. In April 2017, Duquesne Light charged Complainant \$0.99 in supplier charges, \$2.86 in consumption charges and \$15.49 in customer charges for a total bill of \$20.15. (Tr. 73; Duquesne Light Supplemental Exhibit B).

22. When a power surge occurs on Complainant's electric service, the electronic ignition on the natural gas furnace can ignite the furnace and cause the furnace to operate. (Tr. 29-31).

23. When Complainant calls Duquesne Light to discuss his electric service, the customer service representatives will not talk with him about his account because he provides only the account number, the identification number and his password but refuses to provide his name. (Tr. 41).

DISCUSSION

Complainant alleged in his complaint that Duquesne Light overcharged him for electricity at his residential property during times when he visited his daughters out of town and, therefore, did not reside at the service address. Complainant further alleges he winterized the house before he left which included unplugging the refrigerator, draining the water pipes, draining the hot water tank, turning off electricity to the natural gas furnace and unplugging all electrical appliances except for two clocks. Complainant agrees he should have to pay the monthly customer service charge because he did not cancel the electric service but contests his supplier charge and consumption charge should be zero or close to zero. Complainant asks the Commission to order Duquesne Light to refund or credit to his account the monies it collected for electric service from December 2014 until March 2015, and from December 8, 2016 to April 11, 2017.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving by substantial evidence he is entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.² Complainant must show these alleged facts to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.³ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁴ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵

Pursuant to the Pennsylvania Code, all relevant and material evidence may be admitted but will be excluded if repetitious or cumulative, or if its probative value is outweighed by a "danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time."⁶

Complaint Concerning Inaccurate Billing Statements and Overcharging

In Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980), the Commission outlined the general dynamics for the burden of proof in a case involving a high bill dispute. The Commission held certain factors must be considered in order for a ratepayer to

² Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

³ 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); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

⁴ Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa.Cmwlth. 1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S.A. § 704.

⁵ Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa.Super. 1960); Murphy v. Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

⁶ See "Admissibility of Evidence", 52 Pa.Code § 5.401.

establish a *prima facie* case whenever claiming unusually high bills. The accuracy of a meter is an important factor to resolve a billing dispute, but it is not the sole criterion. The Commission stated complainant may establish a *prima facie* case by showing:

- (1) the disputed bill was abnormally high when compared to prior usage patterns; and
- (2) the ratepayer's pattern of usage had not changed.

When looking at these criteria, important considerations include the billing history of the account, any change in the number of occupants residing in the household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding.⁷ In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance.⁸

The Commission restated its position for the purpose of clarifying the Waldron test in Charisse M. Bennett v. Peoples Natural Gas Company, LLC, Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010). In Bennett, the Commission stated:

While a comparison of the disputed monthly bill to the Complainant's billing history and the consistency of her usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant's disputed high bill.... Also, this interpretation does not allow for other relevant facts or circumstances with probative value to be considered as evidence supportive of a high bill complaint. Waldron does not limit the establishment of a *prima facie* case to the above two elements alone. Rather, the Commission may consider 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.

Bennett, Opinion and Order entered October 13, 2010, p. 6 (emphasis in the original).

⁷ Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

⁸ Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).

In Nehemiah B. Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011), the Commission reaffirmed its position in Bennett, supra, when it specified:

[T]he 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*. (Emphasis in original).

Complainant did not meet the requirements of the Waldron test although Mr. Kochis presented credible and believable testimony about his extended absences from the service address during the winters while he visited his daughters who lived out-of-town. In the Waldron Rule, however, he must show that the disputed bills are “unreasonably high”. The billing statements from Duquesne Light show that Complainant’s consumption levels were lower during those winter months when he visited his daughters. There were some months in which the recorded consumption did not appear to be consistent with Mr. Kochis’ testimony.

For example, the supplier charges are higher in January 2017 than in December 2016 even though Complainant was at home until December 8, 2016 and was not at home during the entire month of January 2017. That increased consumption amounted to a \$2.16 difference, which does not qualify as “unreasonably high” under the Waldron Rule. The evidence Complainant provided was insufficient to shift the burden of production⁹ over to Respondent to show what fact or facts would explain how a house sitting empty with an inoperable furnace and only two operating clocks could produce higher consumption recordings.

⁹ Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). 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, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a 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. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

Accordingly, Complainant's complaint that he was overcharged for electric service will be denied in the ordering paragraphs that follow.

Complaint Concerning Safety Problem

Complainant alleged that, when a power surge occurs on his electric service, the electronic ignition on the natural gas furnace will ignite the furnace and cause the furnace to operate. Complainant testified he was present in his home one time when he realized that his furnace, to which he had turned off the electric power source, had become operational after a power surge.

Pursuant to 66 Pa.C.S.A. § 1501, Respondent, as a public utility, must "furnish and maintain adequate, efficient, safe, and reasonable service and facilities,...."¹⁰ Complainant's contention that Duquesne Light failed to provide him with adequate, efficient, safe and reasonable service and facilities was not proved by substantial evidence. Complainant testified he never had a friend or neighbor check on the condition of the service address during his extended absences. His testimony does not include any instance when he returned home from visiting one of his daughters to find the furnace was operating. Accordingly, he did not carry the burden of proving that Respondent failed to provide him with adequate and safe service.

Accordingly, Complainant's complaint that Duquesne Light created an unsafe condition after a power surge will be denied in the ordering paragraphs that follow.

Complaint Concerning Customer Service

Complainant contended that when he calls Duquesne Light to discuss his electric service, the customer service representatives will not talk with him about his account. Complainant alleged he would provide the customer service representatives with the account

¹⁰ 66 Pa.C.S.A. § 1501.

number, the identification number and his password but refuses to provide his name due to identity theft concerns.

Complainant's contention that Duquesne Light failed to provide him with adequate, efficient, safe and reasonable service and facilities pursuant to 66 Pa.C.S.A. § 1501 was not proved by substantial evidence. Duquesne Light is required under the regulations to provide adequate, efficient and reasonable service, including taking reasonable and adequate measures to ensure that the individual calling on the telephone is, in fact, the ratepayer of record. While it may be irksome and annoying for Complainant, it is not unreasonable for Duquesne Light's customer service representatives to insist Complainant provide his name, as well as the other information, before discussing the details on his electric service account.

Accordingly, Complainant's complaint that Duquesne Light failed to provide adequate and reasonable customer service will be denied in the ordering paragraphs that follow.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S.A. § 701.

2. Complainant did not prove Respondent overcharged him for electric service when he was absent from the service address for an extended period of time during the winters from 2014 to 2017. 66 Pa.C.S.A. § 332(a).

3. Complainant did not prove Respondent failed to provide reasonable and appropriate customer service when its customer service representatives declined to discuss his electric service account because he refused to provide his name. 66 Pa.C.S.A. § 1501.

4. Complainant did not prove Respondent failed to provide safe and reliable service by causing his furnace to turn on after a power surge. 66 Pa.C.S.A. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by A. Raymond Kochis against Duquesne Light Company at Docket No. C-2017-2601038 is denied.
2. That the Secretary mark this docket closed.

Date: January 22, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge