

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Riley	:	
	:	
v.	:	C-2017-2611751
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s formal Complaint because she failed to sustain her burden of proof to establish that PECO Energy Company violated any Commission orders or regulations concerning charges on her bill, or that it failed to provide her with safe and reliable service.

**HISTORY OF THE PROCEEDING**

On June 12, 2017, Deborah Riley (Complainant or Ms. Riley) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that there were incorrect charges on her bill and that she had a safety and reliability issue with her service. The Complainant requested a review of her bills.<sup>1</sup>

---

<sup>1</sup> Ms. Riley initially indicated in her Complaint that she had a Protection from Abuse Order. However, at the first hearing, Ms. Riley stated that she had accidentally checked that box on the Complaint form and did not have a Protection from Abuse Order. Tr. 8.

On July 13, 2017, Respondent filed an Answer indicating the Complainant does have electric service. PECO also alleged that the Complainant was actively enrolled in its Customer Assistance Program (CAP). The Answer indicated that the Complainant's entire balance is comprised of CAP arrears. The Respondent asserted that the Complainant's bills are based on actual meter readings and the Company conducted a high bill investigation which found her bills to be in line with potential usage, and no issues with the meter.

On July 24, 2017, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for Thursday, September 21, 2017, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on September 8, 2017.

The initial hearing in this matter was held as scheduled on September 21, 2017. The Complainant appeared *pro se* and testified on her own behalf. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of two witnesses, Anna Mae Migliaccio and Thomas Lerro. Respondent offered 11 exhibits which were entered into the record at the time of the hearing. During the course of the hearing, I directed PECO to submit a late filed exhibit regarding the changes in the Company's CAP program and how it affected the Complainant's bills.

By Hearing Notice dated November 9, 2017, a Further Hearing was scheduled for Wednesday, January 24, 2018, at 10:00 a.m., related to the changes in the CAP program and how it affected the Complainant's bills.

The further hearing convened as scheduled on January 24, 2018. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Shawane Lee, Esq., who presented the testimony of Moneka Smith. Respondent offered four additional exhibits which were entered into the record at the time of the hearing.

The two hearings resulted in 162 pages of transcript. The record closed on February 20, 2018, when I received the transcript of the further hearing.<sup>2</sup>

### FINDINGS OF FACT

1. The Complainant in this case is Deborah Riley, who resides at 6017 Osage Avenue, 1<sup>st</sup> Floor, Philadelphia, Pennsylvania 19143 (Service Address). Tr. 9.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant rents the Service Address. Tr. 21.
4. The Complainant resides at the Service Address alone. Tr. 22.
5. The Complainant tries to reduce her electric usage. Tr. 29.
6. The Service Address is a two-bedroom and one-bathroom apartment that has a total of five and a half rooms. Tr. 22-23.
7. The Complainant first enrolled in CAP on October 19, 2010, at Tier D. Tr. 35-36; PECO Exh. 3.
8. The Complainant was removed from CAP on December 7, 2012, for failure to recertify. Tr. 36; PECO Exh. 3.
9. Complainant was reenrolled in CAP on February 19, 2013, at Tier D1. Tr. 36; PECO Exh. 3.

---

<sup>2</sup> The two transcripts are not consecutively numbered, so for the purposes of this decision, they will be referred to as Tr. and Tr 2.

10. The Complainant's CAP enrollment was transferred to the Service Address on September 16, 2013. Tr. 36; PECO Exh. 3.
11. The Complainant was again removed from CAP on July 13, 2016, for failure to recertify. Tr. 36; PECO Exh. 3.
12. The Complainant was reenrolled in CAP FCO (Fixed Credit Option) on December 21, 2016. Tr. 36; PECO Exh. 3.
13. PECO's CAP program changed from the Tier system to the CAP FCO program in October 2016. Tr. 37.
14. PECO's CAP Tier system provided a percentage discount from a customer's bill. Tr. 49.
15. Tier D1 was a 28% discount off of a customer's bill. Tr. 49.
16. The CAP FCO program determines the Complainant's energy burden based on her monthly income and where she falls on the Federal Poverty Guidelines. Tr 2. 9-12.
17. The Complainant's monthly income is \$755.10, which means that the Complainant falls at 76% of the Federal Poverty Guidelines for a household of one person. Tr 2. 10-11, 30.
18. Under the CAP FCO program, the Complainant's annual energy burden is 6% of her annual income, which is \$543.67 per year. Tr 2. 10, 12; PECO Exhs. 3 & 15.
19. The Complainant was provided a credit under the CAP FCO program of \$172.14 because she went over her energy burden. Tr 2. 12; PECO Exh. 15.
20. The credit is allocated over a 12-month period. Tr 2. 16.

21. PECO compared the Complainant's bills under the CAP FCO and CAP Tier D1 programs. PECO Exhs. 1 & 12.

	<b>CAP FCO</b>	<b>CAP Tier D1</b>
12/1/2016	\$76.33	\$37.77
1/1/2017	\$97.84	\$43.32
2/1/2017	\$73.72	\$34.03
3/1/2017	\$72.94	\$33.71
4/1/2017	\$32.37	\$18.09
5/1/2017	\$29.20	\$15.92
6/1/2017	\$12.00	\$11.54
7/1/2017	\$12.00	\$13.06
8/1/2017	\$12.00	\$10.39

22. PECO analyzed the Complainant's usage and found that it was seasonal in nature. Tr. 56-58, 59; PECO Exh. 2.

	2014	2015	2016	2017
	KWH Usage	KWH Usage	KWH Usage	KWH Usage
<b>Month</b>				
January	260	702	503	785
February	190	764	654	604
March	381	851	460	611
April	288	411	342	302
May	227	292	248	259
June	240	305	273	172
July	303	378	384	203
August	268	382	338	149
September	250	469	313	
October	226	393	212	
November	301	470	272	
December	776	530	618	

23. PECO performed three high bill field investigations on February 21, 2015, August 18, 2016, and March 17, 2017. Tr. 62, 70, 76; PECO Exhs. 5, 6 & 8.

24. PECO technician, Scott Murray, conducted the high bill investigation on February 21, 2015. Tr. 62; PECO Exh. 7.

25. Mr. Murray found there were three student size refrigerators, a microwave, a toaster oven, two televisions, a dryer, an iron and a furnace fan. Tr. 62-65; PECO Exh. 5.

26. The Service Address had a potential winter usage of 910 kilowatt hours. Tr. 65; PECO Exh. 7.

27. The Complainant's usage at the Service Address has never exceeded the potential usage of 910 kilowatt hours. Tr. 66; PECO Exh. 1.

28. Mr. Murray performed an idle meter test which showed there was no foreign wiring. Tr. 67; PECO Exh. 5.

29. Mr. Murray also performed a passing load test on a dryer which was 1,440 watts and it was clocked at 1,417 within the acceptable range for the meter. Tr. 68; PECO Exh. 5.

30. Mr. Murray found no meter mix up at the Service Address. Tr. 68; PECO Exh. 5.

31. PECO technician, Roberto Alicea, conducted the second high bill investigation on August 18, 2016. Tr. 70; PECO Exh. 6.

32. Mr. Alicea accounted for a top bottom refrigerator, microwave, toaster oven, toaster, window fan, circulator, two televisions, cable box, VCR, and a home stereo. Tr. 71; PECO Exh. 6.

33. Mr. Alicea determined that there was a potential for summer usage of 422 kilowatt hours and that there was a revised potential winter usage of 990 kilowatt hours. Tr. 72.

34. Mr. Alicea found no foreign wiring. Tr. 73.

35. Mr. Alicea performed a passing load test on the meter for the Service Address which found a 400-watt potential for the refrigerator that clocked at 398 watts. Tr. 74.

36. On March 17, 2017, PECO technician, Mary McQuilkin, performed the third field visit at the Service Address. Tr. 76; PECO Exh. 8.

37. Ms. McQuilkin found a top bottom refrigerator, student refrigerator, two microwave ovens, two toaster ovens, washer, dryer, two space heaters, furnace fan and two televisions. Tr. 77-78; PECO Exh. 8.

38. Ms. McQuilkin determined that there was a revised potential summer usage of 813 kilowatt hours and a revised potential winter usage of 3,213 kilowatt hours. Tr. 79; PECO Exh. 8.

39. If the space heaters were removed from the potential winter usage, the Complainant's potential winter usage was 953 kilowatt hours. Tr. 79.

40. The Complainant's usage in January, February, and March 2017 never exceeded 953 kilowatt hours. Tr. 79; PECO Exhs. 1 & 2.

41. The Complainant's usage in June, July and August 2017 did not exceed 813 kilowatt hours. Tr. 80; PECO Exhs. 1 & 2.

42. Ms. McQuilkin found no evidence of foreign wiring, meter mix up or issues with the meter. Tr. 80-81; PECO Exh. 8.

43. As of the hearing on January 24, 2018, the Complainant's account balance was zero. Tr2. 43; PECO Exh. 1.

44. The Complainant is conservative in her electric usage. Tr 2. 32.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

### High Bill Dispute

The Complainant contends that her bills are out of line for the amount of electricity she is using. The Complainant asserts that she barely uses any electricity and that she is living alone in a small apartment. While the Complainant also contends that she is having a safety and reliability issue as well, based on her testimony, this allegation is related to her billing dispute.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

The Commission explained the burden of proof set forth in *Waldron* as follows:

[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.*”

*Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

PECO analyzed the Complainant’s usage and found that it was seasonal in nature. Tr. 56-58, 59; PECO Exh. 2.

	2014	2015	2016	2017
	KWH Usage	KWH Usage	KWH Usage	KWH Usage
<b>Month</b>				
January	260	702	503	785
February	190	764	654	604
March	381	851	460	611
April	288	411	342	302
May	227	292	248	259
June	240	305	273	172
July	303	378	384	203
August	268	382	338	149
September	250	469	313	
October	226	393	212	
November	301	470	272	
December	776	530	618	

PECO also performed three high bill field investigations on February 21, 2015, August 18, 2016, and March 17, 2017. Tr. 62, 70, 76; PECO Exhs. 5, 6 & 8. PECO technician, Scott Murray, conducted a high bill investigation on February 21, 2015. Tr. 62; PECO Exh. 7. Mr. Murray found there were three student size refrigerators, a microwave, a toaster oven, two televisions, a dryer, an iron and furnace fan. Tr. 62-65; PECO Exh. 5. The Service Address had a potential winter usage of 910 kilowatt hours. Tr. 65; PECO Exh. 7. The Complainant's usage at the Service Address has never exceeded the potential usage of 910 kilowatt hours. Tr. 66; PECO Exh. 1. Mr. Murray performed an idle meter test which showed there was no foreign wiring. Tr. 67; PECO Exh. 5. Mr. Murray also performed a passing load test on a dryer which was 1,440 watts and it was clocked at 1,417, within the acceptable range for the meter. Tr. 68; PECO Exh. 5. Mr. Murray found no meter mix up at the Service Address. Tr. 68; PECO Exh. 5.

PECO technician, Roberto Alicea, conducted another high bill investigation on August 18, 2016. Tr. 70; PECO Exh. 6. Mr. Alicea accounted for a top bottom refrigerator, microwave, toaster oven, toaster, window fan, circulator, two televisions, cable box, VCR, and home stereo. Tr. 71; PECO Exh. 6. The potential summer usage was 422 kilowatt hours and revised potential winter usage of 990 kilowatt hours. Tr. 72. Mr. Alicea found no foreign wiring. Tr. 73. Mr. Alicea performed a passing load test on the meter for the Service Address which found 400-watt potential for the refrigerator that clocked at 398 watts. Tr. 74.

On March 17, 2017, PECO technician Mary McQuilkin performed another field visit at the Service Address. Tr. 76; PECO Exh. 8. Ms. McQuilkin found a top bottom refrigerator, student refrigerator, two microwave ovens, two toaster ovens, washer, dryer, two space heaters, furnace fan and two televisions. Tr. 77-78; PECO Exh. 8. The revised potential summer usage was 813 kilowatt hours and revised potential winter usage of 3,213 kilowatt hours. Tr. 79; PECO Exh. 8. If the space heaters were removed from the potential winter usage, the Complainant's potential winter usage was 953 kilowatt hours. Tr. 79. The Complainant's usage in January, February, and March 2017, never exceeded 953 kilowatt hours. Tr. 79; PECO Exhs. 1 & 2. The Complainant's usage in June, July and August 2017, did not exceed 813 kilowatt hours. Tr. 80; PECO Exhs. 1 & 2. Ms. McQuilkin found no evidence of foreign wiring, meter mix up or issues with the meter. Tr. 80-81; PECO Exh. 8.

Further, PECO witness Anne Mae Migliaccio testified that the Complainant first enrolled in CAP on October 19, 2010, at Tier D. Tr. 35-36; PECO Exh. 3. The Complainant was removed from CAP on December 7, 2012, for failure to recertify. Tr. 36; PECO Exh. 3. Complainant was reenrolled in CAP on February 19, 2013, at Tier D1. Tr. 36; PECO Exh. 3. The Complainant's CAP enrollment was transferred to the Service Address on September 16, 2013. Tr. 36; PECO Exh. 3. The Complainant was again removed from CAP on July 13, 2016, for failure to recertify. Tr. 36; PECO Exh. 3. The Complainant was reenrolled in CAP FCO on December 21, 2016. Tr. 36; PECO Exh. 3. Ms. Migliaccio testified that PECO's CAP program changed from the Tier system to the CAP FCO program in October 2016. Tr. 37. PECO's CAP Tier system provided a percentage discount from a customer's bill. Tr. 49. Tier D1 was a 28% discount off of a customer's bill. Tr. 49.

PECO also presented the testimony of Ms. Moneka Smith, who testified regarding the CAP FCO program. The CAP FCO program determines the Complainant's energy burden based on her monthly income and where she falls on the Federal Poverty Guidelines. Tr2. 9-12. The Complainant's monthly income is \$755.10, which means that the Complainant falls at 76% of the Federal Poverty Guidelines for a household of one person. Tr2. 10-11, 30. Under the CAP FCO program, the Complainant's annual energy burden is 6% of her annual income, which is \$543.67 per year. Tr2. 10, 12; PECO Exhs. 3 & 15. The Complainant was provided a credit under the CAP FCO program of \$172.14 because she went over her energy burden. Tr2. 12; PECO Exh. 15. The credit is allocated over a 12-month period. Tr 2. 16.

Moreover, PECO's witness, Ms. Smith provided a comparison between the Complainant's bills under the CAP FCO and CAP Tier D1 programs. PECO Exhs. 1 & 12.

	<b>CAP FCO</b>	<b>CAP Tier D1</b>
12/1/2016	\$76.33	\$37.77
1/1/2017	\$97.84	\$43.32
2/1/2017	\$73.72	\$34.03
3/1/2017	\$72.94	\$33.71
4/1/2017	\$32.37	\$18.09
5/1/2017	\$29.20	\$15.92
6/1/2017	\$12.00	\$11.54
7/1/2017	\$12.00	\$13.06
8/1/2017	\$12.00	\$10.39

While the Complainant contends that she does not use enough electricity to warrant the increase in her billing, it is clear that the electricity that the Complainant is using is within her energy usage potential. PECO performed three high bill investigations at the Service Address. All three PECO technicians performed a potential usage survey and found that the Complainant was using within her potential usage and had not exceeded her potential usage at the Service Address. Further, the technicians also performed testing on the meter which established that it was running properly and that there was no meter mix up or foreign wiring.

It appears that the increase in the Complainant's billing is related to PECO's change from the CAP Tier program to the CAP FCO program. A comparison between the Complainant's bills under the CAP FCO and CAP Tier D1 programs shows there was a marked increase in her billing under the CAP FCO program as opposed to the CAP Tier program. *See* PECO Exhs. 1 & 12, and Table in Finding of Fact No. 21. The Complainant did not challenge the CAP FCO program. Based on all of the above, the Complainant has failed to meet her burden of proof and as such the Complaint is dismissed.

#### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant.

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *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. § 704.

4. The accuracy of the meter is an important factor in resolving billing disputes, but it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants

residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

5. “[T]he 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.” *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Deborah Riley against PECO Energy Company at Docket No. C-2017-2611751 is denied and dismissed;
2. That the record at Docket No. C-2017-2611751 be marked closed.

Date: May 21, 2018

\_\_\_\_\_  
/s/  
Marta Guhl  
Administrative Law Judge