

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shirley Wilson	:	
	:	
v.	:	F-2018-3002765
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On June 5, 2018, Shirley Wilson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent). The complaint is a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision issued April 16, 2018 at BCS No. 3587166 dismissing the Complainant’s informal complaint.

The complaint alleges that there are incorrect charges on the Complainant’s electric bill. The complaint asserts that the Complainant is being overcharged based on her

actual usage. The complaint requests that the Commission order the Respondent to refund the alleged overcharges and direct the Respondent to test the Complainant's meter and replace it.

The Respondent filed an answer on July 5, 2018. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint. The answer denies that the Respondent is overcharging the Complainant.

According to the answer, the Respondent has tested the Complainant's meter and the tests indicate that the meter is working properly and correctly registering the Complainant's electricity usage. The answer requests that the Commission dismiss the complaint.

By hearing notice dated July 11, 2018, the Commission scheduled a telephonic hearing for this matter on August 24, 2018 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated July 19, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on August 24, 2018. The Complainant appeared pro se and presented testimony in support of her complaint. Paul Shane Miller, Esquire, represented the Respondent, which presented two witnesses who sponsored ten exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 54 pages. The record closed on September 17, 2018, 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 Shirley Wilson. N.T. 6-7.
2. The Respondent in this case is Duquesne Light Company. N.T. 9.

3. The complaint concerns the residence at 3001 Marshall Road, Apartment 504, Pittsburgh. N.T. 7.

4. The Complainant has resided at 3001 Marshall Road for approximately 29 years. N.T. 7.

5. The residence is a two-story apartment that the Complainant rents. N.T. 7-8.

6. The Complainant resides at 3001 Marshall Road by herself. N.T. 7.

7. The apartment at 3001 Marshall Road is a two-bedroom apartment and in addition has a kitchen, living room, dining room, and a bathroom. N.T. 7-8.

8. The residence has a stove, microwave, refrigerator, television and hot water heater. N.T. 12-13.

9. The house has electric heat. N.T. 12.

10. The house has air conditioning but the Complainant only uses the air conditioning when members of her family visit her. N.T. 13.

11. The Complainant is not home during the day because she is taking care of her brother. N.T. 14.

12. The Complainant's bill for January 2018 was \$289.80. N.T. 8.

13. The Complainant's account balance at the time of the hearing was \$0.

Ex. A.

14. The Complainant's bill dated January 28, 2018 in the amount of \$289.80 was based on an actual meter reading. N.T. 20-21, Ex. M, p. 4.

15. The Complainant contacted the Respondent on December 29, 2017 concerning a high bill. N.T. 24, Ex. I, p. 2.

16. The Respondent removed the Complainant's electric meter on November 13, 2017. N.T. 26, Ex. F.

17. This meter had been installed on January 30, 1997. N.T. 26, Ex. F.

18. The Respondent tested the meter prior to installing it. N.T. 35, Ex. D.

19. The meter tested at a weighted average of 99.6%. N.T. 35, Ex. D.

20. After the Respondent removed the meter, it tested the meter on February 13, 2018. N.T. 37, Ex. E.

21. The meter tested at a weighted average of 99.79%. N.T. 37, Ex. E.

22. The Respondent installed a new meter at the Complainant's residence on November 13, 2017, when it removed the existing meter. N.T. 3, Ex. F.

23. Prior to installing the new meter, the Respondent tested the meter on October 7, 2017. N.T. 27, Ex. G.

24. The meter tested at a weighted average of 100.022%. N.T. 28, Ex. G.

25. The Respondent re-read the Complainant's meter on January 11, 2018.
Ex. H.

26. By letter dated January 26, 2018, the Respondent informed the Complainant that it had re-read her meter and that the reading indicated that her disputed billing reading was correct. Ex. J.

27. The Respondent contacted the Complainant on June 22, 2018 and scheduled a meter test on June 27, 2018. N.T. 39.

28. Mr. Boardley visited the Complainant's residence on June 27, 2018. N.T. 44.

29. Mr. Boardley took a manual read of the Complainant's meter. N.T. 45.

30. Mr. Boardley tested the voltage, socket and service. N.T. 46.

31. The tests did not indicate any problems with the meter. N.T. 46.

32. Mr. Boardley tested the meter. N.T. 46, Ex. L

33. The meter tested at 99.929% for a full load and 99.886% for a light load. N.T. 46, Ex. L.

34. Mr. Boardley tested the meter to determine whether there was any meter creep present. N.T. 47-48.

35. The test revealed that there was no meter creep present. Ex. L.

36. Mr. Boardley prepared a meter inspection report when he completed his inspection. N.T. 48-49, Ex. L.

37. The meter inspection report concluded that the Complainant's meter was registering correctly. N.T. 49, Ex. L.

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 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). To meet her 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. 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.Cmwlt. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a complainant must establish certain specific elements 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 her 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 her. 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 her residence at 3001 Marshall Road, Apartment 504, Pittsburgh. N.T. 7. The Complainant testified that she has resided at this address for approximately 29 years. N.T. 7. The residence is a two-story apartment that the Complainant rents. N.T. 7-8.

The Complainant resides at 3001 Marshall Road by herself. N.T. 7. The apartment house at 3001 Marshall Road is a two-bedroom apartment and in addition has a kitchen, living room, dining room, and a bathroom. N.T. 7-8. The residence has a stove, microwave, refrigerator, television and hot water heater. N.T. 12-13. The house has electric heat. N.T. 12. The house has air conditioning but the Complainant stated that she only uses the air conditioning when members of her family visit her. N.T. 13.

The Complainant indicated that she was not home during the day because she was taking care of her brother. N.T. 14.

The Complainant testified that her electric bill for January 2018 was too high. N.T. 8. The bill for January 2018 was \$289.80. N.T. 8. According to the Complainant, she has never had a bill as high as the one she received for January 2018. N.T. 8.

The Complainant testified that she contacted the Respondent after receiving the bill for January 2018. N.T. 9-10. The Respondent indicated to the Complainant that it had replaced her meter prior to January 2018. N.T. 9-10. The Complainant indicated she was not satisfied with the Respondent's answer and filed an informal complaint with BCS. N.T. 11.

In response to the Complainant's evidence concerning overbilling, the Respondent presented the testimony of Diana Kiesel, a customer relations specialist. N.T. 16-17. Her 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. Kiesel reviewed the account statement for the Complainant's account for the period from November 28, 2014 through August 3, 2018. N.T. 17, Ex. A. The Complainant's account balance at the time of the hearing was \$0. Ex. A.

Ms. Kiesel reviewed copies of the Complainant's December 2017 and January 2018 bills. N.T. 19-20, Ex. M. The Complainant's bill dated January 28, 2018 in the amount of \$289.80 was based on an actual meter reading. N.T. 20-21, Ex. M, p. 4.

Ms. Kiesel reviewed a record of a customer contact. N.T. 22, Ex. I, p. 2. The record indicates that the Complainant contacted the Respondent on December 29, 2017 concerning a high bill. N.T. 24, Ex. I, p. 2.

Ms. Kiesel testified that the Respondent removed the Complainant's electric meter on November 13, 2017. N.T. 26, Ex. F. This meter had been installed on January 30, 1997. N.T. 26, Ex. F. The Respondent tested the meter prior to installing it. N.T. 35, Ex. D. The meter tested at a weighted average of 99.6%. N.T. 35, Ex. D. After the Respondent removed the meter, it tested the meter on February 13, 2018. N.T. 37, Ex. E. The meter test indicated that the meter tested at a weighted average of 99.79%. N.T. 37, Ex. E.

The Respondent installed a new meter at the Complainant's residence on November 13, 2017 when it removed the existing meter. N.T. 23, Ex. F. Prior to installing the new meter, the Respondent tested the meter on October 7, 2017. N.T. 27, Ex. G. The meter test indicated that the new meter tested at a weighted average of 100.022%. N.T. 28, Ex. G.

The Respondent's records indicate that in response to the Complainant's contact on December 29, 2017, the Respondent re-read the Complainant's meter on January 11, 2018. Ex. H. By letter dated January 26, 2018, the Respondent informed the Complainant that it had re-read her meter and that the reading indicated that her disputed billing reading was correct. Ex. J.

Ms. Kiesel testified that she contacted the Complainant on June 22, 2018 and scheduled a meter test on June 27, 2018. N.T. 39.

The Respondent also provided the testimony of Robert Boardley, a field meter technician. N.T. 43. Mr. Boardley testified that he visited the Complainant's residence on June

27, 2018. N.T. 44. Prior to arriving at the Complainant's residence, Mr. Boardley telephoned her but she did not answer the telephone. N.T. 44.

After arriving at the Complainant's residence, Mr. Boardley knocked on her door but she did not answer the door. N.T. 45. Mr. Boardley then contacted the apartment building manager who provided access to the meter room. N.T. 45.

Mr. Boardley located the Complainant's meter and took a manual read of the meter. N.T. 45. He then removed the Complainant's meter and tested the voltage, socket and service. N.T. 46. The tests did not indicate any problems with the meter. N.T. 46.

Mr. Boardley then took the meter to his truck and tested the meter. N.T. 46, Ex. L. The test indicated that the meter tested at 99.929% for a full load and 99.886% for a light load. N.T. 46, Ex. L.

Mr. Boardley tested the meter to determine whether there was any meter creep present. N.T. 47-48. Mr. Boardley conducted the test to determine whether there was any disc movement on the meter when there was no load applied. N.T. 47-48. The purpose of the test is to ensure that the meter is accurate. N.T. 48. The test revealed that there was no disc movement and therefore no meter creep present. N.T. 48, Ex. L.

Mr. Boardley prepared a meter inspection report when he completed his inspection. N.T. 48-49, Ex. L. The meter inspection report concluded that the Complainant's meter was registering correctly. N.T. 49, Ex. L.

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 her January 2018 electric bill was too high and that she could not have possibly used the amount of electricity shown on her bill. The Complainant also insisted that the Respondent's meter had malfunctioned and miscalculated her electric usage.

The Complainant did not provide any evidence regarding her electricity usage in January 2018 other than general assertions that her bill was 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 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 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.Cmwlth 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 particular, the Complainant's apartment has electric heat.

In addition, the Respondent installed a new meter at 3001 Marshall Road on November 13, 2017. 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 existing meter on November 13, 2017 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 meters were accurately recording the amounts of electricity the Complainant was using.

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

has failed to establish by a preponderance of the evidence that the Respondent has overbilled her for electric service.

For the foregoing reasons, I will deny the complaint and enter the following order.

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 her for electric service because her potential for energy usage is not low and because her electric meter is accurately recording the amounts of electricity she is using. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980); Milkie v. Pa. Pub. Util. Com., 768 A.2d 1217 (Pa.Cmwlt. 2001).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Shirley Wilson against Duquesne Light Company at Docket No. F-2018-3002765 is denied.

2. That the docket at Docket No. F-2018-3002765 is marked closed.

Date: September 18, 2018

/s/
David A. Salapa
Administrative Law Judge