

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott Oatman	:	
	:	
v.	:	F-2018-3001379
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a Complaint filed by a customer of an electric distribution company who averred that the company has incorrectly charged for usage at the service address. The Complaint is dismissed because the customer failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

HISTORY OF THE PROCEEDING

On April 11, 2018, Scott Oatman (Mr. Oatman or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) at Docket Number F-2018-3001379. The Complaint is a timely appeal of Decision Number 3574467 issued by the Commission's Bureau of Consumer Services. In his Complaint, Mr. Oatman indicated that there are incorrect charges on his bill and that he would like to receive credit for the electricity that he was charged for but did not use. The Complaint was served on PPL electronically by the Commission's Secretary on April 24, 2018.

On May 14, 2018, PPL filed an Answer to Mr. Oatman's Complaint. In its Answer, PPL admitted or denied the various averments made by Mr. Oatman. In particular, PPL denied that Mr. Oatman was charged for electric usage in excess of what he actually used. PPL concluded its Answer by requesting that the Complaint be dismissed.

By Telephonic Hearing Notice dated May 22, 2018, an Initial Telephonic Hearing was scheduled in this matter for Wednesday, July 18, 2018, at 10:00 a.m. and I was assigned as the Presiding Officer. A Prehearing Order was issued on June 28, 2018 setting forth various rules that would govern the hearing.

The hearing convened on July 18, 2018 as scheduled. Mr. Oatman and his wife Mathilda Oatman appeared *pro se*. Graig Schultz, Esquire, appeared on behalf of PPL. The Oatmans sponsored 13 exhibits for the record. Mr. Schultz presented one witness who sponsored seven exhibits for the record. The exhibits of the Oatmans and PPL were admitted into the record. A transcript of the hearing totaling 91 pages was made. The record in this proceeding closed on August 10, 2018 when the transcript was submitted to the Commission.

Mr. Oatman's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Scott Oatman.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 5 Pinnacle Road West, Holtwood, PA, 17532.
4. Mr. and Mrs. Oatman moved into the service address on April 10, 2017. Tr. 13.
5. The Oatmans live with their three children at the service address. Tr. 40.

6. The home at the service address is a single family attached dwelling. Tr. 41.

7. The Oatmans' home is heated with propane and electric baseboard heat.

Tr. 51 – 53.

8. The Oatmans' home is over 2,500 square feet, consisting of the main home of 1,980 square feet and the additional store area of 641 square feet. Tr. 41.

9. The entire home is serviced by electricity except for a mud room/storage area.

Tr. 46.

10. The home has the following electric appliances – a washer/dryer, refrigerator, stove, microwave and five window air conditioning units. Tr. 49 – 51.

11. On October 26, 2017, PPL replaced the Oatmans' meter with a smart meter as part of PPL's initiative to install the latest technology for its service territory. Tr. 63 – 64.

12. The smart meter, like the Oatmans' original meter, records actual electric usage at the Oatmans' home. Tr. 64.

13. On July 9, 2018, PPL removed the Oatmans' smart meter for testing because Mr. Oatman had filed a complaint against PPL with the Commission regarding alleged high billing being caused by the smart meter. Tr. 65.

14. PPL replaced the Oatmans' smart meter with a new smart meter on July 9, 2018. Tr. 65.

15. The removed smart meter was tested for accuracy on July 13, 2018. Tr. 65; PPL Exhibit 7.

16. The removed smart meter (serial # 300-279-286) tested at an average of 100% accuracy, which is within the Commission's regulations for accuracy. Tr. 66; PPL Exhibit 7.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Oatman averred that he has been overcharged by PPL due to high billing from an inaccurate meter. Mr. Oatman, therefore, has the burden of proof in this proceeding.

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, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the 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. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlt. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

In cases of alleged high billing, the Commission applies the Waldron rule, which provides that to establish a prima facie case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant’s billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

In Milkie, *supra*, the Commonwealth Court of Pennsylvania further refined the Waldron rule by holding:

While the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a *prima facie* case of overbilling by a utility company, we believe this view is too restrictive. Rather the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned. Burleson v. Pennsylvania Pub. Util. Comm'n, 501 Pa. 433, 435-36, 461 A.2d 1234, 1235 (1983).

Milkie, at 1219-1220 (emphasis in original). In Nehemiah Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Final Order entered November 15, 2011), the Commission explained that

[C]onsistent with our holding in Charisse Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), the 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.*" *Id.* at 6 (emphasis added).

Id. at 5.

In this case, Mr. Oatman complained that there are incorrect charges on his bill because the PPL meter is inaccurately recording usage and PPL is overbilling the Oatmans. In support of these claims, the Oatmans testified that their electric bills went up dramatically after the original meter was replaced by a smart meter in October 2017. Tr. 18 – 19. The Oatmans also

testified that they primarily used propane heat for their home (Tr. 33 – 34) and that the spike in billed electric usage started after the installation of the smart meter in October of 2017. Tr. 33.

In response, PPL demonstrated that on October 26, 2017, PPL replaced the Oatmans' meter with a smart meter as part of PPL's initiative to install the latest technology for its service territory. Tr. 63 – 64. PPL's witness testified that the smart meter, like the Oatmans' original meter, records actual electric usage at the Oatmans' home. Tr. 64. PPL also demonstrated that on July 9, 2018, PPL removed the Oatmans' smart meter for testing because the Oatmans had filed a complaint against PPL with the Commission, and that the removed smart meter was tested for accuracy on July 13, 2018. Tr. 65; PPL Exhibit 7. The removed smart meter (serial # 300-279-286) tested at an average of 100% accuracy, which is within the Commission's guideline regulations for accuracy. Tr. 66; PPL Exhibit 7.

The record evidence demonstrates that the smart meter installed in October 2017 was functioning accurately and in accordance with the Commission's regulations.¹ PPL Exhibit 7. The record evidence further demonstrates that the Oatmans' spike in billing occurred during the winter months when the temperature drops. Most notably, the highest bills were rendered by PPL as follows:

<u>Billing Date</u>	<u>Billing Amount</u>
12/13/17	\$186.02
1/15/18	\$364.84
2/12/18	\$437.55
3/14/18	\$326.78
4/13/18	\$257.26

PPL Exhibit 2. Prior to the above bills, the Oatmans' bills ranged between \$72.13 and \$87.47 from 5/15/17 through 11/13/17. PPL Exhibit 2. Following the above bills, the Oatmans' electric bills substantially declined. The bill for billing date 5/14/18 was only \$127.73, while the bill for billing date 6/13/18 was under \$100.00 (\$95.89). PPL Exhibit 2. This increased usage is consistent with

¹ See 52 Pa. Code §§ 57.20 and 57.24.

the winter months, and is likely attributable to usage from the electric baseboard heaters, the Oatmans' testimony to the contrary notwithstanding. Just as importantly, it is not PPL's burden of proof to demonstrate which appliances were being used, or by whom; instead, it is the Oatmans' burden of proof to demonstrate that the bills were too high.

Although the Oatmans are firmly convinced that their electric bills are too high and must be changed, they have failed to produce competent evidence to substantiate their beliefs in that regard. In Kirby v. PPL Electric Utilities Corporation, the Commission explained this burden of proof by stating:

Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Kirby v. PPL Electric Utilities Corporation, Docket No. C-20066297, Initial Decision at 6 (Final Order entered November 16, 2006) (citing Pa. Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)). Given these legal parameters, and the lack of competent evidence produced by the Oatmans, the matters complained of in this case must be dismissed.

As Mr. Oatman has failed to demonstrate that PPL violated the Public Utility Code, a Commission Order or regulation or a Commission-approved company tariff with regard to the provision of service to him relating to his bills, the Complaint is hereby dismissed.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. In cases of alleged high billing, to establish a prima facie case of overbilling, a complainant, must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility however; the ultimate burden of persuasion always remains with the complainant. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

4. Even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case of overbilling by the utility by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).

5. Mr. Oatman has failed to satisfy his burden of proof in this proceeding to demonstrate that the bills were not accurate or that PPL violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Scott Oatman on April 11, 2018 against PPL Electric Utilities Corporation at Docket Number F-2018-3001379 is hereby dismissed.

2. That this matter shall be marked closed by the Secretary's Bureau.

Date: October 31, 2018

/s/
Andrew M. Calvelli
Administrative Law Judge