

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Caitlin Reed Carpenter	:	
	:	
v.	:	F-2018-3006477
	:	
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 December 6, 2018, Caitlin Reed Carpenter (Mrs. Carpenter or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PPL Electric Utilities Corporation (PPL) at Docket Number F-2018-3006477. In her Complaint, Mrs. Carpenter indicated that there are incorrect charges on her bill and that she would like to receive credit for the electricity that she was charged for but did not use. The Complaint was served on PPL by the Commission's Secretary on December 11, 2018.

On December 28, 2018, PPL filed an Answer to Mrs. Carpenter's Complaint. In its Answer, PPL admitted or denied the various averments made by Mrs. Carpenter. In particular, PPL denied that Mrs. Carpenter was charged for electric usage in excess of what she actually used. PPL concluded its Answer by requesting that the Complaint be denied.

By Telephonic Hearing Notice dated January 10, 2019, an Initial Telephonic Hearing was scheduled in this matter for February 15, 2019 at 10:00 a.m. and I was assigned as the Presiding Officer. Due to a scheduling conflict, I rescheduled the hearing and by Telephonic Hearing Notice dated February 7, 2019, an Initial Telephonic Hearing was scheduled in this matter for March 15, 2019 at 10:00 a.m. A Prehearing Order was issued on March 5, 2019, advising the parties of various procedural and evidentiary rules that would govern the hearing.

The hearing convened on March 15, 2019 as scheduled. Mrs. Carpenter appeared *pro se*. Mrs. Carpenter's husband, John Carpenter, appeared as a witness for Mrs. Carpenter. Kimberly Krupka, Esquire, appeared on behalf of PPL. Mr. and Mrs. Carpenter testified and a transcript of 41 pages of the hearing was produced and submitted to the Commission's Secretary's Bureau on April 8, 2019.

During the March 15, 2019 hearing, the Carpenters testified about various documentary exhibits and various discussions that they had with other people regarding their electric usage compared to other neighbors' averages and to state-and-nationwide averages. Counsel for PPL objected to most of the proffered testimony in that regard. I offered the Carpenters the opportunity to continue the hearing in order to conduct additional discovery and to produce further documentation and/or additional witnesses. Tr. 36-38. The Carpenters agreed to a continuance for these purposes, and I advised the Carpenters that the ongoing objections of Counsel were being preserved and not waived, and that those objections could again be raised at the continued hearing. Tr. 39-40.

By Telephonic Hearing Notice dated March 18, 2019, a Further Telephonic Hearing was scheduled in this matter for April 5, 2019 at 10:00 a.m. A Prehearing Order was issued on March 21, 2019, advising the parties of various procedural and evidentiary rules that would govern the hearing. Prior to the hearing, the Carpenters requested additional time, due to

the fact that the Carpenters' second child had just been born. There was no opposition to the request and I agreed to continue the April 5, 2019 hearing. By Telephonic Hearing Notice dated April 10, 2019, a Further Telephonic Hearing was scheduled in this matter for April 24, 2019 at 10:00 a.m.

The Carpenters requested additional time from the then-scheduled April 24, 2019 hearing date. There was no opposition to the request and I granted a continuance. By Telephonic Hearing Notice dated April 24, 2019, a Further Telephonic Hearing was scheduled in this matter for May 3, 2019 at 10:00 a.m.

The Further Hearing convened on May 3, 2019 as scheduled. Mr. and Mrs. Carpenter attended and provided testimony in support of the Complaint. Kimberly Krupka, Esquire appeared on behalf of PPL. PPL presented one witness who sponsored four exhibits that were admitted into the record, including an Account Activity Statement (PPL Ex. 1), an Account Contact History (PPL Ex. 2), a Meter Test (PPL Ex. 5) and Data for Billings April 2011 to April 2019 (PPL Ex. 6).

The Carpenters sponsored three exhibits at the May 3, 2019 hearing. Exhibit A was a summary of residential electricity rates in Pennsylvania, along with a summary of average electricity consumption in Pennsylvania households. Exhibit B was a summary of the Carpenters' electricity consumption compared to the consumption of five of the Carpenters' friends or acquaintances. Exhibit C, which was originally a subset of Exhibit B, was data on the homes owned by the Carpenters' friends or acquaintances, showing the layout, square footage, heat sources and other data. Exhibit C also included electric bills from those homes to compare to the Carpenters' bills for the same timeframes.

Counsel for PPL objected to the Carpenters' exhibits on the basis that they constituted hearsay, and also on the basis that the information in the exhibits could not be authenticated by a person or persons with first-hand knowledge of the information. Tr. 56 – 62. The Carpenters were provided with the opportunity to respond to the objections. *Id.* Following the Carpenters' response to the objections, I sustained the objections and the Carpenters' exhibits were not entered into the record. Tr. 62.

The record in this proceeding consists of the 98-page transcript, consisting of the March 15, 2019 hearing transcript and the May 3, 2019 hearing transcript, along with PPL Exhibits 1, 2, 5 and 6. The record closed on May 15, 2019 when the May 3, 2019 transcript was submitted to the Commission.

Mrs. Carpenter's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Caitlin Reed Carpenter.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 403 North Queen Street, Lancaster, PA 17803.
4. The Carpenters have resided at the service address since April 1, 2011. Tr. 9.
5. Between April 1, 2011 and February 2, 2016, Mrs. Carpenter lived at the service address with her husband John Carpenter. Tr. 17.
6. On February 3, 2016, the Carpenters' newborn son began residing at the service address. Tr. 17.
7. The home at the service address is approximately 1,600 square feet. Tr. 15.
8. The home at the service address has a basement, a first level, a second level and a third level. Tr. 15.
9. The home at the service address has three bedrooms and two full bathrooms. Tr. 15, 16.

10. The basement at the service address has a dehumidifier which was purchased in 2015. Tr. 16
11. The Carpenters use three or four window air conditioning units in the summer. Tr. 16, 17.
12. The Carpenters have a refrigerator in their home. Tr. 17.
13. The Carpenters have had a chest freezer in their home since 2017. Tr. 17.
14. The Carpenters first noticed a spike in their electric bills after a new meter was installed by PPL on September 1, 2017. Tr. 9, 10, 80, 83.
15. PPL tests its meters for accuracy prior to installation. Tr. 82.
16. The new meter, number 300-430-422, was tested for accuracy by PPL on December 31, 2018 in response to the Complaint filed by Mrs. Carpenter and tested at an average accuracy of 100%. Tr. 79; PPL Ex. 5.
17. Meter number 300-430-422 was a smart meter installed by PPL as part of its smart meter deployment for its entire service territory. Tr. 87.
18. Meter number 300-430-422 provided actual electric consumption readings to PPL during the times it was installed at the service address. Tr. 76; PPL Ex 1; PPL Ex. 6.
19. PPL Exhibit 6 is a history of the Carpenters' electric use at the service address. Tr. 75 – 77; PPL Ex. 6.
20. The meter read date of September 19, 2017 was the first reading that included some usage on the new smart meter and some usage on the prior meter. Tr. 78.

21. For the meter read date of 8/17/17, the Carpenters' kilowatt hour usage was 469. PPL Ex. 6.
22. For the meter read date of 9/19/17, the Carpenters' kilowatt hour usage was 900. PPL Ex. 6.
23. The meter read date of 10/18/17 was the first reading where all of the recorded usage was on the new smart meter. Tr. 78.
24. For the meter read date of 10/18/17, the Carpenters' kilowatt hour usage was 1,514. PPL Ex. 6.
25. The Carpenters' kilowatt hour usage between the meter read dates of 11/16/17 and 4/17/19 went from a low of 48 on read date 11/15/18 to a high of 3,176 on read date 8/16/18. PPL Ex. 6.
26. Prior to the meter read date of 9/19/17, the Carpenters' kilowatt hour usage was generally much lower than the 900 hours recorded on 9/19/17. PPL Ex. 6.
27. Subsequent to the meter read date of 9/19/17, the Carpenters' kilowatt hour usage was generally much higher than the readings recorded prior to 9/19/17. PPL Ex. 6.
28. When the Carpenters first raised their complaints about high bills with PPL, PPL offered to test the meter at the Carpenters' home but the Carpenters refused the offer to test the meter. Tr. 14, 15.
29. During a phone discussion on April 25, 2018, PPL advised the Carpenters that the prior meter had been slowing down and stopping and was under recording the Carpenters' electric usage. Tr. 84; PPL Ex. 2.
30. During a phone discussion on November 29, 2018, the Carpenters advised PPL that they were using a space heater in their son's room. Tr. 84; PPL Ex. 2.

31. The Carpenters continued to use a space heater in their son's room through the dates of the hearings in this matter. Tr. 89.

32. During a phone discussion on December 18, 2018, PPL advised the Carpenters that their hot water heater was using approximately 225 kilowatt hours per month, and that the recorded usage on the prior meter was often well under what the hot water heater alone would have been consuming. Tr. 84, 85; PPL Ex. 2.

33. The prior meter, which was replaced on September 1, 2017, had been under recording usage at the service address. Tr. 84, 85; PPL Ex. 2.

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, Mrs. Carpenter averred that she has been overcharged by PPL and requests that she be reimbursed for the amount she was overcharged. Mrs. Carpenter, 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.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 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. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980) (Waldron); 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, 435-6, 461 A. 2d 1234, 1235 (1983).

Id. at 1219-1220. In 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, Mrs. Carpenter complained that there are incorrect charges on her bill and that she would like to receive a credit for the amount she was overcharged. In particular, Mrs. Carpenter testified that she and her family have been getting much higher bills since the new meter was installed, but have not changed the way that they use electricity in their home. Tr. 34, 35. Mr. Carpenter also testified that the bills were much higher after the new meter was installed, despite the fact that the Carpenters had taken steps to save energy by purchasing a new HVAC system and new energy efficient air conditioners. Tr. 10. Despite these facts, the Carpenters bills have dramatically increased since the prior meter was replaced in September 2017. Tr. 10, 34, 35.

Although the Carpenters testified that their electric usage has not changed, the record evidence demonstrates otherwise. For example, the Carpenters’ household increased from two people to three on February 3, 2016 when the Carpenters’ newborn son began residing at the Carpenter home.¹ Tr. 17. The evidence also demonstrates that the Carpenters’ electric usage did change, which resulted in higher potential energy utilization. Specifically, the evidence shows that the Carpenters started using a space heater in their son’s room, and continued to use that space heater through the dates of the hearings in this matter. Tr. 84, 89; PPL Ex. 2. The Carpenters have also been using a chest freezer at their home, beginning in 2017. Tr. 17.

¹ The Carpenters had another child on or about April 1, 2019. However, the relevant timeframe in this case is the period prior to the installation of the new meter on September 1, 2017 and the date Mrs. Carpenter filed her Complaint (December 6, 2018). Therefore, for purposes of this Initial Decision, I will discuss the Carpenter household as having three people residing at the service address.

In addition to the above, the record evidence demonstrates that there were prior abnormalities with the Carpenters' billing history. PPL's witness testified that the prior meter was often recording usage below what the Carpenters' hot water heater alone would have consumed. When the Carpenters' complained about high bills during a phone discussion with PPL on April 25, 2018, PPL advised the Carpenters that the prior meter had been slowing down and stopping and was under recording the Carpenters' electric usage. Tr. 84; PPL Ex. 2.

Given the evidence in this case, I conclude that the Carpenters have failed to establish a prima facie case of overbilling under the Waldron rule. The Carpenters have failed to establish that the number of occupants in the house has not changed. The Carpenters have also failed to establish that their potential for energy utilization was low or remained low. Finally, the Carpenters have failed to establish that their billing history shows no prior abnormalities. Since the Carpenters have failed to meet their burden of proof to establish a prima facie case of overbilling, the Complaint must be denied.

In addition to the above, even if one were to conclude that the Carpenters had established a prima facie case of overbilling, and thereby shifted the burden of going forward to PPL, the evidence demonstrates that PPL rebutted any evidence produced by the Carpenters. Most importantly, PPL demonstrated that the meter installed at the Carpenters' house on September 1, 2017 was working at 100% average accuracy and was recording actual billed usage by the Carpenters. Tr. 76, 79; PPL Ex. 1; PPL Ex. 5; PPL Ex. 6. The Carpenters produced no evidence to rebut the meter testing evidence introduced by PPL. Since the Carpenters were unable to rebut the meter testing evidence, the Complaint would fail on this basis as well.

On a final note, although I excluded the documentary evidence proffered by the Carpenters upon valid legal objections raised by PPL's counsel, it bears mentioning that the outcome of this Initial Decision would not have been altered if the evidence had been entered into the record. In that regard, the Carpenters documentary evidence was offered for the proposition that friends and acquaintances of the Carpenters had similar sized homes with similar appliances and yet those people generally paid far less for their electric bills in PPL's service territory. Tr. 52 – 62. Even if the documents could demonstrate those facts, the documents do not tend to prove that the Carpenters were overbilled. The documents do nothing to show the

consumption habits of the other people, and they do nothing to show the consumption habits of the Carpenters.

CONCLUSION

The Complainant has failed to meet her burden of proof to establish a prima facie case of overbilling under the case precedent set forth in Waldron, supra. The Complainant has also failed to rebut the utility company's evidence that the meter in question at the service address was accurately recording actual electric usages during the timeframes in question in this case. As the Complainant 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 her, her 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. "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).
4. 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. Malcolm Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Repogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

5. 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).

6. Mrs. Carpenter has failed to satisfy her burden of proof in this proceeding to demonstrate that her 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 Caitlin Reed Carpenter on December 6, 2018 against PPL Electric Utilities Corporation at Docket Number F-2018-3006477 is dismissed.

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

Dated: August 14, 2019

_____/s/
Andrew M. Calvelli
Administrative Law Judge