

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Leininger	:	
	:	
v.	:	F-2018-3003226
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal complaint of Nancy Leininger (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent) on June 25, 2018, at Docket No. F-2018-3003226 for failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On June 25, 2018, Complainant filed a formal complaint alleging that her bills for electric utility service were high and disputing the accuracy of her meter.¹ As relief, Complainant requested that her bills be adjusted and lowered. On July 30, 2018, Duquesne Light filed its answer. Duquesne Light denied the material averments contained in the complaint and requested that the complaint be dismissed with prejudice.

¹ Complainant timely appealed the decision of the Commission's Bureau of Consumer Services (BCS) dismissing her informal complaint at BCS Case No. 3604056.

An initial call-in telephone hearing was held on September 28, 2018. Complainant appeared *pro se* and testified on her own behalf. Duquesne Light was represented by Shane Miller, Esquire. Duquesne Light presented one witness at the initial hearing, Margaret Mueller, and offered the following exhibits that were admitted into evidence: Exhibits A, E, F, H, K, M, N, and O. The record was closed upon receipt of the hearing transcript by interim order entered on October 11, 2018.

During the hearing, Duquesne Light had offered to perform a home energy audit to attempt to determine the consumption occurring at the service location and Complainant declined the offer. Tr. 27-31.

On January 18, 2019, the hearing record was re-opened for the purpose of developing a full and complete record. 52 Pa.Code § 5.483. The undersigned ordered that a home energy audit and testimony and exhibits related thereto were necessary for a complete record in this proceeding. The undersigned further ordered that a home energy audit must be scheduled between the parties on a date when Complainant can be present for the audit or make sure that Duquesne Light has access to the service location. After the home energy audit had been conducted and a report generated, Duquesne Light was ordered to inform the undersigned in writing so that a further hearing could be scheduled for the purpose of considering the home energy audit and providing each party with an opportunity to offer additional evidence related to the home energy audit.

A further call-in telephone hearing was held on June 28, 2019. Complainant appeared *pro se* and testified on her own behalf. She also offered the testimony of Daniel Ewing. Duquesne Light was represented by Shane Miller, Esquire. Duquesne Light presented one witness, Gregory Wozniak and offered the following exhibits that were admitted into evidence: Exhibits AA and EE.

The record was closed by interim order on July 26, 2019. The hearing record consists of the transcripts of the initial and further hearings and Respondent's Exhibits A, E, F, H, K, M, N, O, AA and EE. This case is now ready for a decision.

FINDINGS OF FACT

1. Complainant, Nancy Leininger, resides at 106 Bryson Road, Pittsburgh, Pennsylvania 15237 (service address) (Tr. 9).
2. Respondent, Duquesne Light, provides electric utility service to Complainant at her residence (Tr. 10).
3. Complainant's residence is a two-story, 3,300 square foot, brick colonial home with a finished attic (Tr. 33, 94; Exhibit EE, p. 2).
4. Complainant's residence has nine total rooms including three bedrooms, two full bathrooms and one-half bathroom, a porch room and a sunroom (Tr. 94, 116; Exhibit EE, p. 2).
5. Complainant's residence has two fireplaces, one in the basement and one in the porch room (Tr. 94; Exhibit EE, p. 2, 13).
6. Complainant's residence is heated with a natural gas forced air furnace, for the core of the home, and five electric baseboard heaters located in the finished attic, the porch room, the sunroom and basement (Tr. 94, 101, 116; Exhibit EE, p. 17).
7. The windows in Complainant's residence are at least 35 years old (Tr. 110).
8. On February 15, 2019, and February 20, 2019, Respondent's witness, Gregory Wozniak, performed an energy audit of Complainant's residence which included an air leakage test (Tr. 91-93; Exhibit EE, p. 12).
9. Complainant's residence contains 36 recessed can lighting fixtures which are a source of air leakage (Tr. 100; Exhibit EE, p. 12).

10. The fireplace damper in the porch room fireplace was opened when the home energy audit was performed. This opened fireplace damper is a source of air leakage (Tr. 100; Exhibit EE, p. 13).

11. Some of the upstairs windows in Complainant's residence were not locked during the energy audit (Tr. 100-101).

12. Complainant's residence contains the following electric appliances: two refrigerators, a double wall stove, a cook top, a microwave oven, a dishwasher, a clothes washer, a clothes dryer, exercise equipment, a sauna and a jacuzzi tub (Tr. 103; Exhibit EE, p. 23-24).

13. Complainant's account for electric service was established in her name on September 11, 2017 (Tr. 39; Exhibit AA).

13. Prior to September 11, 2017, Complainant's husband, Jeffrey Leininger, was the ratepayer of record for Complainant's residence and the account was enrolled in budget billing (Tr. 47-48, 67-69, 117; Exhibit M).

14. When Complainant established the account for service it was removed from budget billing (Tr. 67-69).

15. Complainant's bills for electric service are based on actual meter readings (Tr. 47, Exhibit AA).

16. Complainant lived with her father in the residence from September 2017 until June 23, 2018 (Tr. 24).

17. Complainant was not living in the residence in 2017 until she moved back in in September 2017 (Tr. 24, 109).

18. Between June 2015 and September 2017, Complainant lived in Chautauqua, NY. Complainant's residence was unoccupied at times, but her husband would stay there for business during this timeframe (Tr. 11, 15).

19. Complainant has resided in her residence alone since January 2019 (Tr. 111).

20. There was an analog meter installed to record electricity usage at Complainant's residence between October 9, 1997, and October 15, 2015 (Tr. 50).

21. On October 2, 1997, a meter test of the analog meter installed at Complainant's residence was found to be accurate (Tr. 56; Exhibit N).

22. On October 15, 2015, a smart meter was installed at Complainant's residence (Tr. 50).

23. The smart meter installed at Complainant's residence was tested for accuracy on August 27, 2015, and it was accurate. It tested at 100.02 percent on full load and 99.98 percent on light load for a weighted average of 100.01 (Tr. 52; Exhibit F).

24. On May 4, 2018, the smart meter installed at Complainant's residence was tested for accuracy a second time and found to be accurate (Tr. 52-54; Exhibit K).

DISCUSSION

Since Complainant is requesting affirmative relief from the Commission, she bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, she must demonstrate that Duquesne Light violated the Public Utility Code (the Code), 66 Pa.C.S. § 101 *et seq*, a Commission regulation or a Commission Order. This must be shown by a preponderance of the evidence. 66 Pa.C.S. § 701; Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by

the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600, 602 (Pa.Cmwh. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. Norfolk and Western Railway v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

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 that raises a high bill dispute. In order to determine whether a complainant has established a *prima facie* case where there are claims of unusually high bills, the Commission has declared that certain factors must be considered. While the accuracy of the meter is an important factor in resolving a billing dispute, it is not the sole criterion. *Id.* at 100. A complainant may establish a *prima facie* case by showing that: (1) the disputed bill was abnormally high when compared to prior usage patterns; and (2) his/her pattern of usage had not changed. *Id.* In looking at these criteria, one may consider 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. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980). In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).

In Thomas v. PECO, Docket No. C-2010-2187197 (Order entered November 15, 2011), the Commission reiterated its position as set forth in Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), which clarifies the Waldron rule provision that a complainant may 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).

In the instant case, Complainant has failed to produce evidence that her electric bills are abnormally high. Complainant has failed to establish a *prima facie* case. Complainant’s electric bill is based upon actual meter readings. The meter installed at the residence on October 15, 2015, tested accurately on August 27, 2015, and then again, for a second time, on May 4, 2018. *See* 52 Pa.Code § 57.20(c).

The record in this case was reopened for the purpose of obtaining more evidence about the residence and the possibility of electricity consumption at the residence. The evidence adduced at the second day of hearing revealed that, although Complainant did not occupy the residence for periods of time, the consumption recorded was accurate.

Complainant testified that the heat for the home was set at 50 degrees in the winter when it was unoccupied, and the air conditioning was set at 78 degrees in the summer when the home was unoccupied. Tr. 19. The home has five electric baseboard heaters, but the main core of the home is heated by natural gas. If the thermostat for the natural gas furnace were set at 50 degrees and the baseboard heaters that were operating were not set that low, it would cause those heaters to use a lot of electricity. In addition, the home energy audit performed on Complainant’s home revealed air leakage occurring in 36 recessed lighting fixtures, doors, windows, and an open fireplace damper in the porch room fireplace.

Consequently, Complainant has failed to meet her burden of proof. Accordingly, the complaint is dismissed in the ordering paragraphs to follow for failure to meet the burden of proof. 66 Pa.C.S. § 332(a).

CONCLUSIONS OF LAW

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

2. Complainant bears the burden of proving her entitlement to relief from the Commission. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means the duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest amount, than the evidence presented by the other side. 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).

4. In evaluating a “high bill” dispute, one may consider 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. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

5. Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a); Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Nancy Leininger filed on June 25, 2018, at Docket No. F-2018-3003226, against Duquesne Light Company, is dismissed.

2. That the Docket in this proceeding, Docket No. F-2018-3003226, be marked closed.

Date: October 9, 2019

/s/
Mark A. Hoyer
Administrative Law Judge