

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nathan Schiery	:	
	:	
v.	:	C-2019-3010507
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Nathan Schiery against PECO Energy Company because the Complainant was unable to meet his burden of proving that he is not responsible for his past due balance.

**HISTORY OF THE PROCEEDING**

On June 12, 2019, Nathan Schiery (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating that “[i]ncorrect charges are on my bill.” Under the “requested relief” section, the Complainant explained that he is disputing his responsibility for his past due balance.

On June 19, 2019, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Hearing Notice dated June 21, 2019, a hearing was scheduled for August 5, 2019, at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) Eranda Vero.

ALJ Vero issued a Prehearing Order on June 26, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Hearing Cancellation/Reschedule Notice dated August 5, 2019, the hearing was rescheduled for August 26, 2019 at 10:00 a.m.

By Hearing Cancellation/Reschedule Notice dated August 6, 2019, the hearing was rescheduled for September 30, 2019 at 10:00 a.m.

On September 13, 2019, ALJ Vero issued Prehearing Order #2. Prehearing Order #2 again directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Judge Change Notice dated September 20, 2019, the matter was reassigned from ALJ Vero to ALJ Marta Guhl.

By Order dated September 27, 2019, ALJ Guhl granted the Respondent's Motion for Continuance of the September 30, 2019, hearing.

By Judge Change Notice/Hearing Cancellation/Reschedule Notice dated September 27, 2019, the hearing was rescheduled for November 20, 2019, at 10:00 a.m. and reassigned from ALJ Guhl back to ALJ Vero.

On October 29, 2019, ALJ Vero issued Prehearing Order #3. Prehearing Order #3 again directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on November 20, 2019. Since ALJ Vero was unavailable on the date of the hearing, I presided over the matter. Complainant appeared *pro se* telephonically<sup>1</sup> and testified. The Respondent appeared and was represented by Edward T. Fisher, Esq., who presented the testimony of the following witnesses: Aaron Saunder, a PECO High Bill Technician; and Renee Tarpley, a PECO Senior Regulatory Assessor. The Respondent offered eight exhibits which were all admitted into the record.

The record consists of a 61-page transcript and eight exhibits. The record closed on December 26, 2019 upon my receipt of the hearing transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Nathan Schiery.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant's Complaint concerns electric service at 243 Chestnut Street, 2<sup>nd</sup> Floor, Pottstown, PA 19464 (service address). Tr. 13.
4. The Complainant previously lived at the service address with his brother. Tr. 14.

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<sup>1</sup> Prior to the November 20, 2019, evidentiary hearing, ALJ Vero granted the Complainant permission to appear telephonically for the hearing.

5. As of September 28, 2019, the Complainant no longer lives at the service address and is no longer a customer of PECO Energy Company. Tr. 7-8, 50.

6. On February 13, 2019, PECO issued the Complainant an estimated electric bill for \$347.45 for current charges for the period January 18, 2019 through February 12, 2019. Tr. 41; PECO Exh. 1.

7. PECO estimated that the Complainant used 2,396 kwh of electricity between January 18, 2019 and February 12, 2019. PECO Exh. 1.

8. PECO based the estimated usage on prior usage at the service address during the same time period. Tr. 41.

9. The February 13, 2019 bill was the only bill PECO estimated for the Complainant's account. Tr. 42.

10. On April 2, 2019, the Complainant contacted PECO regarding his billing concerns and a possible meter mix-up. PECO Exh. 5.

11. On April 9, 2019, a PECO technician visited the service address to investigate the Complainant's concerns. Tr. 34; PECO Exh. 5.

12. On April 9, 2019, a PECO technician discovered a meter mix-up at the service address. Tr. 16, 34, PECO Exh. 4.

13. The PECO technician corrected the meter mix up the same day it was discovered. Tr. 17, 27, 53.

14. The PECO technician confirmed that foreign load did not exist at the service address. Tr. 36; PECO Exh. 3.

15. After PECO corrected the meters, the Complainant's bills returned to what he considered normal. Tr. 17-18.

16. Following the discovery of the meter mix up, PECO determined that between January 18, 2019 and February 19, 2019, the Complainant actually used 1,038 kwh, or \$143.50 of electricity. PECO Exh. 2.

17. PECO's estimated bill resulted in the Complainant being overcharged for the period January 18, 2019 through February 12, 2019.

18. Between March 20, 2015 and March 20, 2019, PECO billed the Complainant \$3,942.26 for 29,205 kwh on the wrong meter. PECO Exh. 2.

19. PECO determined that between March 20, 2015 and March 20, 2019, the Complainant actually used 43,640 kwh or \$5,857.95 worth of electricity. PECO Exh. 2.

20. PECO determined that it underbilled the Complainant \$1,915.69 (\$5,857.95 correct billing - \$3,942.26 actual billing = \$1,915.69) for the period March 20, 2015 through March 20, 2019. Tr. 44; PECO Exh. 2.

21. PECO determined not to bill the Complainant for the previously underbilled usage. Tr. 44.

22. As a result of the underbilling and the decision not to bill the Complainant for the previously underbilled usage, PECO did not make any adjustments to the Complainant's then outstanding balance. Tr. 55.

23. On May 1, 2019, PECO issued a letter to the Complainant verifying the meter mix up and also informing him that he had been billed on the wrong meter, that he had been underbilled for the period April 19, 2015 through March 20, 2019, and that PECO would not bill him for the previously underbilled service. Tr. 18-19, 37; PECO Exh. 5.

24. PECO further advised the Complainant in the May 1, 2019 letter that his outstanding balance as of that date totaled \$483.41. Tr. 18-19; PECO Exh. 5.

25. PECO billed the Complainant as follows after the May 1, 2019 letter:

<b>Billing Date</b>	<b>Billing Period</b>	<b>kwh Used</b>	<b>Current Charges</b>
5/20/2019	4/18/19 - 5/17/19	177	\$29.51
6/19/2019	5/17/19 - 6/18/19	227	\$37.50
7/19/2019	6/18/19 - 7/18/19	362	\$56.72
8/19/2019	7/18/19 - 8/16/19	476	\$71.44

PECO Exh. 1.

26. Between May 1, 2019 and August 19, 2019, the Complainant made the following three payments towards his PECO bills totaling \$127.74: 5/22/19 Payment of \$41.23; 6/17/19 Payment of \$29.51; and 7/24/19 Payment of \$57.00. PECO Exh. 1.

27. PECO never billed the Complainant for the \$1,915.69 underbilling. Tr. 37.

28. On August 2, 2019, PECO completed a field visit to determine the Complainant's potential for billed usage and whether his meter was registering his usage correctly. Tr. 48; PECO Exh. 3.

29. PECO determined that the Complainant had the potential for the usage for which he was billed, and that no adjustment to his bills was warranted. Tr. 48; PECO Exh. 3.

30. The Complainant's final bill is \$493.78. Tr. 50-51; PECO Exh. 1.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 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.A. § 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).

The Complainant asserted that his outstanding balance is incorrect because PECO issued him an estimated bill in February 2019 that he believed to be incorrect. The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), 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.

Consistent with the Commission's holding in *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; *see also Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011)(holding that limiting the *Waldron* Rule to the three factors is too limiting).

Commission regulations at 52 Pa.Code § 56.14 allow utilities to bill customers for previously unbilled public utility service that accrued within the past 4 years resulting from, in pertinent part, public utility billing error.

During the hearing, the Complainant asserted that his outstanding balance is incorrect because of an estimated bill he received from PECO in February 2019.

In response, PECO acknowledged that it issued the Complainant an estimated electric bill for \$347.45 for current charges for the period January 18, 2019 through February 12, 2019. Tr. 41; PECO Exh. 1. PECO estimated, based on prior usage at the service address, that the Complainant used 2,396 kwh of electricity between January 18, 2019 and February 12, 2019. Tr. 41; PECO Exh. 1. The February 13, 2019 bill was the only bill PECO estimated for the Complainant's account. Tr. 42.

PECO noted that the Complainant raised billing concerns and a possible meter mix-up on April 2, 2019, and that a PECO technician visited the service address to investigate the Complainant's concerns on April 9, 2019. Tr. 34; PECO Exh. 5. At that time, the PECO technician discovered a meter mix-up at the service address. Tr. 16, 34, PECO Exh. 4. The PECO technician corrected the meter mix up the same day it was discovered and confirmed that foreign load did not exist at the service address. Tr. 17, 27, 36, 53.; PECO Exh. 3. After PECO corrected the meters, the Complainant's bills returned to what he considered normal. Tr. 17-18.

Following the discovery of the meter mix up, PECO determined that between January 18, 2019 and February 19, 2019, the Complainant actually used 1,038 kwh, or \$143.50 of electricity. PECO Exh. 2. PECO's estimated bill resulted in the Complainant being overcharged for the period January 18, 2019 through February 12, 2019. However, PECO also determined that between March 20, 2015 and March 20, 2019, PECO billed the Complainant \$3,942.26 for 29,205 kwh on the wrong meter when he had actually used 43,640 kwh or \$5,857.95 worth of electricity. PECO Exh. 2. PECO determined that it underbilled the Complainant \$1,915.69 (\$5,857.95 correct billing - \$3,942.26 actual billing = \$1,915.69) for the period March 20, 2015 through March 20, 2019. Tr. 44; PECO Exh. 2. PECO determined not to bill the Complainant for the previously underbilled usage. Tr. 44. Since PECO decided not to bill the Complainant for the previously underbilled usage, PECO did not make any adjustments to the Complainant's then outstanding balance. Tr. 55.

On May 1, 2019, PECO issued a letter to the Complainant verifying the meter mix up and also informing him that he had been billed on the wrong meter, that he had been underbilled for the period April 19, 2015 through March 20, 2019, and that PECO would not bill him for the

previously underbilled service. Tr. 18-19, 37; PECO Exh. 5. PECO further advised the Complainant in the May 1, 2019 letter that his then outstanding balance totaled \$483.41. Tr. 18-19; PECO Exh. 5.

Following the issuance of the May 1, 2019 letter, PECO billed the Complainant as follows for his service:

<b>Billing Date</b>	<b>Billing Period</b>	<b>kwh Used</b>	<b>Current Charges</b>
5/20/2019	4/18/19 - 5/17/19	177	\$29.51
6/19/2019	5/17/19 - 6/18/19	227	\$37.50
7/19/2019	6/18/19 - 7/18/19	362	\$56.72
8/19/2019	7/18/19 - 8/16/19	476	\$71.44

PECO Exh. 1. Between May 1, 2019 and August 19, 2019, the Complainant made the following three payments towards his PECO bills totaling \$127.74: a 5/22/19 Payment of \$41.23; a 6/17/19 Payment of \$29.51; and a 7/24/19 Payment of \$57.00. PECO Exh. 1.

Lastly, PECO indicated that on August 2, 2019, a PECO technician completed a field visit to determine the Complainant’s potential for billed usage and whether his meter was registering his usage correctly. Tr. 48; PECO Exh. 3. The PECO technician determined that the Complainant had the potential for the usage for which he was billed, and that no adjustment to his bills was warranted. Tr. 48; PECO Exh. 3. The Complainant’s final bill totaled \$493.78. Tr. 50-51; PECO Exh. 1.

The record demonstrates that PECO overcharged the Complainant with the estimated bill issued on February 13, 2019, which covered the period January 18, 2019 through February 12, 2019. However, the record also demonstrates that PECO underbilled the Complainant \$1,915.69 for the four-year period prior to the issuance of that bill. PECO is permitted by 52 Pa.Code § 56.14 to bill the Complainant for the \$1,915.69 in unbilled services. However, PECO opted to not bill the Complainant for the underbilled charges that occurred over the preceding four-year period. Therefore, while the Complainant is correct that PECO overcharged him for

the single billing period at issue, and while the record demonstrates that his outstanding balance is not correct since it does not reflect his previously unbilled service, he has not suffered any loss in this situation since PECO ultimately forgave the sizeable debt for which it could have charged him. Moreover, the record demonstrates that the Complainant's outstanding balance was the result of not fully paying his bills, and not due to the February 13, 2019 estimated bill.

Accordingly, while the Complainant is correct that the estimated bill he received in February 2019 was incorrect, since he has not demonstrated that he is not responsible for his past due balance, his Complaint must be denied.

### 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. 66 Pa.C.S. § 332(a).

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. In establishing whether a "high bill" has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider 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 Co.*, 54 Pa. PUC 98, 100 (1980).

5. The Complainant met his burden of demonstrating that the estimated bill issued to him on February 13, 2019 was incorrect.

6. Commission regulations at 52 Pa.Code § 56.14 allow utilities to bill customers for previously unbilled public utility service that accrued within the past 4 years resulting from, in pertinent part, public utility billing error.

7. The Complainant failed to meet his burden of demonstrating that he is not responsible for his past due balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Nathan Schiery against PECO Energy Company at Docket No. C-2019-3010507 is denied; and
2. That the record at C-2019-3010507 be marked closed.

Date: March 24, 2020

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/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**C-2019-3010507 - NATHAN SCHIERY v. PECO ENERGY COMPANY**

*Revised 09/27/19*

NATHAN DALE SCHIERY  
243 CHESTNUT STREET  
POTTSTOWN PA 19464  
610.761.7750  
**ACCEPTS E-SERVICE**

EDWARD FISHER ESQUIRE  
GRIESING LAW LLC  
1880 JOHN F KENNEDY BLVD STE 1800  
PHILADELPHIA PA 19103  
215.501.7846  
**ACCEPTS E-SERVICE**