

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barbara Davis	:	
	:	
v.	:	C-2019-3011002
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the complaint of an electric service customer, finding that the Complainant did not meet her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement or a reinstatement and extension of her prior one. This decision also finds that the Complainant did not meet her burden of proving that she was overbilled by the company in the winter months.

**HISTORY OF THE PROCEEDING**

On June 18, 2019, Barbara Davis (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Met-Ed) indicating that Met-Ed is threatening to shut off or has already shut off her service. As relief, Ms. Davis requested a new Commission payment arrangement, also stating that she is not sure her winter bills are correct since they are high.

The formal complaint is an appeal from a decision of the Bureau of Consumer Services (BCS) at Case No. 3700696, which dismissed the informal complaint. The formal complaint also appears to be a timely appeal from this BCS decision since BCS closed Case No. 3700696 on June 5, 2019 and Complainant filed the within formal complaint thirteen (13) days thereafter on June 18, 2019.<sup>1</sup>

On July 11, 2019, Met-Ed filed an answer admitting that it had threatened to terminate Ms. Davis' service, but that termination was being held in abeyance pending resolution of the complaint. Met-Ed denied all other material averments in the complaint and averred that Ms. Davis' account balance was \$15,779.76. Met-Ed requested that the complaint be dismissed.

By hearing notice dated July 12, 2019, an initial telephonic hearing was scheduled for September 10, 2019. Complainant requested a continuance of this hearing which, over no objection of Respondent, was granted. By hearing notice dated September 3, 2019, the initial hearing was rescheduled for November 5, 2019. By agreement of the parties, this hearing was continued. By hearing notice dated October 23, 2019, the initial telephonic hearing was rescheduled for January 28, 2020.

A Prehearing Order was served on the parties on January 6, 2020, addressing, inter alia, various procedures applicable to the hearing.

The initial telephonic hearing was held as scheduled on January 28, 2020. Ms. Davis appeared *pro se* and testified on her own behalf. Ms. Davis sponsored no exhibits for the record. Ms. Margaret A. Morris, Esquire, appeared on behalf of Met-Ed and presented the

---

<sup>1</sup> See, Respondent's Exhibit No. 8 noting that BCS Case No. 3700696 was opened on May 10, 2019 and closed on June 5, 2019. Although the within formal complaint is docketed with a "C" docket, which is the docket letter used for new complaints that are not timely BCS appeals, as noted above, Complainant filed the within formal complaint within twenty (20) days of the date the informal complaint was closed, which is the time period to initiate a request for review of the BCS decision. *See*, 52 Pa. Code § 56.172(a).

However, it also appears that Complainant directly filed her formal complaint with the Secretary's Bureau instead of following the process in Section 56.172 in which BCS would send Complainant a formal complaint form noting the BCS decision case number. In any event, whether the within formal complaint is a timely BCS appeal does not impact the decision herein.

testimony of Laurie Parker. Ms. Parker sponsored twelve exhibits, Respondent's Exhibits 1–8 and 10-13, all of which were admitted into the record.

During the hearing, the presiding officer requested that Met-Ed submit an exhibit regarding the results of its most recent meter testing, which it submitted on January 31, 2020. Since Ms. Davis did not object to the admission of this exhibit, Respondent's Exhibit 14 will be admitted into the record through this decision.

The record closed on February 19, 2020, when the 79-page hearing transcript was filed with the Commission.<sup>2</sup> For the reasons discussed below, the complaint will be denied.

#### FINDINGS OF FACT

1. The Complainant is Barbara Davis.
2. The Respondent is Metropolitan Edison Company.
3. Ms. Davis receives service from Met-Ed at 429 Saw Creek Estates, Bushkill, Pennsylvania (service address).
4. Ms. Davis resides at the service address with her adult son, Nadir. (Tr. 11, 18).
5. Ms. Davis has another adult son, Zilon, who resided at the service address until he moved out around October/November 2019. (Tr. 16, 18).
6. Ms. Davis has a brother who resides at the service address three or four days a week; he does not receive mail at the service address. (Tr. 11, 13).
7. Ms. Davis' gross income is \$3,362 per month. (Tr. 22-24).

---

<sup>2</sup> Subsequently, by Judge Change Notice, the undersigned administrative law judge was assigned this matter.

8. Ms. Davis' son, Nadir, does not provide the household with any income. (Tr. 12).
9. Ms. Davis' brother does not provide the household with any income. (Tr. 13).
10. Ms. Laurie Parker is an advanced customer service specialist whose responsibilities include reviewing and investigating complaints against Met-Ed. (Tr. 27, 28).
11. On August 1, 2017, Ms. Davis filed an informal complaint with BCS at BCS No. 3549657, seeking a payment arrangement. (Respondent's Exhibit 6).
12. On August 15, 2017, at BCS No. 3549657, BCS granted Ms. Davis a level 2 payment arrangement.<sup>3</sup> (Respondent's Exhibit 6).
13. The 2017 BCS payment arrangement was based upon a gross household monthly income of \$3,300 for a household of three individuals. (Respondent's Exhibit 6).
14. Ms. Davis defaulted on the 2017 Commission payment arrangement issued at BCS No. 3549657 and the balance has not been satisfied. (Tr. 42).
15. Respondent's Exhibit 2 is an account statement for the service address from January 31, 2018 to January 9, 2020. (Respondent's Exhibit 2).
16. Ms. Davis' outstanding account balance as of January 9, 2020, was \$16,477. (Respondent's Exhibit 2, p. 2).
17. All of the appliances in Ms. Davis' home are electric. (Tr. 14).

---

<sup>3</sup> A level 2 customer is a household with a gross monthly income exceeding 150% and not more than 250% of the Federal poverty level and is provided with a repayment period of not more than 36 months. 66 Pa.C.S. § 1405(b)(2).

18. Ms. Davis heats her home using electric baseboard heating. (Tr. 15, 17).
19. Respondent's Exhibit 11 is a 24-month usage comparison report for the service address beginning February 2018 and ending January 2020. (Respondent's Exhibit 11).
20. Respondent's Exhibit 12 is a 48-month usage comparison report for the service address beginning July 2015 and ending June 2019. (Respondent's Exhibit 12).
21. The usage reports show that the usage at the service address increased during the winter/colder months. (Respondent's Exhibits 11, 12).
22. The usage in the winter months reflects electric baseboard heating. (Tr. 52).
23. Respondent's Exhibit 13 is the pre-install meter test results for meter 5002038496. (Respondent's Exhibit 13).
24. On September 26, 2018, prior to installation at the service address, meter 5002038496 tested at 100.06% light load, 100.03% full load, and the weighted average was 100.04%. (Respondent's Exhibit 13, p. 1).
25. Meter 5002038496 was installed at the service address on October 15, 2018. (Respondent's Exhibit 2, p. 2).
26. On June 27, 2019, meter 5002038496 was removed for testing, and tested at 100.03% light load, 100% full load, and the weighted average was 100.01%. (Tr. 55; Respondent's Exhibit 13, p. 2).
27. Meter 5002192260 was installed at the service address on June 28, 2019, and is currently installed at the service address. (Tr. 55; Respondent's Exhibit 2, p. 2).

28. On April 2, 2019, prior to installation at the service address, meter 5002192260 tested at 100.02% light load, 100.03% full load, and the weighted average was 100.03%. (Respondent's Exhibit 14).

### 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). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence 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 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Additionally, this decision must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

In this matter, Ms. Davis avers that she thinks she is being overbilled in the winter, and she requests a new Commission-issued payment arrangement. Thus, as the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); Se-Ling Hosiery v. Margulies, *supra*.

#### Billing

First, Ms. Davis alleges that she is being overbilled in the winter. 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 Co., 54 Pa. PUC 98 (1980) (Waldron); Repogle v. Pa. Electric Co., 54 Pa. PUC 528 (1980).

In Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001), 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.

Id. at 1219-1220 (footnote omitted) (emphasis in original). In Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and 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 5 (emphasis in original).

At the hearing, Ms. Davis testified that she resides at the service address with her son, Nadir. Ms. Davis' brother resides at the service address three to four times a week. Ms. Davis' other son, Zilon, resided at the service address until he moved out around October or November 2019. The home at the service address was built around 1987 and has electric baseboard heating throughout the house. Every appliance in the home uses electricity. Ms. Davis alleged that her bills in the winter were too high, stating that her winter bills are around \$1,000, and sometimes more. (Tr. 13).

In response to Ms. Davis' allegations, Met-Ed presented the testimony of Laurie Parker, who explained that the usage comparison reports show that usage and billing at the service address increased during the winter/colder months. Ms. Parker testified that Ms. Davis' usage and billing in the winter is consistent with a home that uses baseboard heating. Ms. Parker additionally testified that when the complaint was filed in this matter, the meter servicing the service address at the time, meter 5002038496, was removed and tested, and that the meter tested within the standards of accuracy set by the Commission. The meter that now serves the service address, meter 5002192260, was tested before it was installed and also tested within the Commission's standards of accuracy.

The Commission's regulations address wathour meter testing as follows:

**§ 57.20. Wathour meter testing.**

(c) No wathour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, periodic or other tests, a wathour meter is found to exceed these limits, it shall be adjusted or removed from service.

52 Pa. Code § 57.20(c).

Both the meter that now serves the service address, and the meter that served the service address until it was removed for testing on June 27, 2019, have been shown to be accurate within the 2.0% margin of error permitted within the Commission's regulatory requirements. However, pursuant to Waldron, the results of a meter test are not controlling, and

can be overcome through other circumstantial evidence which would support a finding that the metered usage exceeded the actual usage.

However, Ms. Davis did not provide any circumstantial evidence that could lead to a finding that the metered usage exceeded the actual usage of the home at the service address. For example, Ms. Davis did not claim that her bills received during a particular winter were high when compared to another winter. Rather, Ms. Davis made a general argument that all of the bills she receives during the winter are too high, as they average around \$1,000 per month.

Further, the usage comparison reports reveal that the bills in the winter/colder months are higher compared to the bills in the warmer months, and Ms. Davis did not present any evidence to show that her home is not capable of using the electricity that has been metered during these colder months. The home was built in 1987 and is heated with electric baseboard heating. Met-Ed's witness, Ms. Parker, confirmed that the usage at the service address is consistent with a home that uses baseboard heating to heat the home in the winter. Naturally, as temperatures decrease during the winter/colder months, more electricity is expended to heat the home. Furthermore, Ms. Davis testified that every appliance in her home uses electricity. As Ms. Davis' brother resides at the home three to four days a week, there are three people who are capable of using the electrical appliances at the home during this time.

Therefore, in light of the accuracy of the tested meters, and the credible testimony of Ms. Parker, the usage and billing at the service address is consistent with a home that uses electric baseboard heating in the winter and not evident of any overbilling. Further, Ms. Davis did not present any circumstantial evidence under Waldron to lead to a finding to the contrary. Thus, Ms. Davis has not met her burden of proving Respondent overbilled her in the winter months. Therefore, Ms. Davis' complaint alleging overbilling will be denied.

#### Payment Arrangement

Second, Ms. Davis requested a new Commission payment arrangement. Requests for payment arrangements are governed by the Responsible Utility Customer Protection Act, 66

Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether it may issue a payment arrangement and the number of payments arrangements it may issue a customer. See, 66 Pa.C.S. § 1405(a) (providing that the Commission is authorized to investigate and establish payment arrangements between a public utility and customers within the limits established by Chapter 14).

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement where the customer has experienced a change of income, as defined by Chapter 14. Specifically, this limitation provides:

**(d) Number of payment arrangements.**--Absent *a change in income*, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d) (emphasis added). Further, “change in income” is defined as, “[a] decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403. “Household income” includes the combined gross income of all adults in a residential household who benefit from the public utility service. *Id.*

Ms. Davis was granted a payment arrangement in 2017 at BCS Case No. 3549657. This payment arrangement became a final Commission payment arrangement when Ms. Davis did not file an appeal of the BCS decision.<sup>4</sup> Ms. Davis defaulted upon this payment arrangement. Thus, Ms. Davis is now seeking a second Commission-issued payment arrangement. The Commission may grant Ms. Davis a second payment arrangement only if Ms.

---

<sup>4</sup> (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

Davis has experienced a change in income since the 2017 payment arrangement was issued. 66 Pa.C.S. § 1405(d).

Ms. Davis testified that her gross monthly household income is \$3,362 for a household of two.<sup>5</sup> Ms. Davis' gross monthly household income reported at BCS No. 3549657 was \$3,300 for a household of three. Thus, Ms. Davis' gross monthly household income has increased, not decreased, following the issuance of her 2017 Commission payment arrangement. Chapter 14 requires that the customer experience some decrease in household income in order to satisfy the definition of "change in income" 66 Pa.C.S. § 1403.

Therefore, Ms. Davis has not met her burden of proving that she experienced a change of income pursuant to Section 1405(d). Accordingly, I am constrained to conclude that Complainant is not eligible for a second Commission-issued payment arrangement.

Next, although the Complainant is not eligible for a second Commission-issued payment arrangement, a provision of Chapter 14 provides that if the payment-defaulted customer establishes that such payment default was a result of a "significant change in circumstance," the Commission is authorized to reinstate, and extend the remaining term for a period of six months, the previously Commission-ordered payment arrangement. Specifically, this section provides:

**(e) Extension of payment arrangements.**--If the customer defaults on a payment arrangement . . . as a result of a *significant change in circumstance*, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months . . . .

66 Pa.C.S. § 1405(e) (emphasis added).

Further, "significant change in circumstance" is defined as a customer with household income less than 300% of the Federal poverty level and who meets any of the following four criteria: (1) the onset of a chronic or acute illness resulting in a significant loss in

---

<sup>5</sup> Ms. Davis' brother, who resides at the service address three to four times a week, but does not receive mail at the service address, is not included herein as a household member. Nonetheless, even if her brother were included, this does not affect the outcome that Ms. Davis has not experienced a change of income.

the customer's household income; (2) catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) loss of the customer's residence; or (4) an increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

While Ms. Davis' gross monthly household income of \$3,362 for a household of two places her less than 300% of the Federal poverty level,<sup>6</sup> none of the above four criteria are applicable. Ms. Davis presented no evidence regarding the second, third, and fourth criteria—namely, catastrophic damage to her residence, loss of her residence, or an increase in the number of dependents in her household. As to the first criteria—namely, the onset of a chronic or acute illness resulting in a significant loss in the customer's household income, Ms. Davis did testify that her husband died in February of 2017 and she suffered strokes prior to her husband's passing. (Tr. 8, 10-11). However, as her Commission-issued payment arrangement was awarded in August of 2017, and the events Ms. Davis described occurred prior to her Commission-issued payment arrangement, her payment default was not a result of these events and did not result in a significant loss of the household income.

Therefore, Ms. Davis has not met her burden of proving that she defaulted on her prior Commission payment arrangement as a result of a significant change in circumstance pursuant to Section 1405(e). Accordingly, I am constrained to conclude that Ms. Davis is not eligible for a reinstatement and extension of her 2017 BCS payment arrangement.

#### CONCLUSIONS OF LAW

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

---

<sup>6</sup> See, Fed. Register, Vol. 85, No. 12 at 3060 (Jan. 17, 2020), also available at: <https://aspe.hhs.gov/poverty> (providing that a gross monthly income of \$4,310 for a household of two is 300% of the Federal poverty guidelines).

2. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

3. 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); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

4. No wathour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, periodic or other tests, a wathour meter is found to exceed these limits, it shall be adjusted or removed from service. 52 Pa. Code § 57.20(c).

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 or her case 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, 1219-20 (Pa.Cmwlt. 2001).

6. The Complainant has not met her burden of proving that Respondent has overbilled her in violation of the Public Utility Code, a Commission regulation or order, or a Commission-approved tariff.

7. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

8. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

9. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a Commission order or decision. 66 Pa.C.S. § 1405(d).

10. If a customer defaults on a Commission-issued payment arrangement as a result of a significant change in circumstance, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. 66 Pa.C.S. § 1405(e).

11. The Complainant has not met her burden of proving that she is eligible for a second Commission-issued payment arrangement, or for reinstatement and extension of her first Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Respondent's Exhibit 14 is admitted into the record in this proceeding.
2. That the formal complaint filed by Barbara Davis against Metropolitan Edison Company at Docket No. C-2019-3011002 is denied.
3. That the docket at Docket No. C-2019-3011002 be marked closed.

Date: May 22, 2020

\_\_\_\_\_  
/s/  
Benjamin J. Myers  
Administrative Law Judge