

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tamaqua Crawford	:	
	:	
v.	:	C-2019-3012358
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Tamaqua Crawford’s formal Complaint against PECO Energy Company at Docket No. C-2019-3012358 for failure to carry her burden of proving that her bills from PECO were abnormally high during the heating season.

HISTORY OF THE PROCEEDING

On August 14, 2019, Tamaqua Crawford (Ms. Crawford or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2019-3012358 alleging that there are incorrect charges on her bills from PECO. In particular, Ms. Crawford alleged that her electricity bills are too high considering that her living space is only 800 square feet. As relief, Ms. Crawford requested the Commission’s assistance in correcting her bills.

On August 27, 2019, Respondent filed an Answer denying the material allegations of fact in the Complaint.

A Hearing Notice dated September 3, 2019, and mailed to the Complainant's P.O. Box address, was returned as undeliverable by the United States Postal Service.

On September 23, 2019, a second Hearing Notice was mailed to the Complainant's P.O. Box and Service Address. The Hearing Notice notified the parties that an initial hearing was scheduled in this matter for October 16, 2019, at 10:00 a.m.

A Prehearing Order was issued on October 4, 2019, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On October 15, 2019, I received, via facsimile, a written request from Ms. Crawford for a continuance of the scheduled hearing. As reason for requesting the continuance, Ms. Crawford cited a doctor's appointment scheduled for the day of the hearing. Attached to the request was a copy of a doctor's appointment card listing both October 16, 2019 and November 14, 2019 as appointment dates.

Ms. Crawford's request was granted for good cause shown. Due to time constraints, the parties were informed orally that Ms. Crawford's request was granted and that the evidentiary hearing scheduled for October 16, 2019 would be cancelled and rescheduled for a later date.

A Hearing Notice dated October 18, 2019, notified the parties that the initial hearing in this matter was rescheduled for October 31, 2019, at 10:00 a.m.

On October 29, 2019, I received, via facsimile, a second request from Ms. Crawford for the continuance of the scheduled hearing. In her communication, Ms. Crawford cited her medical condition as ground for requesting the continuance of the hearing and provided a list with her future doctor appointment dates. Because the date of the hearing, October 31, 2019, did not appear in the list of Ms. Crawford's appointments, I found that she had failed to show good cause for her request. By Order dated October 29, 2019, I denied Ms. Crawford's

request for continuance but allowed her to attend the hearing via telephone in order to accommodate any medical hardships she might be experiencing at the time.¹

The initial hearing convened as scheduled on October 31, 2019. Ms. Crawford appeared *pro se* via telephone and testified in support of the Complaint. Edward T. Fisher, Esquire, appeared on behalf of Respondent, and presented the testimony of Dave Voigtsberger, who is a high bill investigator for PECO, and Renee Tarpley, who is a senior regulatory assessor for the Respondent.

At the hearing, Ms. Crawford stated that she had not received PECO's proposed exhibits and requested additional time to hire an independent contractor to test her electric meter for accuracy. Tr. 33-34, 107. PECO insisted that the exhibits were mailed to Ms. Crawford's residence via FedEx and agreed only to an instrument test of its meter by a third party. Tr. 35-36, 114-15. I instructed PECO to submit, as a late-filed exhibit, the FedEx invoice related to delivery of the proposed exhibits to Ms. Crawford along with a more legible copy of PECO Exhibit 3. Tr. 36, 101-105. I also instructed PECO to mail to Ms. Crawford courtesy copies of its proposed exhibits. Tr. 35-40.

Ms. Crawford was instructed that she had two weeks, or until November 14, 2019, to file written objections to PECO's proposed exhibits and to submit the name of her contractor and the date of the proposed meter test.

On November 5, 2019, I received a communication from Ms. Crawford informing me that she had not received the proposed exhibits from PECO. She did not provide any information with regard to the independent contractor for the proposed meter test. As it was not clear whether Ms. Crawford had served a copy of the letter upon the Respondent's counsel, I sent scanned copies of Ms. Crawford's communication to PECO's counsel, Mr. Fisher.

Also on November 5, 2019, I received PECO's late-filed Exhibit 7, which is the FedEx invoice for the overnight delivery of the proposed exhibits to the Complainant's residence

¹ Due to time constraints, Ms. Crawford was informed orally that her request was denied.

on or about October 24, 2019. PECO also submitted the courtesy package of exhibits whose cover letters evidenced service to Complainant's P.O. Box address via First-Class mail and to her residence address via FedEx and First-Class mail.

On November 8, 2019, I received a communication from PECO responding to Ms. Crawford's allegations regarding the exhibits and reiterating its steps for mailing the exhibits to Ms. Crawford.

On January 6, 2020, I received a communication from Ms. Crawford with instructions regarding the mailing and/or service of documents to her. This communication does not mention whether the Complainant received PECO's proposed exhibits.

The record closed upon receipt of my copy of the hearing transcript on January 21, 2020. PECO's Exhibits 1-7 are admitted into the record in this matter consistent with the discussion below.

FINDINGS OF FACT

1. The Complainant is Tamaqua Crawford, who resides at 5785 Lancaster Avenue, Apartment upstairs, Malvern, PA 19355 (Service Address). Tr. 10.
2. The Respondent is PECO Energy Company.
3. Ms. Crawford initiated electric service at the Service Address on March 10, 2018. Tr. 87, PECO Exhibit 1.
4. Ms. Crawford is the sole occupant of the Service Address. Tr. 14, 17-18.
5. The Service Address is a one-bedroom apartment that comprises a space of 800 square feet. Tr. 13-14.

6. The Service Address is in an old building with poor insulation. Tr. 22-23.
7. When Ms. Crawford first moved into the Service Address, she was warned that her electricity bill would be high. Tr. 13.
8. At the advice of her landlord, Ms. Crawford replaced 27 old light bulbs with LED lights in order to reduce her electricity consumption. Tr. 13.
9. On May 16, 2018, Mr. Voigtsberger testified that he visited the Service Address to conduct a high bill field investigation. Tr. 43, PECO Exhibit 3.
10. As part of his investigation, Mr. Voigtsberger verified that Complainant was being billed from the correct meter and that the meter reading matched the readings the Complainant was billed for. Tr. 43, PECO Exhibit 3.
11. Mr. Voigtsberger inspected the meter and verified that there was no foreign load on Ms. Crawford's line. Tr. 45, PECO Exhibit 3.
12. Mr. Voigtsberger tested the electric meter using a passing load test with the electric water heater and verified that the meter was accurate. Tr. 44-45, PECO Exhibit 3.
13. While at the Service Address, Mr. Voigtsberger performed an appliance analysis of all the appliances that he saw at the Service Address, including: one top-bottom refrigerator, one cooking range, one coffee maker, one microwave, one heat pump, one electric water heater, one TV, one cable box, one VCR, and lighting for six rooms. Tr. 45, 54-55, 63-64, 94, PECO Exhibit 5.
14. Based on the electric appliances found in Ms. Crawford's apartment, the Complainant had the potential to use 5,103 kWh per month during the heating season. Tr. 53, PECO Exhibit 3.

15. Ms. Crawford's electricity usage during the colder months ranged between 513 kWh and 3,714 kWh. PECO Exhibit 1.

16. The appliance analysis justified the usage recorded and billed for by PECO. Tr. 58-59.

17. Ms. Crawford's electricity usage is seasonal. It is higher in the colder months than in the warmer ones. Tr. 47-48, 61-62, 63, PECO Exhibit 1.

18. It is not possible for a meter to malfunction and then correct itself. Tr. 51, 76.

19. The Service Address has a central heating and cooling system. Tr. 20-21.

20. The electric heat pump is part of Complainant's central heating and cooling system. Tr. 70.

21. The electric heat pump is the heating appliance for Ms. Crawford's residence. Tr. 81.

22. The electric heat pump is not an efficient source of heat when the temperature falls below freezing. Tr. 72-73.

23. When the outside temperature falls below freezing, the heat pump engages its back up source or emergency heat, which consumes three times the amount of electricity that its primary source uses. Tr. 72-74.

24. Mr. Voigtsberger returned to the Service Address on September 6, 2019 to conduct another high bill field investigation at Ms. Crawford's request. Tr. 76.

25. On September 6, 2019, Mr. Voigtsberger was unable to gain access to the Service Address to conduct the investigation. Tr. 50.

26. Complainant was enrolled in PECO's Customer Assistance Program (CAP) on April 27, 2018, and in budget billing in June of 2019. Tr. 88, 97, PECO Exhibit 1.

27. As part of PECO's CAP Fixed Credit Option (CAP-FCO) for low income customers, Ms. Crawford is eligible for an annual fixed credit of \$1,206.18. Tr. 88-89.

28. Complainant was not eligible for CAP credits between November 2018 and May 2019, so she was billed her full budget billing amount. Tr. 99-100.

29. PECO has not issued any estimated bills to Ms. Crawford. Tr. 90-91, PECO Exhibit 1.

30. PECO is not responsible for the inspection, maintenance, repair, and replacement of the electrical appliances serving Ms. Crawford's residence. Tr. 76-77.

DISCUSSION

As a preliminary matter I will address the admission of PECO's Exhibits 1-7 into the record in this matter. During the evidentiary hearing, Ms. Crawford stated that she had not received PECO's proposed exhibits and requested additional time to hire an independent contractor to test her electric meter for accuracy. Tr. 33-34, 107. PECO insisted that the exhibits were mailed to Ms. Crawford's residence via FedEx and agreed only to an instrument test of its meter by a third party. Tr. 35-36, 114-15.

I instructed PECO to submit, as a late-filed exhibit, the FedEx invoice related to delivery of the proposed exhibits to Ms. Crawford along with a more legible copy of PECO Exhibit 3. Tr. 36, 101-105. I also instructed PECO to mail to Ms. Crawford courtesy copies of its proposed exhibits. Tr. 35-40. Ms. Crawford was instructed that she had two weeks, or until

November 14, 2019, to file written objections to PECO's proposed exhibits and to submit the name of her contractor and the date of the proposed meter test.

On November 5, 2019, I received a communication from Ms. Crawford informing me that she had not received the proposed exhibits from PECO. She did not provide any information with regard to the independent contractor for the proposed meter test. As it was not clear whether Ms. Crawford had served a copy of the letter upon the Respondent's counsel, I sent scanned copies of Ms. Crawford's communication to PECO's counsel, Mr. Fisher.

Also on November 5, 2019, I received PECO's late-filed Exhibit 7, which is the FedEx invoice for the overnight delivery of the proposed exhibits to the Complainant's residence on or about October 24, 2019. PECO also submitted the courtesy package of exhibits whose cover letters evidenced service to Complainant P.O. Box address via First-Class mail and to her residence address via FedEx and First-Class mail.

Because the communications from Ms. Crawford and PECO were received on the same date, it appeared likely that the two packages had crossed paths. The record remained open in order to allow Ms. Crawford additional time to review the exhibits and submit any written objections that she may have. No objections were received. Instead, on January 6, 2020, I received a communication from Ms. Crawford with instructions regarding the mailing and/or service of documents to her. This communication does not mention whether the Complainant received PECO's proposed exhibits.

Because PECO took all the necessary steps to serve its proposed exhibits on Ms. Crawford at both the mailing addresses she provided in her Complaint, and because Ms. Crawford did not renew her claim of not having received the exhibits, I find that the Complainant received the exhibits and had an opportunity to review them. Additionally, because as of the date of this decision, Ms. Crawford did not file any written objections to the admission of PECO's Exhibits 1-7, I shall admit these Exhibits into the record in this matter.

I shall now turn to the substantive issues raised in the Complaint. In her Complaint against PECO, Ms. Crawford alleged that there are incorrect charges on her bills from PECO. In particular, Ms. Crawford alleged that her electricity bills are too high considering that her living space is only 800 square feet. As relief, Ms. Crawford requested the Commission's assistance in correcting her bills.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *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 than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision 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 Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 her 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).

In *Waldron v. Philadelphia Electric Company*, (*Waldron*), 54 Pa. PUC 98 (1980), 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 Michigan PSC 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.

While a comparison of the disputed monthly bill to the Complainant's billing history and the consistency of her usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant's disputed high bill. *Waldron* does not limit the establishment of a prima facie case to the above two elements alone. Rather, the Commission may consider 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. See *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

Thus, a complainant in a high bill case has the opportunity to present any other relevant evidence which, if sufficient to establish a prima facie case, can be used to sustain the burden of proof. There is no specific requirement as to what particular facts the complainant must offer. This will likely vary from case to case. In *Waldron*, for example, the complainant did not provide a comparison of prior billing, but asserted that the apartment was uninhabited during the billing period in question and that the only operating appliances were a clock and a refrigerator; that two air conditioners were disconnected; and that, even if the latter had been connected, the complainant could not possibly have used the energy reflected in the billing. The

Commission remanded the complaint in *Waldron* reasoning that, had the record been properly developed, those facts may have established a prima facie high bill case, and then the Company would have had to introduce evidence to overcome the prima facie case. *Waldron* at 101. Therefore, to establish a prima facie case under *Waldron*, a complainant must show the disputed bill was abnormally high when compared to prior usage patterns and that his or her pattern of usage has not changed or must provide other relevant evidence showing that the disputed bill is unreasonably high.

As set forth in *Waldron*, evidence proffered by a utility relating to the accuracy of a meter test alone, in response to a high bill complaint, is not conclusive evidence and would not, by itself, require a finding against a complainant and in favor of a company. *Id.* In other words, evidence of a meter test showing that the meter worked within the acceptable degree of accuracy can be overcome with circumstantial evidence that otherwise indicates that a bill was too high.

At the evidentiary hearing, Ms. Crawford testified that she is the sole occupant of the Service Address and that, as of the day of the hearing, she had resided there for little over a year. Tr. 14, 17-18. She added that her residence is a one-bedroom apartment that comprises a space of only 800 square feet and maintained that she has few electric appliances in there. Tr. 13-14. In view of these circumstances, Ms. Crawford disputed all the electricity bills that exceeded one hundred dollars. Tr. 15-16.

During her testimony, Ms. Crawford explained that her apartment has a central heating and cooling system. Tr. 20-21. She added that her apartment is in an old building with poor insulation. Tr. 22-23. Ms. Crawford also explained that, when she first moved into the apartment, she was warned that her electricity bill would be high,

When I first moved in there the landlord told me that your bill will be high because of the lighting system in the ceiling, and she said try to use your lamps instead. She said don't use the ceiling because they just generate a lot of electric bills and electric bills can be high.

Tr. 13. At the advice of her landlord, Ms. Crawford replaced 27 old light bulbs with LED lights to reduce her electricity consumption. Tr. 13. Lastly, she testified that a few days before the hearing, a contractor hired by her landlord had informed her that “the reason why my bills are high is because there is no heating pump.” Tr. 78.

According to Ms. Crawford, her electricity bills are being estimated based on the usage of the previous occupants of the service address. Tr. 14. She maintained that she repeatedly asked for a meter test which was never done. Tr. 17.

In response to Ms. Crawford’s testimony, PECO’s witness Mr. Voigtsberger testified that he visited the Service Address on May 16, 2018 to conduct a high bill field investigation. Tr. 43, PECO Exhibit 3. As part of his investigation, Mr. Voigtsberger verified that Complainant was being billed from the correct meter and that the meter reading matched the readings the Complainant was billed for. *Id.* He tested the electric meter using a passing load test with the electric water heater and verified that the meter was accurate. Tr. 44-45, PECO Exhibit 3. In addition, Mr. Voigtsberger inspected the meter and verified that there was no foreign load on Ms. Crawford’s line. Tr. 45, PECO Exhibit 3.

Mr. Voigtsberger testified that while at the Service Address, he performed an appliance analysis of all the appliances that he saw at the Service Address, including: one top-bottom refrigerator, one cooking range, one coffee maker, one microwave, one heat pump, one electric water heater, one TV, one cable box, one VCR, and lighting for six rooms. Tr. 45, 54-55, 63-64, 94, PECO Exhibit 5. Mr. Voigtsberger testified that based on the electric appliances found in Ms. Crawford’s apartment, the Complainant had the potential to use up to 5,103 kilowatts per month during the heating season. Tr. 53. He concluded that the appliance analysis justified the usage recorded and billed for by PECO. Tr. 58-59. Mr. Voigtsberger testified that Ms. Crawford’s electricity usage is seasonal. He explained that Complainant’s usage is higher in the colder months than in the warmer ones and that it is not possible for a meter to malfunction and then correct itself. Tr. 47-48, 61-62, 63; PECO Exhibit 1; see also Tr. 51, 76. According to Mr. Voigtsberger, the heat pump is the electric appliance responsible for the Complainant’s high electricity usage during the heating season. Tr. 62-63.

Mr. Voigtsberger explained that the heat pump is part of Complainant's central heating and cooling system. Tr. 70. He added that the electric heat pump is the heating appliance for Ms. Crawford's residence. Tr. 81. Mr. Voigtsberger stated that the heat pump is not an efficient source of heat when the temperature falls below freezing. Tr. 72-73. When the outside temperature falls below freezing, the heat pump engages its back up source or emergency heat, which consumes three times the amount of electricity that its primary source uses. Tr. 72-74.

Lastly, Mr. Voigtsberger testified that he returned to the Service Address on September 6, 2019 to conduct another high bill field investigation at Ms. Crawford's request. Tr. 76. However, he was unable to gain access to the Service Address to conduct the investigation. Tr. 50.

Next, PECO's second witness Renee Tarpley testified that Ms. Crawford initiated electric service at the Service Address on March 10, 2018. Tr. 87, PECO Exhibit 1. Complainant was enrolled in PECO's CAP program on April 27, 2018 and in budget billing in June of 2019. Tr. 88, 97, PECO Exhibit 1. Ms. Tarpley explained that, as part of PECO's CAP fixed credit option for low income customers, Ms. Crawford is eligible for an annual fixed credit of \$1,206.18. Tr. 88-89. According to Ms. Tarpley, the combined effect of the CAP credits and the budget billing has resulted in several \$30 bills for Ms. Crawford; however, these bills are not indicative of Ms. Crawford's actual electricity usage. Tr. 90. Ms. Tarpley pointed out that Complainant was not eligible for CAP credits between November 2018 and May 2019, so she was billed her full budget billing amount. Tr. 99-100. Lastly, Ms. Tarpley testified that PECO did not issue any estimated bills to Ms. Crawford. Tr. 90-91, PECO Exhibit 1.

Upon careful review of the evidence collected in this matter, I find that Ms. Crawford has received actual bills from PECO. Her bills correctly reflect Ms. Crawford's electricity usage, as well as the effect of her enrollment in PECO's CAP program and budget billing program. Ms. Crawford's account history indicates that her electricity usage never exceeded her potential for usage. See PECO Exhibits 1 and 3, Tr. 53. PECO's witness, Mr. Voigtsberger testified credibly that the Complainant's meter tested accurate during the May 16,

2018 high bill field investigation, and that the heat pump was responsible for her high usage during the heating season.

As of the day of the hearing, Complainant had resided at the Services Address for approximately 17 months (March 2018 – October 2019). Despite the brevity of her residence at the Service Address her electricity usage during the 2018 heating months (March 2018-May 2018 and October 2018-December 2018) is comparable to her electricity usage during the 2019 heating months (January 2019-May 2019). PECO Exhibit 1. Ms. Crawford has failed to submit any evidence that her high heating bills are the result of a violation of the Code, Commission regulation or order of the Commission by PECO. On the contrary, Ms. Crawford’s testimony indicates that the high electricity usage at the Service Address was a condition that predated her residence there, that she was made aware of the high usage problem at the time she moved to the Service Address, and that the high usage problem is most likely caused by one or several electrical appliances for the inspection, maintenance, repair, and replacement of which PECO is not responsible. Tr. 13, 78, 76-77. In view of the above, I find that Ms. Crawford has failed to carry her burden of proving that the electricity charges on her PECO bills are incorrect. Therefore, Ms. Crawford’s Complaint against PECO, Docket No. C-2019-3012358, is dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
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).

4. Ms. Crawford has failed to carry her burden of proving that the electricity charges on her PECO bills are incorrect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Exhibits 1-7 are admitted into the record in this case.
2. That the formal Complaint of Tamaqua Crawford against PECO Energy Company at Docket No. C-2019-3012358, is denied.
3. That the Secretary mark this docket closed and discontinued.

Date: May 4, 2020

_____/s/
Eranda Vero
Administrative Law Judge