

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Hettinger

v.

PPL Electric Utilities Corporation

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F-2020-3015938

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility alleging that his electric meter was faulty and as a result his electric bills were too high and he had been overbilled by the utility. This decision denies and dismisses the complaint because the customer has failed to show he has been incorrectly billed.

HISTORY OF THE PROCEEDING

On January 7, 2020, William Hettinger (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) alleging that his electric meter was faulty and that PPL Electric Utilities Corporation (PPL or Respondent) was therefore overbilling him approximately \$50 per month.

On February 4, 2020, PPL filed an answer to the complaint. This answer admitted or denied the various averments of the complaint. PPL, however, specifically denied

that the Complainant was being billed in excess of his actual usage and that PPL had offered to conduct a meter test but Complainant had declined.

A notice of hearing was issued on February 6, 2020, scheduling this matter for a telephonic hearing on March 17, 2020, at 10:00 a.m. A prehearing order was issued on February 7, 2020, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The March 17, 2020 hearing was cancelled due to the closing of the Commission's offices in light of the Covid-19 pandemic.¹ On April 20, 2020, a notice was issued rescheduling this matter for a hearing on May 27, 2020.

The initial hearing was conducted as scheduled on May 27, 2020. The Complainant appeared *pro se* and testified in support of his complaint. Attorney Kimberly Krupka represented the Respondent which presented one witness who sponsored three exhibits which were admitted into the record. The initial hearing resulted in a transcript of 36 pages. The record closed on May 27, 2020, at the conclusion of the hearing. For the reasons set forth below, the complaint will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant in this matter is William Hettinger.
2. The Respondent in this matter is PPL Electric Utilities Corporation.
3. The Complainant's service address is 79 Leslie Lane, Jim Thorpe, Pennsylvania.

¹ The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

4. The Complainant's home was built in 2011 with a geothermal heating system. N.T. 9.

5. On December 4, 2018, PPL replaced the Complainant's electric meter with a smart meter. N.T. 11, 26.

6. After the smart meter was installed at the service address, the Complainant became concerned about the increased amount of usage indicated in his electric bills. N.T. 9.

7. In response to the increase in his electric bills, the Complainant began using various electricity conservation measures including turning his thermostat down, using heavy window drapes and not putting up Christmas lights. N.T. 9-10.

8. Despite these conservation efforts, the Complainant believed he was not seeing a corresponding decrease in his monthly electric bill. N.T. 10.

9. On December 23, 2019, the Complainant contacted PPL regarding his concern that his electric consumption was too high and that he was being overbilled. PPL Ex. 3.

10. On January 15, 2020, Complainant contacted PPL and requested that his meter be tested. N.T. 29, PPL Ex. 2.

11. On January 16, 2020, PPL tested the Complainant's smart meter. PPL Ex. 3.

12. The test conducted on January 16, 2020 determined that the Complainant's smart meter had an accuracy of 100.02%. N.T. 26; PPL Ex. 3.

13. On January 17, 2020, PPL sent the Complainant a letter confirming the smart meter test results and that he had been billed accurately for his electric usage. N.T. 33.

14. The daily use registered by the Complainant's smart meter is consistent with the daily use the Complainant experienced with the meter which was previously installed at his residence and which was replaced with the smart meter in 2018. N.T. 27.

15. The Complainant's electric usage significantly declined beginning on December 28, 2019 through April 26, 2020. N.T. 27.

16. The Complainant and his wife were in Florida from December 27, 2019 until April 26, 2020. N.T. 20-21.

17. The Complainant's household has an average usage of 40 kilowatts per day. N.T. 28.

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, 70 A.2d 854 (Pa. 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.

Here, the Complainant has alleged that as a result of a faulty meter his electric bills are too high and he has been overbilled by PPL. Therefore, the Complainant has the burden to show that his monthly electric bills are too high in relation to the electricity that his household uses and that he has been overbilled for his electric usage.

The Complainant argued at the hearing that after the smart meter was installed at his home, his monthly electric usage increased by approximately \$50 per month or about 500 kilowatt hours (kWh) per month. N.T. 9. In addition, Complainant argued that despite his conservation efforts to reduce his household electric consumption such as turning his thermostat down, using heavy window drapes and not putting up Christmas lights, he did not see a corresponding decrease in his monthly electric bill. N.T. 9-10. In support of his allegations, the Complainant testified that his household consisted of only himself and his wife and that they were often not at home for extended periods of time due to travel and residing in Florida for part of the year. N.T. 18-20. In addition to testifying that he believed his electric meter was faulty thereby causing his monthly electric bills to be too high for a two-person household, the Complainant cited to a history of his monthly usage which he had summarized and attached as a chart to his formal complaint. A portion of the Complainant’s usage chart will be reproduced and discussed here.²

Month	Year 2017	Year 2018	Year 2019
June	1104	1165	1190
July	1405	1420	1081 (gone 2 weeks)
August	1312	1304	1310
September	1267	1547	1189
October	1125	1190	982 (gone 2 weeks)
November	1215	1424	1244 (gone 2 weeks)
TOTAL	7428 kWh	8050 kWh	6996 kWh

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.

² In addition to being away from home for a total of six weeks between June and November of 2019, the Complainant also noted on this chart that he did not use air conditioning or a hot tub during these months.

While not admitted into the record as an exhibit, the Complainant referred to and testified to the contents of this chart during his testimony.

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); Repogle v. Pa. Electric Co., 54 Pa. PUC 528 (1980).

In Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 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. 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 Co., Docket No. C-2010-2187197 (Final Order entered November 15, 2011), the Commission further explained the Waldron Rule:

[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.

The Commission has also considered circumstances where a complainant contends that their utility bill is inordinately large as compared to their perceived utility usage. In Kirby v. PPL Electric Util. Corp., the Commission ruled that,

Complainant's testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.

Kirby v. PPL Electric Util. Corp., Docket No. C-20066297 (Final Order entered November 16, 2006) (citing Pa. Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)).

Similarly, in the instant case, the Complainant's mere belief and assertion that his electric bill is too high and that he has been overbilled by PPL does not constitute substantial evidence sufficient to permit him to sustain his burden of proof as in Kirby, and without more, he has not met his burden under Waldron and Milkie. In addition, the Complainant's argument that his monthly usage incorrectly increased after the installation of a smart meter in December 2018 is not supported by the evidence.

Notwithstanding the above, even accepting as true the Complainant's testimony including the monthly usage amounts supplied by the Complainant in his chart, the Complainant's monthly usage has been consistent despite the meter change.³ The meter change occurred in December of 2018 with the installation of the smart meter. According to Complainant, his electric usage thereafter has been too high and therefore incorrect. Looking at the information supplied by the Complainant for the months of June through November for the years 2017 through 2019, it appears that the Complainant's overall usage has remained consistent despite this new meter replacement. The monthly usage for each of the months during this three-year period varies by only a few kilowatt hours. During the months the Complainant

³ It is immaterial whether the monthly usage amounts supplied, and relied upon, by the Complainant in his argument are in fact accurate. The point is that even giving the Complainant the benefit of the doubt and accepting these monthly usage amounts as accurate, the evidence which he relies upon does not support his overarching argument that he has experienced an unexplained increase in his monthly usage as the result of installation of the smart meter.

indicated he and his wife were away from home between June and November 2019, there is a corresponding decrease in the Complainant's monthly usage. In September 2019, the Complainant's monthly usage as measured by the smart meter was in fact lower than his monthly usage for the same month in both 2017 and 2018 – months which had been measured by the Complainant's old meter.

It is agreed that there are months indicated by the Complainant where his monthly usage was higher than in previous years. However, such fluctuations may result from a variety of factors such as the weather and not merely because of the change in the Complainant's meter. While such increases would undoubtedly raise concerns for the Complainant, isolated months with usage increases are not in and of themselves sufficient to demonstrate a fault in the Complainant's meter. This is particularly evident as for the majority of the months in 2019 the Complainant's usage was on par with previous years or correctly indicated a usage decrease at times the Complainant was away from home for weeks at a time.

PPL's witness, on the other hand, has provided testimony and evidence to show that the meter installed at the Complainant's service address had been tested and found to be 100.02% accurate and that the Complainant's household has an average usage of 40 kilowatts per day which is consistent with the daily use the Complainant experienced with the old meter. N.T. 27, 28, PPL Ex. 3. This witness also confirmed that the Complainant's electric usage significantly declined beginning on December 28, 2019 through April 26, 2020 – the precise dates the Complainant and his wife were in Florida. N.T. 20-21, 27.

Based on the testimony and evidence presented, the Complainant has failed to demonstrate that PPL has violated the Public Utility Code, Commission order, regulation or a Commission-approved tariff. The Complainant's allegations that his electric meter was faulty, causing his electric bills to be too high and therefore him to be overbilled by PPL, consist of mere belief and assertion and do not constitute substantial evidence sufficient to meet his burden of proof. In addition, the evidence presented by the Complainant in the form of monthly usage amounts does not support his argument that his metered usage incorrectly increased after the installation of the smart meter. Consequently, the complaint will be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. To establish a prima facie overbilling case a complainant must show that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980).
4. 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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001).
5. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain their burden of proof. Kirby v. PPL Electric Utilities Corp., Docket No. C-20066297 (Final Order entered November 16, 2006) (citing, Pa. Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)).
6. The Complainant has failed to establish that he has been overbilled for his electric service. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980); Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001).

