

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brendan Lavin	:	
	:	
v.	:	C-2020-3019103
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against his electric utility alleging that he was being overbilled by the utility. This decision denies and dismisses the complaint because the customer failed to show he has been incorrectly billed.

**HISTORY OF THE PROCEEDING**

On April 16, 2020, Brendan Lavin (Complainant), filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) alleging that his electric utility, PPL Electric Utilities Corporation (PPL or Respondent), was overbilling him for his electric usage.

On May 6, 2020, PPL filed an answer to the complaint. This answer admitted or denied the various averments of the complaint. PPL, however, specifically denied that Complainant had been incorrectly billed.

A notice of hearing was issued on May 20, 2020, scheduling this matter for a telephonic hearing on July 28, 2020.

The initial hearing was conducted as scheduled on July 28, 2020. The Complainant appeared *pro se* and testified. Attorney Kimberly Krupka represented PPL which presented one witness who sponsored four exhibits which were admitted into the record. The initial hearing resulted in a transcript of 25 pages. The record closed on July 28, 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 is Brendan Lavin.
2. The Respondent is PPL Electric Utilities Corporation.
3. The Complainant's service address is 1231 Crystal Lake Boulevard, Carbondale, Pennsylvania.
4. The Complainant's home is a one-story A-frame home built around 1980. N.T. 7-8.
5. The Complainant resides alone. N.T. 8.
6. The home is heated by three electric baseboard heaters. N.T. 8.
7. The Complainant calculated what he believes to be his average daily electricity usage and concluded his electric bill should be approximately \$50 per month. N.T. 10.
8. The Complainant's outstanding account balance at the time of hearing was \$2,989.80. N.T. 12.
9. The Complainant's account is on budget billing. N.T. 12.

10. The Complainant's yearly seasonal electric usage between 2011 and 2020 has been consistent with lower usage during the summer months and higher usage during the winter months. N.T. 17; PPL Ex. 5.

11. On April 27, 2020, PPL removed the meter at Complainant's home for testing. N.T. 18.

12. The meter was tested on May 1, 2020 and had a 99.96% accuracy. N.T. 18-19; PPL Ex. 6.

### 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 his electric bills are too high and he has been incorrectly overbilled by PPL. The Complainant, therefore, 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.

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 Elec. Co., 54 Pa. PUC 98 (1980); Repogle v. Pa. Elec. 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 1219-20 (footnote omitted). In Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Final 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 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 Elec. Utils. Corp., the Commission ruled that,

The 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 Elec. Utils. Corp., Docket No. C-20066297 (Final Order entered November 16, 2006) (citing Pa. Bureau of Corrs. v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)).

The Complainant's mere belief that his electric bill is too high in comparison to what he believes his electric usage should be and that he has been overbilled by PPL does not constitute substantial evidence sufficient to permit him to sustain his burden of proof under Kirby, and without more, he has not met his burden under Waldron and Milkie.

The Complainant made a general argument at the time of hearing that he was being charged for more electricity than his home used. He based this argument on information he received from "JEA" in Jacksonville, Florida.<sup>12</sup> He further testified that the amount of electricity he was being billed for was far beyond the amount of electricity his home used. In support of this position, Complainant made reference to calculations he had made in a page attached to his formal complaint. At the conclusion of these calculations, the Complainant indicated that his average monthly electric bill should be approximately \$50.16.<sup>3</sup> The Complainant, however, failed to provide any evidence to support the manner in which these calculations were made or the accuracy of their results. In short, the Complainant has failed to

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<sup>1</sup> "JEA" is a community-owned utility serving Jacksonville and surrounding communities. The Complainant did not provide an explanation as to why he contacted this particular utility or how information he may have received regarding electric usage in Florida relates to his home or personal circumstance in Pennsylvania.

<sup>2</sup> PPL properly objected to the Complainant's recitation regarding what he was told by JEA as hearsay.

<sup>3</sup> While the calculations the Complainant relied upon in his argument were not submitted as an exhibit at the time of hearing, they are attached to the complaint form and the Complainant referenced these calculations in his testimony and they will therefore be addressed.

establish that these calculations have any relevance or relationship to his home or his electric usage. For example, to apparently establish how much electricity certain appliances use, the Complainant provided the following calculations:

Lights and Water Pump - 7 Lights including Water Pump equal  $.7 \times 7$   
Hours per Day = 4.9 KWH/Day

Hot Water Heater - 1 Light Outlet of 115 Watts per 12 Hours a Day equal  
 $.1 \times 12$  Hours = 1.2 KWH/Day

Washer - 1 Light Outlet of 115 Watts per 4 Hour a Day (and overage)  
equal  $.1 \times 4$  Hours = .4 KWH/Day

Stove - 2 Lights Outlet or 220 Watt Outlet per 2.4 Hours a Day equal  $.2 \times$   
2.4 Hours = .48 KWH/Day

Dryer - 2 Lights Outlet or 220 Watt Outlet per 2.4 Hours a Day equal  $.2 \times$   
2.4 Hours = .48 KWH/Day

Refrigerator - 1 Light Outlet per every half hour or 12 Hours a Day equal  
 $.1 \times 12$  Hours = 1.2 KWH/Day

Electric Heat (Thermostat Auto-shut off) - 4 Light Outlet of 115 Watt  
Outlet equal  $.4 \times 12$  Hrs.: 4.8 KWH/Day per every half hour per 24 hours or  
12 Hours (every half hour and overage per day)

**Total KiloWatt Hours per Day 13.46 KWH/Day**

The Complainant's calculations fail to provide any meaningful explanation or support for his argument that he uses far less electricity than he is billed for and that he has been consistently overbilled each month by PPL. The Complainant's calculations, however, do indicate that in addition to baseboard electric heat, the Complainant's home also has a water pump, electric hot water heater, electric stove and electric dryer. These appliances all add to the Complainant's monthly electric usage. The Complainant, however, has failed to provide any evidence to show that this is the actual electric usage of each of the appliances in his home on an average basis.

PPL offered testimony and evidence which contradicts the Complainant's arguments. The Complainant's yearly seasonal electric usage between 2011 and 2020 has been

consistent with lower usage during the summer months and higher usage during the winter months. N.T. 17; PPL Ex. 5. On April 27, 2020, PPL removed the meter at Complainant's home for testing and on May 1, 2020 it tested with an accuracy of 99.96%. N.T. 18-19; PPL Ex. 6. Thus, the meter servicing the Complainant's home was accurate within the margin of error permitted by the Commission's regulations. See 52 Pa. Code § 57.20(c).

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 he is being billed for more electricity than his home uses and that he has therefore been overbilled is not supported by any evidence. PPL has demonstrated that the Complainant's yearly seasonal electric usage has been consistent since 2011 and that the meter recording the electric usage in his home tested to be 99.96% accurate. Without more, the Complainant has failed to meet his burden. Therefore, 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 Elec. 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).

