

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Agnes and Steve Atuahene	:	
	:	
v.	:	C-2019-3012904
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainants sustained their burden of proof in part regarding overbilling. The Complainants failed to sustain their burden of proof regarding all other allegations. Therefore, this decision grants in part and denies in part the formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On September 12, 2019, Agnes and Steve Atuahene (Complainants) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against PECO Energy Company (PECO, Company or Respondent) and AEP Energy Inc. (AEP). The Complainants alleged: (1) the Complainants were overcharged for electric service because of a faulty meter and equipment; (2) the amounts billed as transfers for service at other properties violate Complainants' due process rights; (3) the utility threatened termination of service; (4) the contract with AEP was obtained fraudulently; and (5) AEP conspired with PECO to extort money from the Complainants.

The Complainants requested that the Commission: (1) give Complainants sufficient time to investigate; (2) investigate the functionality of PECO's meter and equipment for billing accuracy; and (3) investigate the business practices of both PECO and AEP.

The Complaint was electronically served (eServed or eService) by the Commission's Secretary on September 13, 2019, per the audit history of the docket.

On October 3, 2019, Angela Lorenz, Esquire, counsel for PECO, filed an Answer to the Complaint which denied all material allegations. The Answer asserted the Complaint is an appeal of a decision by the Commission's Bureau of Consumer Services (BCS) at Case No. 003677045 wherein BCS determined that the Complainants are responsible for an outstanding balance and that Complainants' account was properly renewed with AEP. PECO requested that the Commission dismiss the Complaint.

On October 7, 2019, F. Mitchell Dutton, Esquire, counsel for AEP, filed an Answer to the Complaint and a Motion to Dismiss (Motion 1)¹ the Complaint for failure to state a claim upon which relief can be granted. In the Answer, AEP denied any fraud in the enrollment or renewal of the Complainants' electric service account. AEP further asserted insufficient information on the other matters asserted in the Complaint. In Motion 1, AEP asserted that the Complainants' service account was enrolled and renewed in compliance with the rules, procedure and regulations of the Commission. AEP asserted that any allegation that the service provided by AEP was without notice and unauthorized by the Complainants or slammed is without merit, and therefore, the Complaint against AEP should be dismissed.

52 Pa.Code § 5.101(f) states that an answer to a preliminary objection may be filed within 10 days of the date of service. As stated above, Motion 1 was served on October 7, 2019. Complainants did not file an Answer to Motion 1.

¹ I treated Motion 1 as a preliminary objection.

By Hearing Notice dated October 8, 2019, the Complaint was scheduled for an initial in-person hearing on November 22, 2019 at 10:00 a.m., and I was assigned as the presiding officer.

On October 10, 2019, David Feinberg, Esquire, counsel for AEP, filed a Motion for Admission *Pro Hac Vice* (Motion 2) and Notice of Appearance of Attorney Dutton. Motion 2 was marked, “AEP Confidential.” Pursuant to 52 Pa.Code § 5.103(c) a response to Motion 2 was due within 20 days of the date of service unless otherwise fixed by the presiding officer or the Commission. Complainants did not file an Answer to Motion 2.

By Interim Order dated October 28, 2019, the undersigned denied Motion 1 finding it was not in compliance with Commission regulations at 52 Pa.Code § 5.101(a),(b).

On November 4, 2019, counsel for AEP filed a Motion to request a call-in telephonic initial hearing, followed by an Amended Motion filed the same day.² Also, on November 4, 2019, by Interim Order, the undersigned denied Motion 2 because it failed to comply with regulations at 52 Pa.Code §§ 1.22(b) and 5.103(b).³

By Interim Order dated November 14, 2019, the Amended Motion of AEP was granted. The previously scheduled in-person initial hearing for November 22, 2019, was changed to a call-in telephonic initial hearing.

On November 16, 2019, the undersigned received an Entry of Appearance for Kristine E. Marsilio, Esquire, on behalf of AEP. Attorney Marsilio is a licensed member of the bar of the Commonwealth of Pennsylvania. On November 18, 2019, AEP filed a certificate of satisfaction noting that it and the Complainants, have satisfied their dispute.⁴

² The initial Motion filed on November 4, 2019, inadvertently omitted an attachment.

³ The Motion 2 did not include, among other things, a Notice to Plead.

⁴ The settled dispute with AEP caused the undersigned to amend the caption of this proceeding by Order dated April 23, 2020, to be just the one Respondent, PECO.

By facsimile dated November 19, 2019, the Complainants requested that the scheduled initial hearing on November 22, 2019, be rescheduled no earlier than 60 days from the scheduled hearing date because of medical and health reasons.

On November 20, 2019, PECO filed an objection to the requested continuance. In its objection, PECO alleged that the Complainants have a history of using continuance requests to prevent PECO from collecting on the unpaid balance. PECO cited to an Initial Decision at *Atuahene v. PECO Energy Co.*, Docket No. C-2019-2422759 (dated March 14, 2014) (Final Order entered May 18, 2015) (*Atuahene Final Order*) as evidence that the Complainants are no strangers to the formal complaint process at the Commission. *Atuahene Final Order*, at ordering paragraph 3, stated:

That, due to abuse of process, the Complainant Steve Atuahene is precluded from filing any informal or formal complaints with the Pennsylvania Public Utility Commission regarding the subject matter of the instant complaint until such time as his current balance with PECO Energy Company is paid in full.

PECO suggested that pursuant to the *Atuahene Final Order* and the fact that the Complainants have an unpaid balance on their account, there is a question of whether the Complainants have standing in the instant formal Complaint. Nonetheless, PECO stated that it exercised discretion in the interest of due process not to file a Motion to Dismiss. *See* footnote 1 of PECO November 20, 2019, letter in response to requested continuance.

By Interim Order dated November 21, 2019, the undersigned granted the requested continuance of the Complainants finding PECO's grounds for objection unsupported.

By Hearing Notice dated November 25, 2019, this proceeding was rescheduled for an initial in-person hearing on January 22, 2020, at 10:00 a.m.

On November 25, 2019, a Prehearing Order was issued providing the pertinent procedural rules for the hearing.

On January 7, 2020, a Notice of Appearance was filed stating PECO would be represented by Edward Fisher, Esquire.

On January 13, 2020, the Complainants filed an Emergency Motion alleging that the Respondent used the incorrect address for the Complainants in discovery responses, and therefore, the Respondents should be directed to answer the outstanding discovery by a date certain or, in the alternative, a 30-day continuance be granted.

By Interim Order dated January 15, 2020, the undersigned denied the emergency status of the Complainants' Motion and denied the request to direct the Respondent to respond to discovery by a specific date. However, the undersigned granted the Complainants' request for a continuance stating it was reasonable and unopposed.

By Hearing Notice dated January 16, 2020, the in-person, evidentiary hearing was rescheduled for February 19, 2020, at 10:00 a.m.

The February 19, 2020 in-person hearing convened as scheduled. The Complainants were present, represented themselves and each offered testimony. Attorney Fisher represented the Respondent and presented the testimony of the following three witnesses, all employed by PECO:

- 1) Elsa Leung,
- 2) Ralph Landolphi, and
- 3) Thomas Lerro.

The Complainants did not present any exhibits. The Respondent presented the following exhibits:

- 1) PECO Exhibit 1 – Account statement of service address,⁵
- 2) PECO Exhibit 2 – Collections history,
- 3) PECO Exhibit 3 – 6/12/18 informal complaint,
- 4) PECO Exhibit 4 – 6/28/18 letter and answer to informal complaint,
- 5) PECO Exhibit 5 – 11/12/19 email,

⁵ Initially Complainants objected to this exhibit, but after further review, the objection was withdrawn.

- 6) PECO Exhibit 6 – Meter accuracy testing,
- 7) PECO Exhibit 7 – Meter calibration,
- 8) PECO Exhibit 8 – High Bill Report, and
- 9) PECO Exhibit 9 – Account history of Agnes Atuahene.

All PECO exhibits were admitted into the record. During the hearing, the parties were provided with a briefing schedule, giving the parties the opportunity to file Main and Reply Briefs.

The evidentiary hearing generated 175 pages of transcribed testimony.

A telephonic hearing conference convened on May 5, 2020, to discuss any procedural issues due to COVID-19 pandemic and the briefing schedule. In compliance with the briefing schedule, the parties filed Main Briefs on May 22, 2020. A second telephonic hearing conference convened as scheduled on May 28, 2020 to establish the due date for Reply Briefs. The parties filed Reply Briefs by the June 12, 2020 due date.

The Complainants filed a Motion to Strike on June 11, 2020. The Respondent filed its Answer to the Motion to Strike on June 26, 2020. The record closed on June 26, 2020, when the Respondent's Answer was received.

The undersigned re-opened the record by Order dated July 22, 2020 and scheduled a further hearing to obtain testimony critical to this Complaint. A Hearing Notice dated July 22, 2020 scheduled a further call-in telephonic hearing for August 6, 2020 at 10:00 a.m.

By Order dated July 27, 2020 the undersigned denied the Complainants' Motion to Strike.

The further hearing convened as scheduled. Steven and Agnes Atuahene were present and represented themselves. Khadijah Scott, Esquire,⁶ was present and represented the Respondent. Hearing Exhibit 1 was presented for admission by the undersigned; however, due to the inability of the Complainants to receive the exhibit and review it, the Complainants were instructed to object to Hearing Exhibit 1 by August 10, 2020.

On August 10, 2020, the Complainants objected to admission of Hearing Exhibit 1. On August 13, 2020, the Respondents filed a Response, which stated the Respondent did not object to the admittance of Hearing Exhibit 1 and rebutted the Complainants' objection.

By Order dated August 21, 2020, the Complainants' objection was overruled, and Hearing Exhibit 1 was admitted. The August 21, 2020 Order also closed the record.

This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainants, Agnes and Steve Atuahene, are husband and wife and they have lived at 7500 N. 21st Street, Philadelphia, Pennsylvania (service address) from October 27, 2014 to the present. Tr. 17, 47, 67-68, 80, 89, 105, PECO Exhibit 1.

2. The Respondent is PECO Energy Company, an electric and gas distribution utility company with the service territory of Philadelphia, Pennsylvania.

3. The Complainants are not currently the owners of the service address.
Tr. 47.

4. The Complainants are currently renting the service address. Tr. 47-48.

⁶ Attorney Scott filed a Notice of Appearance at this docket on July 28, 2020.

5. The Complainants owned the service address from 2014 to 2019 and sold the service address to GV Homes in 2019. Tr. 48-49.

6. The Complainants did not discontinue electric service at the service address. Tr. 49-50.

7. Complainants do not receive gas service for heat from the Respondent. Tr. 50, 218.

8. The electric service account for the service address is in the name of Mrs. Agnes Atuahene. Tr. 89.

9. Complainants' five electric devices at the service address are:

- 1) lights,
- 2) refrigerator,
- 3) 32" flat-screen television,
- 4) laptop,
- 5) printer, and
- 6) a ceiling fan.

Tr. 50-52, 66-68, 220.

10. The meter for the service address is outside the house. Tr. 85-86.

11. Complainants' usage in kilowatt hours at the service address is:

Month	2015	2016	2017	2018	2019
Jan	250	260	303	429	212
Feb	199*	220	251	390	201
Mar	187	206	405	406	206
Apr	169	212	256	302	185
May	204	245	232	177	195
Jun	248	226	238	202	237
Jul	188	229	248	226	221

Aug	208	253	217	200	227
Sept	224	216	216	187	204
Oct	181	190	200	181	
Nov	206	233	305	251	
Dec	242	312	525	253	

*-- denotes new meter installed. PECO Exhibit 1.

12. A record cold wave impacted Philadelphia on November 11, 2017, making it the coldest day since 1961. Hearing Exhibit 1.

13. Starting in December 2017 and ending in January 2018, a blizzard and cold wave impacted the Northeastern United States. Hearing Exhibit 1.

14. Between late February 2018 and late March 2018 four Nor'easters impacted the Northeastern United States, one of which caused a snow emergency in Philadelphia on March 7, 2018. Hearing Exhibit 1.

15. Mrs. Atuahene owned the property at 6203 Limekiln Pike, Philadelphia, PA (Limekiln service address) until she sold it in June 2019. Tr. 80-82.

16. Mrs. Atuahene was responsible for the electric service received at the Limekiln service address before she sold it in June 2019. Tr. 83-84, 90.

17. Mrs. Atuahene leased the Limekiln service address to a renter in June 2019 before she sold it. Tr. 83.

18. Mrs. Atuahene told the Respondent to discontinue electric service at the Limekiln service address in July 2019. Tr. 84-85.

19. There was an outstanding amount due for electric service at the Limekiln service address, which was transferred to the Complainants' service address in June 2019. Tr. 82, 85.

20. Mrs. Atuahene had PECO electric service between November 2014 and June 2019 at the following six properties, that she owns and rents:

- 1) 5512 Hadfield St., Philadelphia, PA,
- 2) 920 E. Price St., Philadelphia, PA,
- 3) 5520 Crowson St., Philadelphia, PA,
- 4) 5728 N. Marvine St., Philadelphia, PA,
- 5) 2124 N. 11th St., Philadelphia, PA, and
- 6) Limekiln service address.

Tr. 90-94, 109-10, PECO Exhibit 9.

21. Mrs. Atuahene's practice was to have electric service in her name at her properties until she found a tenant to lease the property. Tr. 94-95.

22. Mrs. Atuahene's practice is to contact the Respondent about one month after she obtained a new tenant to discontinue service in her name. Tr. 94-96.

23. Elsa Leung has been an employee of PECO working as a regulatory assessor since 2011. Tr. 99-100.

24. A regulatory assessor reviews customer accounts who have filed informal and formal complaints with the Commission. Tr. 100.

25. Ms. Leung reviewed the Complainants' Complaint. Tr. 100.

26. The last payment received on the service address account was on October 13, 2017 in the amount of \$50.00. Tr. 107, PECO Exhibit 1.

27. On January 9, 2015, the amount of \$69.82 for service at 2124 N. 11th St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 107, PECO Exhibit 1.

28. On April 10, 2015, the amount of \$135.02 for service at 5728 Marvine St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 107-08, PECO Exhibit 1.

29. On October 5, 2015, the amount of \$48.97 for service at 5512 Hadfield St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108, PECO Exhibit 1.

30. On December 28, 2015, the amount of \$46.43 for service at 5520 Crowson St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108, PECO Exhibit 1.

31. On April 24, 2017, the amount of \$102.78 for service at 920 E. Price St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108, PECO Exhibit 1.

32. On June 6, 2017, the amount of \$161.96 for service at 2124 N. 11th St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108, PECO Exhibit 1.

33. On June 12, 2018, Mr. Atuahene filed an informal complaint regarding a high bill dispute at the service address with the BCS at Case No. 003623265.

34. By letter dated June 28, 2018, PECO answered the informal complaint at BCS Case No. 003623265 requesting Mr. Atuahene to call a specified number for PECO to schedule a high-bill investigation, which would include an appliance test, a passing load test (to verify meter accuracy) and a drop load test (to determine if foreign load exists). Tr. 114-15, PECO Exhibit 4.

35. PECO has no record of a call from the Complainants to the specified telephone number provided to schedule the field investigation. Tr. 115.

36. No appointment was made by the Complainants for a high-bill field investigation at the service address. Tr. 115.

37. On September 18, 2018, the amount of \$190.73 for service at 5512 Hadfield St., Philadelphia, PA, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108, PECO Exhibit 1.

38. On September 24, 2018, the amount of \$497.88 for service at the Limekiln service address, which was in Mrs. Atuahene's name, was transferred to the service address account. Tr. 108-09, PECO Exhibit 1.

39. The total amount transferred from other properties of Mrs. Atuahene to the service address account is \$1,253.59.⁷ Tr. 119-22.

40. The \$1,253.59 total amount transferred to the service address account is not attributed to usage of electric service at the service address. Tr. 123.

41. BCS Case No. 003623265 was dismissed on January 31, 2019, with the customer satisfied and in agreement to close the dispute. Tr. 111, PECO Exhibit 3.

42. The total balance on the service address account as of February 7, 2020, was \$2,076.04. Tr. 106, PECO Exhibit 1.

43. The total balance of \$2,076.04 for the service address account includes the amounts transferred to the service account, all payments, and all charges for service usage at the service address, from November 2014 to February 10, 2020. Tr. 123-24.

44. On August 30, 2019, PECO sent a 10-day termination notice to terminate service at the service address on or after September 16, 2019, for a past due balance of \$1,805.90. Tr. 110, PECO Exhibit 2.

⁷ \$69.82 (FOF 26) + \$135.02 (FOF 27) + \$48.97 (FOF 28) + \$46.43 (FOF 29) + \$102.78 (FOF 30) + \$161.96 (FOF 31) + \$190.73 (FOF 37) + \$497.88 (FOF 38) = \$1,253.59.

45. On November 7, 2019, Ms. Leung had a conversation with Mr. Atuahene to set-up an appointment to conduct a meter test and a high-bill investigation, but Mr. Atuahene did not have time to schedule it and requested that she contact him later. Tr. 116.

46. After the November 7, 2019 conversation, Ms. Leung was unsuccessful in reaching Mr. Atuahene by phone. Tr. 116.

47. On November 12, 2019, Ms. Leung emailed Mr. Atuahene to confirm his interest to set-up a meter test and a high-bill investigation and provided her phone number to contact her. Tr. 116, PECO Exhibit 5.

48. Ms. Leung has no record of a phone call from Mr. Atuahene to her responding to her November 12, 2019 email. Tr. 116-17.

49. Any call or voicemail to Ms. Leung would be logged into PECO's records through the Company's normal course of business. Tr. 117.

50. Ralph Landolphi has been employed by PECO for 30 years and serves as the business process manager for the last two years, who oversees meter equipment and systems of PECO. Tr. 130-31.

51. Mr. Landolphi looked at the meter history involved with the service address. Tr. 131.

52. Meter number 1189261817 was installed at the service address on February 16, 2015 for service account 07200-37070. Tr. 138-39, 54, 57, PECO Exhibits 1, 6 and 8.

53. Meter number 1189261817 was tested on November 5, 2014 and was certified accurate based on the results of the test. Tr. 132-34, PECO Exhibit 6.

54. The meter came from the vendor on September 24, 2012, and the vendor tested it and found it accurate. Tr. 134, PECO Exhibit 6.

55. The equipment used to test the meter was calibrated on July 22, 2014. Tr. 135-36, PECO Exhibit 7.

56. Thomas Lerro has been employed by PECO for 16 years as a Senior Field foreman for high billing Tr. 141-42.

57. Mr. Lerro supervises eight field investigators, audits the paperwork, and performs field investigations on more difficult cases. Tr. 141.

58. Mr. Lerro supervised the field investigator and audited the paperwork of the field investigator that performed the investigation at the service address. Tr. 141, 145-46.

59. PECO was able to perform a meter accuracy test on November 19, 2019, on meter number 118926817 since the meter is located outside of the service address. Tr. 117, 157, PECO Exhibit 8.

60. Only a meter test was performed at the service address on November 19, 2019. Tr. 143, PECO Exhibit 8.

61. No appliance test was able to be done on November 19, 2019, at the service address since access inside the property was not provided. Tr. 143-44, PECO Exhibit 8.

62. On November 19, 2019, the PECO field investigator performed two full load tests and two light load tests of the meter at the service address and determined the meter was accurate. Tr. 144-45, PECO Exhibit 8.

63. A full load or heavy load test simulates a large amount of electricity going through the meter. Tr. 145.

64. A light load test simulates a minimal amount of electricity going through the meter. Tr. 145.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order or seeking affirmative relief from the Commission, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainants 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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 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 Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

If the Complainants present evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainants have not satisfied their burden of proof. The Complainants 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*, 461 A.2d 1234 (Pa. 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).

II. Alleged High Bill

The Complainants alleged that their electric bills were high.

Where a complainant alleges inadequate service due to overbilling, the complainant has the burden of establishing a *prima facie* case that the complainant was overcharged for service. *Wilson v. PECO Energy Co.*, Docket No. F-2011-2272410 (Opinion and Order entered February 28, 2013) (*Wilson*). This can be accomplished in several ways, including showing that:

- (1) the number of occupants in a household has not changed;
- (2) the potential for energy utilization was low;
- (3) the complainant's prior billing history showed no previous abnormalities; and
- (4) any other evidence showing utility bills unreasonably high.

Dyckman v. PPL Elec. Utils. Corp., Docket No. C-20030661 (Order entered December 16, 2004); *Waldron v. Philadelphia Elect. Co.*, 54 Pa. PUC 98 (1980) (*Waldron*); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (1980); and *Burleson v. Pa. Pub. Util. Comm'n*, 501 Pa. 433, 461 A.2d 1234 (1983). The complainant may also establish a high billing *prima facie* case by presenting any other evidence showing that the bills were unreasonably high. *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010).

Once a *prima facie* case has been established, the burden of going forward, but not the ultimate burden of proof, shifts to the utility to rebut the prima facie case with evidence which is at least co-equal. *Waldron, supra*. If the utility rebuts a complainant's evidence, the burden of going forward shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa. PUC LEXIS 95. Although the burden of going forward with the evidence may shift from one party to another, the "burden of proof" (burden of persuasion) never shifts. It always remains on the complainant. *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (1980), and *Waldron*.

In the instant Complaint, the Complainants are the only occupants of the service address. FOF 1. The Complainants have been the sole occupants of the service address from October 2014 to the present. *Id.*

The Respondent asserts that the Complainants failed to carry their burden of proof. PECO M.B. at 7. The Respondent states that while the Complainants claimed only a television and refrigerator as electric appliances, the record evidence adds electric lights, a laptop, a printer and a smartphone. *Id.* The Respondent states that this is the only assertion provided by the Complainants to support the allegation of overbilling.

The Respondent rebuts the Complainants' assertion with the technical testimony of two of its witnesses. One witness testified to the accuracy or calibration of the meter before it was placed in the field. Tr. 133, PECO Exhibit 7. Another witness testified to the accuracy of the meter while it was at the service address during a field investigation conducted on November 19, 2019. Tr. 144, PECO Exhibit 6. The Respondent contends that this technical evidence should outweigh the anecdotal evidence supplied by the Complainants. PECO M.B. at 8.

I do not find that the Complainants' evidence is as limited as represented by the Respondent. The Complainant used PECO Exhibit 1 to show abnormalities in usage at the service address.

For example, in reviewing the table below,

Month	2015	2016	2017	2018	2019
Jan	250	260	303	429	212
Feb	199*	220	251	390	201
Mar	187	206	405	406	206
Apr	169	212	256	302	185
May	204	245	232	177	195
Jun	248	226	238	202	237
Jul	188	229	248	226	221
Aug	208	253	217	200	227
Month	2015	2016	2017	2018	2019
Sept	224	216	216	187	204
Oct	181	190	200	181	
Nov	206	233	305	251	
Dec	242	312	525	253	

*-- denotes new meter installed. PECO Exhibit 1.

I see several abnormalities comparing usage of the same month in different years.

The usage appears to be abnormal compared to different years in the following months:

- (1) March 2017;
- (2) November 2017;
- (3) December 2017;
- (4) January 2018;
- (5) February 2018;
- (6) March 2018; and
- (7) April 2018.

It is noted that the above months except March and November 2017 and April 2018 encompass the 2017-18 Winter season. The 2017-18 Winter season encompassed December 1, 2017 to February 28, 2018, meteorologically, and December 21, 2017 to March 20, 2018, astronomically. Hearing Exhibit 1. A significant cold wave of air was present in Pennsylvania in November 2017. *Id.* Additionally, at least two Nor'Easters affected Pennsylvania with significant amount of snowfall in March 2018, one of which caused a snow emergency to be declared in Philadelphia. Hearing Exhibit 1. These weather events may affect the normal behaviors of the Complainants in electric usage. There is no record evidence of whether cold weather affects the meter.

The Complainants use gas heat not electric heat. Tr. 50, 218. Not only do the Complainants use gas service for heat, but the Complainants also testified that they do not supplement their heat when it gets cold by additional appliances. Tr. 219, 223. Specifically, Mr. Atuahene testified, "We had a previous accident with our tenants using supplementation [to heat source] during the winter. So, because of that, we are hesitant to use supplementation." Tr. 224.

I find that the Complainants have satisfied a *prima facie* case by the *Wilson* factors that overbilling occurred from the period of November 2017 through April 2018. I do not find that omitting the additional electric appliances of lights, laptop, printer, smartphone and ceiling fan as egregious as contended by the Respondent to forfeit satisfaction of a *prima facie* case under *Wilson*.⁸ Therefore, I do not find that the omission of the additional electrical appliances rebuts the *prima facie* case presented by the Complainants of overbilling.

I find the technical testimony regarding the accuracy of the meter credible of both witnesses of the Respondent. However, I find significantly persuasive the evidence of abnormal electric usage that was sponsored by the Respondent. That evidence coupled with the credible testimony of the Complainants that they do not supplement their heat in cold weather because of the danger that it may place them in is compelling.

⁸ I note that a laptop and smartphone are capable of functioning without being plugged into an electric source of energy.

I do not find the *prima facie* case of the Complainants co-equal in weight to the testimony of accurate meter reading by the Respondent's witnesses. Rather, I find that the *prima facie* case of the Complainants outweighs that of the testimony and exhibits of the Respondent's witnesses.

I conclude that the Complainants have satisfied their burden of proof that they were overbilled from November 2017 through April 2018. I direct the Respondent bill the Complainants for the period of November 2017 through April 2018 at the service address usage for November 2018 through April 2019. The Respondent should calculate the usage for each month from November 2018 through April 2019 by substituting the corresponding tariff rates in effect for each month from November 2017 through April 2018 and credit the Complainants' bill for the service address account accordingly.

III. Whether Transfer of Balances of Other Properties Violates PUC Laws

The Complainants dispute the transfer by Respondent of balances from the following properties to the service account for the service address:

- 1) 5512 Hadfield St., Philadelphia, PA,
- 2) 920 E. Price St., Philadelphia, PA,
- 3) 5520 Crowson St., Philadelphia, PA,
- 4) 5728 N. Marvine St., Philadelphia, PA,
- 5) 2124 N. 11th St., Philadelphia, PA, and
- 6) 6203 Limekiln Pike, Philadelphia, PA

There is no dispute that Mrs. Atuahene owned all the above listed six properties prior to June 2019. Tr. 90-94, 109-10, PECO Exhibit 9. There is no dispute that Mrs. Atuahene has been the ratepayer of record for the service address from 2014 to the present. Tr. 48-50, 89.

Section 56.16(a) of Title 52 of the Pennsylvania Code states, in relevant part,

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

52 Pa.Code § 56.16(a).

Mrs. Atuahene stated that the six properties at issue were leased by her to tenants. Tr. 90-94, PECO Exhibit 9. Mrs. Atuahene stated that her practice was to put the electric service in her name when a tenant vacated the property so that service would remain on. She also stated that her policy was to wait for the new tenant to put the service in their name when they moved into a vacated property. Mrs. Atuahene stated she would wait at least 30 days before contacting the Respondent to discontinue service at a rental property in her name once she obtained a new tenant for a previously vacant property. Tr. 94-95.

Section 56.16(b) of Title 52 of the Pennsylvania Code states,

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa.Code § 56.16(b).

As stated above, there is no dispute that the service account for the service address is in the name of Agnes Atuahene. There is no violation of PUC regulations for the Respondent to transfer the outstanding balance from the six abovementioned rental properties to the service account at the service address if the service at the rental properties was in the name of Agnes Atuahene at the time the balance was transferred.

I find that the transfer of the following outstanding balances:

1. \$69.82 on January 9, 2015, from 2124 N. 11th St.;
2. \$135.02 on April 10, 2015, from 5728 N. Marvine St.;
3. \$48.97 on October 5, 2015, from 5512 Hadfield St.;
4. \$46.43 on December 28, 2015, from 5520 Crowson St.;
5. \$102.78 on April 24, 2017, from 920 E. Price St.;
6. \$161.96 on June 6, 2017, from 2124 N. 11th St.;
7. \$190.73 on September 18, 2018, from 5512 Hadfield St.;
- and
8. \$497.88 on September 24, 2018, from 6203 Limekiln Pike.

for a grand total of \$1,253.59 are not in violation of Commission regulation. FOFs, 27, 28, 29, 30, 31, 37, 38 and 29. Mrs. Atuahene was the owner of the properties at the time the transfers occurred; Mrs. Atuahene is the current responsible ratepayer at the service address and the corresponding service account the balances were transferred to; and Mrs. Atuahene's practice was to place vacant properties electric service in her name until the tenant contacted the Respondent or within approximately 30 days, whichever occurred first. Based on the record evidence, I find that the above eight transfers comply with 52 Pa.Code § 56.16(b).

IV. Whether Respondent had Grounds to Threaten Termination of Service

Section 56.91(a) of the Code states, in pertinent part,

§ 56.91. General notice provisions and contents of termination notice.

- (a) Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

52 Pa.Code § 56.91(a).

Section 56.81 of the Code states,

A public utility may notify a customer and terminate service provided to a customer after notice... for any of the following actions:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit.

- (3) Failure to permit access to meter, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.
- (4) Failure to comply with the material terms of a payment arrangement.

52 Pa.Code § 56.81.

The service account of the Complainants was delinquent in that there were outstanding balances due on the rental properties. The amounts due accrued as early as January 9, 2015, at the address of 2124 N. 11th Street, Philadelphia, PA, to September 24, 2018, at the Limekiln service address. See *supra* at 22.

I found that the amounts were justly transferred to the service address account of Mrs. Atuahene. Thus, before any Complaint was filed, there existed nonpayment of a delinquent account. Nonpayment of a delinquent account that is undisputed gives the Respondent reason to issue a termination notice pursuant to 52 Pa.Code § 56.81(1). Consequently, I find that the Respondent had a justifiable reason to issue a termination notice to the Complainants in compliance with the Commission regulations. The record evidence supports that the Respondent's actions complied with 52 Pa.Code § 56.91(a).

V. Whether the Complainants' Contract with AEP was Obtained Fraudulently

The Complainants alleged that their contract with AEP was obtained fraudulently. The Complainants resolved their dispute with AEP through a certificate of satisfaction that was filed on November 18, 2019. Consequently, this matter is rendered moot by the certificate of satisfaction.

VI. Whether AEP Conspired with PECO to Extort Money from the Complainants

The Complainants alleged that AEP conspired with the Respondent to extort money from the Complainants. As stated above, the Complainants resolved their dispute with AEP as evidenced by a filed certificate of satisfaction. See *supra*. Any allegation of wrongdoing by AEP is rendered moot by the certificate of satisfaction.

VII. Conclusion

The Complainants established a *prima facie* case that they were overbilled by showing the factors as presented in *Wilson*. I found that the rebuttal testimony of the Respondent's two witnesses on the accuracy of the meter failed to outweigh the evidence shown through the Complainants' *prima facie* case. The Complainants sustained their burden of proof to show the Respondent overbilled for usage at the service address from November 2017 through April 2018.

The Complainants failed to sustain their burden of proof to show the Respondent violated a Commission order, regulation, statute, or precedent through,

- (1) transferring balances from service accounts that were in the name of Mrs. Atuahene or tenants of Mrs. Atuahene from properties that she leased; and
- (2) threatening to terminate service.

The Complaint will be granted in part for overbilling and denied in part for terminating service, and transfer of balances by the ordering paragraphs below. The Complainants through a certificate of satisfaction with AEP rendered moot the allegations of any fraudulent contract with AEP or any conspiracy by AEP with PECO to extort the Complainants.

CONCLUSIONS OF LAW

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

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, then the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. A complainant can establish a *prima facie* case for overbilling by the following factors:

- (1) the number of occupants in a household has not changed;
- (2) the potential for energy utilization was low;
- (3) the complainant's prior billing history showed no previous abnormalities; and
- (4) any other evidence showing utility bills unreasonably high.

Wilson v. PECO Energy Co., Docket No. F-2011-2272410 (Opinion and Order entered February 28, 2013); *Dyckman v. PPL Elec. Utils. Corp.*, Docket No. C-20030661 (Order entered December 16, 2004); *Waldron v. Philadelphia Elec. Co.*, 54 Pa. PUC 98 (1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (1980); and *Burleson v. Pa. Pub. Util. Comm'n*, 501 Pa. 433, 461 A.2d 1234 (1983).

4. In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa.Code § 56.16(b)

5. Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days. 52 Pa.Code § 56.91(a).

6. A public utility may notify a customer and terminate service provided to a customer after notice for nonpayment of an undisputed delinquent account. 52 Pa.Code § 56.81(1).

7. The Complainants had the burden of proof and sustained their burden regarding Respondent overbilling.

8. The Complainants had the burden of proof and failed to sustain their burden regarding the Respondent transferring balances from Complainants' rental properties or threatening termination of service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Agnes and Steve Atuahene against PECO Energy Company at Docket No. C-2019-3012904 is granted in part and denied in part.
2. That the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is granted regarding overbilling.
3. That PECO Energy is to bill the Complainants, Agnes and Steve Atuahene, for electric usage at 7500 N. 21st Street, Philadelphia, Pennsylvania over the period from November 2017 through April 2018, by substituting the usage at the same address from November 2018 to April 2019 and provide a credit to the service account accordingly within thirty (30) days of the entry of a Final Order in this matter.
4. That the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is denied regarding transfer of rental property account balances to the Complainants' service account at 7500 N. 21st Street, Philadelphia, Pennsylvania.
5. That the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is denied regarding threatened termination of service.
6. That any claim of contract fraud in the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is moot.
7. That any claim of extortion in the formal Complaint of Agnes and Steve Atuahene v. PECO Energy Company at Docket No. C-2019-3012904 is moot.

8. That the Secretary's Bureau mark this docket closed.

Date: November 3, 2020

_____/s/_____
Angela T. Jones
Administrative Law Judge