

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kim Wilkes	:	
	:	
v.	:	F-2020-3022227
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint filed by Kim Wilkes against Duquesne Light Company due to Complainant’s failure to meet her burden of proof that the Company violated a statute, regulation, order, or tariff provision. Complainant alleges her bills are inaccurate and she has had repeated service outages. However, the evidence adduced at the hearing demonstrates that her consumption is correctly recorded and there is no inaccuracy in her billing. Furthermore, while she has experienced some power outages, the outages do not rise to the level of violating the Commission’s regulations. Therefore, her Complaint must be dismissed.

HISTORY OF THE PROCEEDING

On September 11, 2020, Kim Wilkes (Complainant or Ms. Wilkes) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Company, Respondent or DLC), alleging that she was having reliability, safety, or quality problems with her utility service at her residence at 335 Linoleum Way, Pittsburgh,

PA 15219 (service location). Specifically, she averred that the transformer on Herron Avenue was “blowing out 2-3 times a month,” and that sometimes during a storm, the service line over the Herron Avenue bridge would come down. Complainant also averred that the Company’s charges are too high, and it is charging her twice her normal usage. As relief, Complainant requested that the Company lower or eliminate her customer charge, her supply charge, or her distribution charge. Additionally, Complainant requested that she receive a credit for various bills between December 26, 2019, through September 27, 2020, due to overcharges.

On October 21, 2020, the Company filed an Answer to the Complaint. The Company denied there were incorrect charges on her bill and admitted there were outages at the service location, but denied any wrongdoing related to those outages. DLC averred it has provided adequate, safe, and reasonable service to Complainant in accordance with the Commission’s regulations. The Company denied the remaining material averments of the Complaint. DLC attached Exhibits A through E to its Complaint. Exhibit A is a Statement of Account, Exhibit B is a record of a pre-installation meter inspection, Exhibit C is a letter sent to Complainant by the Company dated April 6, 2020, Exhibit D is a two-year Interruption Detail Report, and Exhibit E is a copy of the Bureau of Consumer Services (BCS) decision related to the Informal Complaint Complainant filed prior to the instant Formal Complaint.

By notice dated October 23, 2020, an evidentiary hearing was scheduled for November 24, 2020, at 10:00 a.m. On October 26, 2020, a Prehearing Order was issued. The Notice and Prehearing Order were sent to Complainant via email.¹

The evidentiary hearing convened as scheduled on November 24, 2020. Complainant appeared *pro se*, and attorney Emily Farah, Esq., was present on behalf of Respondent. Complainant testified on her own behalf, and the Company presented the testimony of Lisa Bloomfield, regulatory consumer relations specialist; Colleen Mackin, consumer program associate; Dawn Stolarski, billing manager; and Richard Saporito, distribution planning engineer.

¹ See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order Entered March 20, 2020).

The exhibits entered into the record consist of Complainant's Exhibit 1 and the Company's Exhibits A-H and J-N. The transcript is 166 pages.

The record closed on January 25, 2021.

FINDINGS OF FACT

1. Complainant is Kim Wilkes and she resides at 335 Linoleum Way, Pittsburgh, PA 15219.
2. Respondent is Duquesne Light Company, a jurisdictional public utility.
3. On September 11, 2020, Complainant filed a Complaint with the Commission against Respondent, alleging incorrect charges on her bill and service issues with her utility service.
4. On October 21, 2020, the Company filed an Answer to the Complaint, essentially denying the material averments in the Complaint.
5. As of the date of the hearing, Complainant's account was current and had a zero balance.²
6. Prior to April 1, 2019, Complainant had an analog meter.³
7. On April 1, 2019, the Company replaced the analog meter with a smart meter as part of the Company's new meter infrastructure plan implemented pursuant to Act 129.⁴

² N.T. 42:23-24; *see* Company Exhibit A.

³ N.T. 69:16-19, 72:5-6.

⁴ N.T. 60:1-2, 69:24-70:6, 72:5-6, 74:23-24; *see* 66 Pa.C.S. § 101, *et seq.*

8. Complainant's smart meter was tested on September 10, 2018, before it was installed at the service location. The results were 100.03 percent full load and 100.04 percent light load.⁵

9. Complainant received bills based on estimated readings on December 11, 2018, December 21, 2018, January 9, 2019, February 10, 2019, and March 11, 2019.⁶

10. Complainant received these bills based on estimated readings because the Company was in the process of deploying its new smart meter infrastructure, and the analog meter Complainant had at the time was not able to communicate actual readings through the Company's network.⁷

11. Complainant received bills based on actual readings after her smart meter was installed, beginning on April 4, 2019, through the present.⁸

12. Complainant's estimated bills were "trued-up" to reflect her actual usage at the time her smart meter was installed.⁹

13. Around May 2019, Complainant's electric usage dropped dramatically. Between December 5, 2018 and April 3, 2019, Complainant's usage averaged between 47.77 kwh per day and 102.05 kwh per day, but between May 5, 2019 and January 2, 2020, Complainant's usage averaged between 6.44 kwh per day and 25.87 kwh per day.¹⁰

⁵ N.T. 59:1-2; Company Exhibit E.

⁶ Company Exhibit A.

⁷ N.T. 69:24-70:6.

⁸ Company Exhibit A.

⁹ N.T. 121:20-24, 135:19-20.

¹⁰ N.T. 48:13-16; Company Exhibit B.

14. Complainant intentionally made efforts to reduce her electric consumption.¹¹

15. Complainant was enrolled in the Company's Customer Assistance Program (CAP) on November 13, 2007, but was voluntarily removed on November 8, 2019.¹²

16. As of May 15, 2020, Complainant used both electricity and propane to heat her home.¹³

17. Complainant is charged a residential heating rate.¹⁴

18. Complainant has a window air conditioning unit, a washer and dryer, one refrigerator, and two televisions.¹⁵

19. Her residence is a multi-story home that is over one hundred years old.¹⁶

20. Complainant's bill is comprised of a customer charge, a distribution charge, a DSIC surcharge, and a supply and transmission charge.¹⁷

¹¹ N.T. 26:9-15.

¹² Company Exhibit C.

¹³ Company Exhibit H; N.T. 64:20-22.

¹⁴ N.T. 46:25-47:4.

¹⁵ Company Exhibit H.

¹⁶ *Id.*

¹⁷ N.T. 101:17-102:3.

21. The Company issues Home Energy Reports, which are used to educate customers about their electricity usage.¹⁸ The Home Energy Reports include multiple graphs depicting a customer's electricity usage.¹⁹

22. Complainant's electricity consumption is consistently lower than that of similar homes.²⁰

23. The Company receives hourly readings from customers' smart meters, but customers are billed per month for their total monthly usage.²¹

24. As of the time of the evidentiary hearing, Complainant's account balance was zero.²²

25. Between October 1, 2018 and November 11, 2020, Complainant experienced three incidents that resulted in disruptions to her electrical service.²³ The first incident occurred on April 25, 2020 and was due to a jumper failure.²⁴ The second incident occurred on August 4, 2020 due a downed wire, and the third incident occurred on August 13, 2020, due to a downed wire at a different location.²⁵

¹⁸ N.T. 106:10-108:23, 113:3-11, 116:13-21.

¹⁹ Company Exhibit M.

²⁰ *Id.*

²¹ N.T. 122:3-123:9.

²² N.T.: 42:23-24.

²³ N.T. 150:11-13.

²⁴ N.T. 150:17-24.

²⁵ N. T. 152:17-20.

26. The three outage incidents resulted in total outage time of about three and a half hours, which includes outage time related to the Company's repair efforts.²⁶

27. All three instances were unrelated and involved events happening at different places on the circuit.²⁷ None of these outages were related to any transformer failures along Herron Avenue, specifically around the bridge or hill.²⁸

LEGAL STANDARDS

Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008) (citation omitted). 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). Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

²⁶ Company Exhibit J.

²⁷ N.T. 153:23-154:6.

²⁸ N.T. 155:17-19.

A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501. A public utility is not required to provide perfect service. *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

DISCUSSION

Complainant alleges that she is having service issues and has incorrect charges on her bill. Complainant is the party seeking affirmative relief from the Commission; therefore, she has the burden of proof.²⁹ This means that she has the duty to establish a fact by a preponderance of the evidence, and must show that the Company has violated the Public Utility Code or Commission regulations.³⁰ While it is certainly true that the Complainant is very careful of her consumption of electricity, maintains a lower than normal level of consumption, and has experienced some service outages, there is no evidence that her meter is reading her consumption incorrectly, her bills for consumption are improperly rendered, or that the outages violate the Company’s duty to render adequate, efficient, safe, and reasonable service.

Complainant testified on her own behalf.³¹ Regarding her billing claims, she testified that she has dramatically decreased her electric consumption since removing herself from the Company’s CAP and budget programs³², and her bills while in those programs were “artificially high” such that she was being charged three times her actual usage.³³ She testified she believes her bills were based on estimates³⁴, which has led to overbilling because, when the

²⁹ 66 Pa. C.S. § 332(a).

³⁰ *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Phila. Suburban Water Co.*, 50 PA PUC 300 (1976).

³¹ N.T. 25:4-37:11.

³² N.T. 26:4-15.

³³ N.T. 26:16-20.

³⁴ *Id.*

Company issues an estimated bill, it “rounds up” to charge an amount greater than the customer’s actual usage.³⁵

Complainant also testified about service issues she was having. She testified that her line was “always dropping” due to a “necrotic on top where it was corroded.”³⁶ She testified that the transformers on Herron Avenue near her home “blow up...a lot.”³⁷ She testified that after one power outage her security cameras would no longer work.³⁸

The Company presented witness testimony and exhibits to refute Complainant’s testimony. Ms. Bloomfield, a regulatory relations specialist, testified that Complainant had an analog meter prior to April 1, 2019, at which time a smart meter was installed as part of the Company’s smart meter installation plan. She testified that Complainant’s smart meter was tested on September 10, 2018, prior to its installation, and it tested within the Commission’s requirements.³⁹

Ms. Bloomfield also testified about Complainant’s bills and account. She testified that as of the time of the hearing, Complainant’s account balance was zero⁴⁰, and Complainant is being charged the residential heating rate, which is the rate for customers whose primary source is electricity for heating.⁴¹ She testified that Complainant received bills based on estimated readings prior to the installation of her smart meter on April 1, 2019, because the Company was in the process of deploying its new smart meter infrastructure pursuant to Act 129⁴² and the

³⁵ N.T. 136:24-137:1.

³⁶ N.T. 32:3-9.

³⁷ N.T. 35:9-14.

³⁸ N.T. 36:24-25.

³⁹ N.T. 59:10-12, 60:1-2; Company Exhibit E.

⁴⁰ N.T.: 42:23-24.

⁴¹ N.T. 46:25-47:4.

⁴² 66 Pa.C.S. § 101, *et seq.*

analog meter Complainant had at the time was not able to communicate actual readings through the Company's network.⁴³ She testified that Complainant received bills based on actual readings after the smart meter was installed on April 1, 2019.⁴⁴

Ms. Colleen Mackin, a Customer Programs Associate, testified about Complainant's energy usage and her energy usage as compared to the weather. Ms. Mackin testified that the Complainant's bill is comprised of a customer charge, a distribution charge, a DSIC surcharge, and a supply and transmission charge.⁴⁵

Ms. Stolarski, a billing manager, testified about the Company's billing practices and Complainant's bills. She testified that Complainant received estimated bills from December 2018 through April 2019, but that those estimates were reconciled at the time of the meter exchange in April 2019.⁴⁶ She testified that the Company receives hourly readings from customers, but that customers are billed per month.⁴⁷ She testified that the bills include meter reading data, usage information, and rates, and show how the charges are calculated.⁴⁸ She testified that the bills are calculated in accordance with the Company's tariff⁴⁹, and explained that Complainant is being charged the residential heating rate, which means she receives a lower rate during the winter when her usage is higher.⁵⁰

⁴³ Company Exhibit A; N.T. 69:24-70:6.

⁴⁴ Company Exhibit A.

⁴⁵ N.T. 101:17-102:3.

⁴⁶ N.T. 121:20-24.

⁴⁷ N.T. 122:3-123:9.

⁴⁸ N.T. 130:21-24.

⁴⁹ N.T. 130:13.

⁵⁰ N.T. 132:25-133:3.

The Company's final witness, Richard Saporito, a Distribution Planning Engineer, testified about Complainant's outage claims.⁵¹ He testified that between October 1, 2018 and November 11, 2020, Complainant experienced three incidents that resulted in disruptions to her electrical service.⁵² The first incident occurred on April 25, 2020 and was a 110-minute total outage due to a jumper failure.⁵³ The second incident occurred on August 4, 2020 due a downed wire. The Company's efforts to fix the issue resulted in three separate outages lasting 4 minutes, 22 minutes, and 23 minutes.⁵⁴ The third incident occurred on August 13, 2020 due to a downed wire at a different location, and resulted in an initial outage of 34 minutes and a second outage of 6 minutes related to the Company's repair efforts.⁵⁵ Mr. Saporito testified that all three instances were completely unrelated and involved events happening at different places of the circuit.⁵⁶ He further testified that none of these outages were related to any transformer failures along Herron Avenue, specifically around the bridge or the hill.⁵⁷

After reviewing the evidence, the undersigned finds Complainant failed to meet her burden to prove that there are incorrect charges on her bill or that the Company has violated the Commission's regulations regarding the service outages.

The Complainant here alleges a billing dispute. Therefore, the Complainant's burden of proof is governed by *Waldron v. Phila. Elec. Co.*⁵⁸ In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* case by showing that: (1) the number

⁵¹ N.T. 146:24-25.

⁵² N.T. 150:11-13.

⁵³ N.T. 150:17-24.

⁵⁴ Company's Exhibit J.

⁵⁵ *Id.*; N. T. 152:17-20.

⁵⁶ N.T. 153:23-154:6.

⁵⁷ N.T. 155:17-19.

⁵⁸ 54 Pa. P.U.C. 98 (1980).

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.

The Commonwealth Court broadened the Commission's ruling in *Waldron* in *Milkie v. Pa. Pub. Util. Comm'n.*⁵⁹ The Commonwealth Court held that the Commission's requirement that the Complainant must establish certain specific elements in order to make out a *prima facie* case was too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage. Accordingly, the Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding.⁶⁰ Further, the Commission has also held that in response to a high bill complaint, the accuracy of a meter test alone is not conclusive evidence and does not by itself mandate a finding against a complainant and in favor of a utility.⁶¹ This rule protects the complainant from dismissal because of his inability to produce direct proof that the meter malfunctioned.

Regarding the claims related to her estimated bills, Complainant's arguments are that the Company is "rounding-up" when it issues estimated bills, resulting in overcharging. In contrast, the Company's witnesses credibly testified that Complainant received some estimated bills which are permitted under the Commission's rules and were eventually "trued-up" so that Complainant was eventually only charged for her actual usage during the period of time she was issued estimated bills. The Commission's rules permit for billing based on estimated reads in some circumstances, as long as the company obtains an actual read and rebills for underbilled amounts and issues refunds for overbilled amounts.⁶² The Company's issuance of

⁵⁹ 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*).

⁶⁰ *Bennett v Peoples Nat. Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

⁶¹ *Bennett*, Slip op. at 7.

⁶² 52 Pa. Code § 56.12.

estimated bills due to its smart meter deployment plan and subsequent “true-up” is consistent with the Commission’s regulations.

Regarding her claims that her bills are too high, she testified that she has made efforts to reduce her consumption, but her bills are still too high for her consumption. Around May 2019, Complainant’s electric usage dropped dramatically. Between December 5, 2018 and April 3, 2019, Complainant’s usage averaged between 47.77 kwh per day and 102.05 kwh per day, but between May 5, 2019 and January 2, 2020, Complainant’s usage averaged between 6.44 kwh per day and 25.87 kwh per day.⁶³ Complainant has done an excellent job reducing her electric consumption. The Company’s witnesses credibly testified that her current meter was tested and registered within Commission limits⁶⁴, and the charges on her bills are consistent with the Commission’s tariff. Complainant has failed to present substantial evidence that the Company is incorrectly measuring her consumption or that it is incorrectly charging her for that consumption.

While her household size and appliances have remained the same, Complainant has admittedly made substantial changes to reduce her consumption. Notably, her consumption is *consistently and substantially less than similar homes*,⁶⁵ Complainant is being charged the correct rate, and her usage has decreased since May 2019, which is consistent with her self-admitted reduction in consumption.

Regarding the Complainant’s outage concerns, the Company’s witnesses testified that since October 1, 2018, Complainant has only experienced three unrelated outage incidents, resulting in outages totaling about three and a half hours, which includes outage time related to the Company’s repair efforts. While a public utility is required to provide adequate, efficient,

⁶³ N.T. 48:13-16; Company Exhibit B.

⁶⁴ See 52 Pa. Code § 57.20.

⁶⁵ Company Exhibit M.

safe, and reasonable service⁶⁶, a public utility is not required to provide perfect service.⁶⁷ Mr. Saporito testified regarding these outages and the Company’s reasonable response to repair the lines and restore service.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 1501, 701.

2. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

3. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008) (citation omitted).

4. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701.

⁶⁶ 66 Pa.C.S. § 1501.

⁶⁷ *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

5. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

6. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

7. Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, 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 the burden of proof. The complainant now has to provide some 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).

8. 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).

9. Assertions, personal opinions, or perceptions do not constitute evidence.. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

11. A public utility is not required to provide perfect service. *Williams v. Verizon Pa., LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

12. Complainant failed to carry her burden of proof establishing that Duquesne Light Company violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 332.

13. Complainant failed to carry her burden of proof establishing that Duquesne Light Company provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

14. There is no evidence that Complainant did not consume the amount of electricity which was recorded by the utility.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Kim Wilkes filed against Duquesne Light Company at Docket No. F-2020-3022227 is dismissed with prejudice.

2. That Docket No. F-2020-3022227 be marked as closed.

Date: February 3, 2021

/s/
Emily I. DeVoe
Administrative Law Judge