BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Gualberto Carhuaslla and Lisa Fedorka-Carhuaslla	:	
	:	
v.	:	C-2021-3028698
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint requesting the Public Utility Commission find Duquesne Light Company overcharged Complainants for electric service provided to the common areas in their multi-unit rental building from December 2019 through June 2020.

HISTORY OF THE PROCEEDING

On September 20, 2021, Gualberto Carhuaslla and Lisa Fedorka-Carhuaslla (Complainants or Mr. and Mrs. Carhuaslla) filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against Duquesne Light Company (Respondent, Duquesne or DLC) alleging DLC overcharged Complainants for electric service provided to the common areas of their rental building between December 2019 and June 2020. Complainants asked the Commission to order DLC to evaluate the historical usage over the previous few years, generate an average bill based on that data and adjust the amount billed by providing a refund for the overcharges.

On October 14, 2021, Respondent filed an Answer generally denying the allegations in the formal complaint. Respondent averred the service address was correctly billed for the electric service provided in the common areas, based on consumption readings from a meter which last was tested as accurate on October 1, 2021. DLC asserted Complainants are billed under Respondent's General Service Medium Commercial (GM) rate.

On December 2, 2021, the Office of Administrative Law Judge (OALJ) issued an Initial Call-In Telephonic Hearing Notice[1], which scheduled an initial hearing to be conducted on January 18, 2022. On December 8, 2021, the presiding officer issued a Prehearing Order which outlined various procedural matters.

On December 14, 2021, the parties filed a Joint Motion for Protective Order (Joint Motion). The parties averred proprietary information had been requested or was anticipated to be requested during the discovery phase in this proceeding. Some of that information would be customarily treated as sensitive, proprietary, or highly confidential including requests for recorded telephone calls between Complainants and Duquesne's customer service representative wherein personally identifiable customer information was exchanged. Accordingly, on December 15, 2021, the presiding officer issued the First Interim Order which granted the Joint Motion for a Protective Order.

The presiding officer convened the initial hearing as scheduled on January 18, 2022. Complainants appeared represented by William Kaczynski, Esquire, who presented the testimony of both Complainants. Complainants offered five (5) exhibits which were admitted as Complainants Exhibits 1 through 4 and 6. Respondent was represented by Emily Farah, Esquire. Attorney Farah presented the testimony of two witnesses, and offered eight (8) exhibits which were admitted as Duquesne Light Exhibits A, C, D, E, F, H, I and L. Complainants and Respondent issued final statements on the hearing record in lieu of filing briefs.

[1] Initially, the OALJ issued a notice for a hearing on remand on December 2, 2021. On December 15, 2021, the OALJ issued a Corrected Hearing Notice to reflect the earlier hearing notice incorrectly listed the hearing as "on Remand."

The transcript of the hearing, consisting of 145 pages, was received in the Commission's Secretary's Bureau on February 9, 2022. On February 16, 2022, the presiding officer issued the Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainants, Gualberto Carhuaslla and Lisa Fedorka-Carhuaslla, have owned a multi-unit building (service address) located at 3111 Landis Street, Pittsburgh, Pennsylvania, since April 11, 2019. (Tr. 13, 76; Duquesne Exhibit A).

2. The service address contains six rental apartments, with each unit containing three bedrooms. (Tr. 14, 71).

3. Respondent, Duquesne Light Company, provides each rental unit with an individual meter, and there is a separate meter (house meter) for the electric service provided in the common areas. (Tr. 14, 20, 49, 62, 71; Complainants Exhibit 1-A).

4. The common areas require electric service to operate two 60-watt exterior light bulbs, a ceiling light, and a safety exit light on each of the three floors, and three light bulbs, a fluorescent light, an outlet, and a dehumidifier in the basement where a communal laundry is located. (Tr. 20 – 23, 61, 62; Complainants Exhibits 1-A, 1-C, 1-D).

5. The common areas are accessible to all tenants and their guests but are not accessible to the general public. (Tr. 46).

6. Riva Ridge Real Estate Services (Riva Ridge), a real estate management company, established electric service at the service address on April 30, 2019, and managed the service address until December 24, 2020, after which Complainants contracted with another management company, DeSantis, to perform the management duties. (Tr. 14, 38, 39, 75, 76; Duquesne Exhibit C).

7. Complainant Gualberto Carhuaslla established electric service in his name in January 2021, at which time the unpaid account balance for the house meter was $6,267.30. (Tr. 14, 38, 77, 113, 117; Duquesne Exhibits A and C).

8. The house meter registers electric consumption in the common areas of the service address and house meter #F74168155 was installed by Duquesne on July 20, 2017. (Tr. 79; Duquesne Exhibit E).

9. Respondent tested the house meter two times: prior to its installation on July 20, 2017, and once[2] on October 1, 2021, after Duquesne received the formal complaint. (Tr. 71, 80 - 87; Duquesne Exhibit F).

10. The results of testing the house meter on July 20, 2017, and October 1, 2021, showed the house meter functioned consistent with the Commission's requirements. (Tr. 80-87; Duquesne Exhibit F).

11. Prior to May 2020, DLC billed for consumption through the house meter using the General Service Small Commercial (GS) rate but changed the rate used to the General Service Medium Commercial < 25 (GM) rate, after the house meter recorded usage considered to be excessive pursuant to Duquesne's tariff. (Tr. 128 – 130; Duquesne Exhibit I).

12. On May 22, 2020, DLC informed Riva Ridge that Respondent would apply the GM rate when calculating the cost of electric consumption through the house meter. (Tr. 74, 88 – 90, 128 - 132; Duquesne Exhibits A and Redacted H).

13. Duquesne did not inform Complainants, directly or through Riva Ridge, how the rate change might impact the monthly bill. (Tr. 89 - 91; Duquesne Redacted Exhibit H).

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[2] Duquesne's witness testified Duquesne's technician conducted two tests on October 1, 2021, when the technician arrived and as the technician was leaving. However, the time stamp on Duquesne Exhibit F indicates the tests were conducted at the same time. The witness was testifying from a business record and was unable to explain reliably the discrepancy.

14. In July 2020, Riva Ridge notified Complainants there was a problem with the amount of the monthly bills for the common areas and Complainants began calling Respondent about the high bills. (Tr. 17, 30, 34, 48, 49; Complainants Exhibit 4).

15. Respondent sent billing statements for the common areas (house meter) with the following amounts due and consumption levels noted:

October 2019	$72.59	396 kWh
November 2019	$146.06	886 kWh
December 2019	$954.64	6,356 kWh[3]
January 2020	$1,070.08	7,169 kWh
February 2020	$1,033.36	6,922 kWh
March 2020	$894.57	5,978 kWh
April 2020	$902.70	6,005 kWh
May 2020	$793.66	5,268 kWh
June 2020	$672.82	4,479 kWh
July 2020	$246.24	2,041 kWh
August 2020	$93.46	416 kWh

(Tr. 15, 124 - 127; Duquesne Exhibit C).

16. The bills Duquesne sent for the common areas, over the two years prior to December 2019, averaged $129.90 per month. (Tr. 16; Duquesne Exhibit C).

17. After June 2020, the amount of the bills dropped to or below $150 each month. (Tr. 39, 40, 59).

18. Complainants perform renovation, or turnover, on each apartment unit after a tenant vacates, to freshen the apartment before new tenants take possession, which turnover typically consists of painting walls and ceilings, and occasionally replacing floor surfaces, using either battery-powered equipment or manual labor. (Tr. 25, 40).

[3] kWh = Kilowatt per hour.

19. If electric power was needed, Complainants never used an extension cord from the common area when performing renovation work in a unit. (Tr. 26, 55).

20. After the COVID19 pandemic started in March 2020, Complainants performed the renovations themselves. (Tr. 25, 42, 54).

21. Complainants did no renovation or turnover work within the common areas during the seven-month period from December 2019 through June 2020. (Tr. 40-42, 55).

22. Riva Ridge did not request a meter test during or about the disputed bills from December 2019 through June 2020. (Tr. 119).

23. As of the date of the initial hearing, the account balance for the house meter at the service address totaled $1.19. (Tr. 74; Duquesne Exhibit A).

DISCUSSION

Complainants alleged in their formal complaint DLC erroneously charged for electric service provided through the house meter from December 2019 through June 2020.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainants bear the burden of proving by substantial evidence they are entitled to the requested relief. 66 Pa.C.S.A. § 332(a). To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described.[4] Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by

[4] *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976).

even the smallest amount, than that evidence presented by the other party.[5] Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.[6] Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[7]

Pursuant to the Pennsylvania Code, all relevant and material evidence may be admitted but will be excluded if repetitious or cumulative, or if its probative value is outweighed by a danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time.[8]

Party Positions

Complainants argue they met their burden of proving the power usage for the seven-month period in question remained unchanged from the time period prior to and subsequent to that seven-month period. Complainants contend the burden of production shifted to Respondent once Complainants showed the seven-month time period was an aberration. Complainants argue Respondent had a responsibility to rebut that evidence and its failure to do so should result in the Commission sustaining the formal complaint. Complainants point out the house meter was not tested until almost two years after the high bills were generated, which Complainants argue renders the meter test results as inapplicable to prove the accuracy of the consumption readings from the house meter during the contested period.

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[5] *Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

[6] *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S.A. § 704.

[7] *Norfolk & Western Railway. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

[8] *See* "Admissibility of Evidence," 52 Pa.Code § 5.401.

Respondent argues the formal complaint should be dismissed because Complainants failed to meet the burden of proof. DLC contends Complainants failed to present evidence the house meter provided incorrect readings at any time, and it argues the bills were correct as rendered. Duquesne notes the meter was tested prior to its installation on November 27, 2017 and was tested again on October 1, 2021. Each test showed the house meter was operating within the parameters established by the Commission. Further, DLC argues it applied the correct tariff rate (GM) in accordance with its tariff because the service address is a multi-unit residential building and the level of usage in the common areas of the structure are appropriately charged under the GM rate.

Analysis

The evidence Complainants provided was sufficient to shift the burden of production[9] over to Respondent to show what fact or facts would explain how the recorded consumption levels could increase so precipitously in one month and drop to historically low levels seven months later. The evidence provided by both parties included credible testimony from Complainants and two utility witnesses and proved the house meter was tested as accurate (under standards established by the Commission) when installed in 2017 and continued to test as accurate almost two years after the relevant time period. No reason was provided by either side to explain this sharp increase or the equally sharp decrease.

Once Complainants provided sufficient evidence to shift the burden of production over to Duquesne, it was incumbent upon Duquesne to produce evidence to explain how the service address was appropriately charged a higher amount for similar consumption patterns. If the evidence presented by DLC is of co-equal value or "weight," the burden of proof has not been satisfied by Complainants. At that point, Complainants must provide additional evidence to rebut the evidence provided by Respondent. While the burden of persuasion may shift back and

[9] *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pa. Electric Company*, 54 Pa. P.U.C. 528 (1980).

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, which in this case is Complainants.[10]

In *Waldron v. Philadelphia Electric Co.* (*Waldron*), 54 Pa. P.U.C. 98 (1980), the Commission adopted the Michigan Public Service Commission's (PSC) policy annunciated in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Michigan PSC stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

In *Bennett v. Peoples Natural Gas Co.,* Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010), the Commission stated as follows:

> While a comparison of the disputed monthly bill to the Complainant's billing history and the consistency of her usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant's disputed high bill. Clearly this or any other new customer cannot produce evidence that she does not possess regarding prior usage. Thus, the ALJ's interpretation of *Waldron* is too narrow and would never allow a new customer to be able to challenge a high bill. Also, this interpretation does not allow for other relevant facts or circumstances with probative value to be considered as evidence supportive of a high bill complaint. *Waldron* does not limit the establishment of a *prima facie* case to the above two elements alone. Rather, the Commission may consider the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and* any other relevant facts or circumstances that come to light during the proceeding.

Bennett, Opinion and Order entered October 13, 2010, p. 6 (emphasis in the original).

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[10] *Milkie v. Pa. Pub. Util. Comm'n.*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Waldron v. Philadelphia Electric Co.*, 54 Pa. P.U.C. 98 (1980); and *Replogle v. Pa. Electric Co.*, 54 Pa. P.U.C. 528 (1980).

Disposition

In the instant case, Complainants proved there was a sharp increase followed by a similar decrease in recorded consumption. Complainants proved the renovations used little to no electricity through the house meter. Complainants proved they were right to question the recorded consumption. Duquesne proved its meter accurately recorded the electricity consumption at the service address. Duquesne provided credible testimony that Complainants renovated at least one apartment in early 2020 and that usage in the basement could have increased during that same time frame. DLC provided unsubstantiated suppositions that Complainants were performing extensive renovations at the rental building in early 2020 but Respondent produced no evidence to support those suppositions as anything other than what the statements really are: educated guesses.

The *Waldron* test includes: the billing history of a complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the formal complaint proceeding.[11] The most relevant facts or circumstances here are two. First, Complainants were not in complete control of the electricity used by tenants and guests in the basement. There is no way to know how many times tenants accessed the basement during this seven-month period, how often tenants used the laundry or when any other lawful purpose occurred during this time which included the winter months of 2019/2020 as well as the initial few months of the COVID19 pandemic lockdown. Complainants' testimonies - that the renovations conducted at the service address starting in March 2020 did not require the use of electricity through the house meter - were accepted as credible, however, what is not known is how many tenants resided at the service address, if there were any changes in usage and if the usage patterns in the basement changed during the seven months.

Second, the same meter recorded consumption prior to, during and subsequent to the sharp increase. Further, that meter tested accurate in 2017 and again in 2021. There is no

[11] *Waldron* at 100.

evidence from Complainants to suggest or prove how the meter - that accurately recorded consumption prior to December 2019 and after June 2020 – failed to accurately record consumption during that seven-month period. The burden of proving the existence of any Waldron factors rested with Complainants and Complainants have not met the burden of proof in this proceeding. 66 Pa.C.S.A. §332(a).

The undersigned concludes, based upon the totality of factual evidence chronicled in the Findings of Fact, that Mr. and Mrs. Carhuaslla did not meet the burden of production or persuasion.[12] Complainants proved a problem existed in the recorded usage from Respondent's house meter, but they were unable to prove the recorded usage was excessive or the fault of Respondent. It is noted Duquesne complied with the Commission's directives in a high bill dispute. Respondent tested the electric meter, albeit many months later, for accuracy and considered the history of consumption levels at the service address. Respondent rebutted sufficiently the evidence produced by Complainants.

Complainants did not meet their burden of proving Duquesne violated the Commission's statute, regulations, or orders when there was an exorbitant increase in the consumption noted by Respondent's house meter from December 2019 through June 2020. The same meter that recorded consumption during that seven-month period is the same meter which tested as within the Commission's requirements for accuracy. Duquesne did not explain or show any reason for the precipitous increase, however, the burden of proving the cause for the increase lies with Complainants more than it does with Duquesne. The increase could have been caused by tenants using the laundry more than normal, or by the dehumidifier in the basement. That level of spiking usage seems excessive to be explained away by a large increase in the use of the washer and dryer in the basement. But the burden for showing the source of the increase lay with Complainants.

Duquesne was less than helpful with Complainants. The problem developed while Complainants' property was managed by a real estate management company. When Complainants

[12] See *Hahn v. PPL Electric Utilities Corp*., Docket No. C-2009-2100830 (Final Order entered August 26, 2010).

learned of the problem from Riva Ridge, DLC was not forthcoming with assistance to Complainants. DLC did not test the meter in early 2020 despite receiving some type of a complaint or inquiry from Riva Ridge as well as receiving at least one inquiry from Complainants in August 2020.[13] DLC did not explain why it did not test the meter in 2020 except to note some rules for testing meters are different on commercial accounts than on residential accounts. However, though Duquesne was less than helpful in assisting Complainants to ascertain the source of energy usage, Duquesne did not violate the Commission's statute, regulations or its own tariff.

The burden of proof never shifted away from Complainants. The burden of production shifted to DLC but its rebuttal evidence (which consisted of showing the meter tested accurate, tenants had access to the laundry machines and outlets in the basements and Complainants performed renovation work on empty apartments in early 2020) was sufficient to show that DLC's rendition of events was as likely to be the cause for the increased consumption as Complainants' rendition of events. Complainants remained responsible to present more evidence, however, than Respondent presented to prove DLC failed to provide reasonable and adequate customer service. Complainants were unable to do so. Accordingly, Mr. and Mrs. Carhuaslla's formal complaint - that they were overcharged for electric service provided to their rental building - will be dismissed in the Ordering Paragraphs that follow.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

2. Complainants have the burden of proving Respondent issued incorrect billing statements from December 2019 through June 2020. 66 Pa.C.S. § 332(a).

[13] The date or specifics of the communications between Riva Ridge and DLC are unknown because DLC refused to provide the customer contacts during the relevant seven-month time period, except to note that Riva Ridge objected at some point about something and DLC later closed the matter.

3. Complainants failed to prove Respondent did not issue correct billing statements when charging for electric service provided from December 2019 through June 2020. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Gualberto Carhuaslla and Lisa Fedorka-Carhuaslla against Duquesne Light Company at Docket No. C-2021-3028698 is dismissed.

2. That the Secretary mark this docket closed.

Date: May 17, 2022

/s/
Katrina L. Dunderdale
Administrative Law Judge