

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nikola Warren	:	
	:	
v.	:	C-2018-3004557
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

Complainant filed a Formal Complaint and Amended Formal Complaint against Respondent alleging Respondent was threatening to terminate her service; that Respondent provided her with inflated, incorrect, and erroneous bills; and requesting a payment arrangement. This decision dismisses the Formal Complaint for failure of Complainant to meet her burden of proof.

**HISTORY OF THE PROCEEDING**

On September 10, 2018, Nikola Warren (Complainant or Ms. Warren) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Company or Respondent), alleging Respondent was threatening to terminate her service at 1259 Taylor Avenue, New Kensington, Pennsylvania (Taylor Avenue), and provided her with inflated, incorrect, and erroneous bills at her prior residence at 1807 Kenneth Avenue, Arnold, Pennsylvania (Kenneth Avenue). As relief,

Complainant requested a payment arrangement and that her bill be reduced by fifty percent or that an outstanding bill for service at the Kenneth Avenue address be dismissed.

On October 1, 2018, Respondent filed an Answer to the Complaint. Respondent admitted that it provides residential retail electric service to Complainant at the Taylor Avenue address and previously provided service to the Kenneth Avenue address. Respondent also admitted that it provided a service termination notice to Complainant on July 17, 2018, for a past due bill. Respondent denied that Complainant is eligible for a payment arrangement and averred that the majority of Complainant's past due balance consists of monies which were subject to the Company's Pennsylvania Customer Assistance Program (PCAP). Respondent further averred that Complainant received bills from June 2016 through January 2017 that reflected a zero-balance due because Complainant was enrolled in the PCAP program and had monthly credits that exceeded the Company's budget billing amount and electric generation supplier charges at that time. Throughout that period, Respondent averred that Complainant had an actual balance that exceeded \$1,000. Respondent further averred that a Formal Complaint was filed at Docket No. C-2017-2609836 concerning high usage beginning in January 2017 and that the Complainant's meter was tested and found to be within the Commissions accuracy limits. Respondent further averred that the Formal Complaint was settled in September 2017. Respondent denied the remaining averments set forth in the Complaint.

On November 19, 2018, a hearing notice was issued, scheduling the initial telephonic hearing (initial hearing or first hearing) for January 10, 2019, at 10:00 a.m. On December 3, 2018, the undersigned Presiding Officer issued a Prehearing Order, which set forth the procedural requirements for a formal hearing before the Commission.

On January 10, 2019, the initial telephonic hearing was convened as scheduled. Complainant appeared *pro se* and testified on her own behalf. Respondent was represented by Aron J. Beatty, Esquire. Attorney Beatty presented the testimony of one witness, Tammy Taylor, and offered nine exhibits which were marked as Respondent Exhibits 1 through 9 and admitted into evidence. The initial hearing was concluded on January 10, 2019.

The Answer filed by Respondent on October 1, 2018<sup>1</sup> averred that a Formal Complaint was filed in June 2017 concerning high usage beginning in January 2017, and that the meter was tested and found to be within the Commission's accuracy limits. No evidence of the meter testing or results were offered into evidence at the hearing of this dispute on January 10, 2019.

The transcript from the evidentiary hearing was received by the undersigned Presiding Officer on February 19, 2019.

On March 6, 2019, an Interim Order was entered permitting Respondent to submit evidence of the meter testing and results referenced in its Answer, to Complainant and the undersigned Presiding Officer, as proposed late-filed exhibits, not later than April 5, 2019. Complainant was permitted to file written objections to any late-filed exhibits submitted by Respondent on or before April 26, 2019.

On April 5, 2019, counsel for Respondent filed a Certificate of Service indicating that he served a true copy of the late filed proposed exhibits of West Penn Power Company to Complainant on April 5, 2019. The proposed late filed exhibits were not identified, and no copy was provided to the undersigned Presiding Officer. No objection was filed by Complainant.

On April 8, 2019, Complainant filed an Amended Complaint. Complainant averred that Respondent was threatening to terminate her electric service at the Taylor Avenue location and requested a payment arrangement.

On April 29, 2019, Respondent filed an Answer to the Amended Complaint.

On August 22, 2019, Teresa Harrold, Esquire, entered her appearance for Respondent.

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<sup>1</sup> Answer and New Matter filed by Respondent on October 1, 2018, pp. 5-6.

On October 1, 2019, a second prehearing order was entered scheduling a further call-in telephone evidentiary hearing (second hearing) for December 3, 2019, at 10:00 a.m. The Order provided the Parties with instructions on how to participate in the hearing and advised the Parties of their responsibility to call into the hearing and that they would not be called by the undersigned Presiding Officer. On October 1, 2019, a further call-in telephone evidentiary hearing notice (further hearing notice) was issued scheduling the hearing for December 3, 2019, at 10:00 a.m. Both the further hearing notice and the second prehearing order advised the Parties that they must appear at the hearing or they could lose their case. In addition, the further hearing notice and the second prehearing order directed the Parties to call into the hearing at the telephone number provided. Both were sent to Complainant at the address provided by Complainant on her Complaint and Amended Complaint and were not returned as undelivered.

On December 3, 2019 at approximately 10:00 a.m., the undersigned Presiding Officer convened the second hearing and Teresa Harrold, Esquire, counsel for Respondent, called the number provided on the notice and Second Prehearing Order to participate in the hearing. Complainant did not call into the second hearing. A brief recess was taken, and the hearing was reconvened at approximately 10:20 a.m.

Upon reconvening the second hearing, counsel for Respondent indicated that she was prepared to proceed and indicated she had witnesses prepared to testify on behalf of Respondent. Counsel moved for dismissal of the Amended Complaint for failure of Complainant to appear and to prosecute the Amended Complaint. In addition, Respondent presented testimony from Jordan Pineiro and offered Respondent Exhibit 10, which was admitted into evidence. Complainant did not call into the hearing after the second hearing was reconvened. Complainant has not provided an explanation for her failure to participate in the second hearing.

The office of Administrative Law Judge closed on March 16, 2020, as a result of the Covid-19 Pandemic. Subsequent to the office closing, the undersigned presiding officer obtained the written transcript of the evidentiary hearing and an Interim Order was entered on June 16, 2020 closing the hearing record.

In reviewing the docket of this proceeding, it was discovered that Respondent Exhibits 1-9 which were admitted in evidence, do not appear to have been attached to the hearing transcript and Respondent Exhibits 1-10 were not made a part of the electronic record in this proceeding. Accordingly, an interim order was entered on October 21, 2020 reopening the record in order to include Respondent Exhibits 1- 10, previously admitted into evidence, to be included in the electronic record.

Upon entry of the Interim Order on October 21, 2020, an electronic copy of Respondent Exhibits 1-10 were provided to the Secretary's Bureau to be included in the electronic file and therefore accessible to the Parties under the circumstances.

On November 16, 2020, a Second Interim Order was entered closing the record.

For the reasons set forth below, the original Complaint will be dismissed for failure of Complainant to meet her burden of proof. The Motion to Dismiss the Amended Complaint will be granted for failure of Complainant to appear at the second hearing and to prosecute the Amended Complaint.

#### FINDINGS OF FACT

1. Complaint is Nikola Warren who resides at 1259 Taylor Avenue, New Kensington, Pennsylvania. Tr. 30, 34, 75.

2. Complainant resided at 1807 Kenneth Avenue, in Arnold, Pennsylvania from March of 2014 until May of 2018. Tr. 33, 75.

3. Respondent is West Penn Power Company, a public utility that provides residential retail electric service to Complainant. Tr. 74-75, 92.

4. Respondent provided service to Complainant at 1807 Kenneth Avenue from March 3, 2014 through May 16, 2018. Tr. 75.

5. Complainant established service with Respondent at her current address of 1259 Taylor Avenue on March 30, 2018. Tr. 75.

6. Complainant's household at both locations was comprised of Complainant, her 16-year-old son and two daughters ages 13 and 14. Tr. 64-65.

7. Complainant's household income consists of a monthly disability benefit of \$1,024 and each of her three children receive a monthly payment of \$285. Her son receives an additional monthly disability payment of \$277. Tr. 65-66.

8. Complainant used electric baseboards as a heating source at the Kenneth Avenue address. Tr. 30-31, 34, 37, 49.

9. On June 12, 2018, a balance of \$4,121.55 was transferred to Complainant's existing account for service provided to the Kenneth Avenue address. Tr. 75.

10. Complainant was enrolled in the PCAP program on February 25, 2016, with a balance of \$2,434.09. Complainant was removed from the program in February 2018 for failure to recertify. Tr. 87-88.

11. From June 2016 through January 2017, Complainant's bills reflected a zero balance because she was participating in the PCAP, and the PCAP monthly amount applied to the account exceeded Complainant's monthly consumption charges. Tr. 92-93.

12. During that time period, Complainant had an actual account balance in the range of one to two thousand dollars, but her bills showed no amount due because Complainant's monthly PCAP credit exceeded her monthly consumption charges. Accordingly, until January 2017, no payments were required from Complainant because her PCAP credit covered her monthly usage. Tr. 92-93.

13. From October 2016 through January 2017, Complainant was on a budget bill plan. Her budget billing amount was \$60 until the bill due date of February 22, 2017, when the budget bill amount increased to \$151. Respondent Exhibit 3.

14. PCAP credit adjustments applied to the Kenneth Avenue account exceeded Complainant’s billing amount for usage through December of 2016. Respondent Exhibit 3.

15. Complainant’s usage and billing amounts from December 27, 2016 through May of 2017, as identified, are set forth as follows:

Due Date	Total Monthly Billing Amount	Total Monthly Supplier Billing Amount	kWh Usage	Budget Billing Amount
December 27, 2016	\$257.97	\$178.47	1,861	\$60
January 24, 2017	\$964.39	\$678.78	7,078	\$60
February 22, 2017	\$664.54	\$464.54	4,844	\$151
March 23, 2017	\$890.72	\$595.06	6,205	\$151
April 24, 2017 <sup>2</sup>	\$711.79	\$474.51	4,948	\$151
May 23, 2017	\$277.71	\$45.65	2,383	\$151

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<sup>2</sup> Change in Supplier on April 4, 2017 from SFE Energy to West Penn Power Company. Respondent Exhibit 3.

16. Beginning in January of 2017, Complainants usage and supplier billing amounts increased when Complainant switched her supplier from SFE Energy Inc., to West Penn Power Company. Respondent Exhibit 3.

17. Complainant filed an informal complaint with the Commission on June 16, 2017, at Bureau of Consumer Services (BCS) No. 3536118 and a Formal Complaint on June 16, 2017, at Docket No. C-2017-2609836. In the complaints, Complainant alleged that she was receiving erroneous and inflated bills from Respondent at the Kenneth Avenue address and requested a payment agreement. Tr. 91-93.

18. The informal complaint was dismissed as being a duplicate of the Formal Complaint. The Formal Complaint was settled by the Parties and Complainant received a credit adjustment in the sum of \$350 and placing Complainant's account balance on hold until October 1, 2017. Tr. 93; Respondent Exhibit 8b.

19. A Certificate of Satisfaction was filed on September 1, 2017 at Docket No. C-2017-2609836. Tr. 94.

20. Complainant admits that the Formal Complaint that forms the basis for the instant proceeding was for the same issues as the prior Formal Complaint filed by Complainant, regarding the Kenneth Avenue address. Tr. 47.

21. Complainant filed another Formal Complaint on April 17, 2018, at Docket No. C-2018-3001191, alleging Respondent threatened to terminate her electric service and requesting a payment arrangement. That Formal Complaint was dismissed with prejudice by an Initial Decision entered on June 12, 2018, for failure of the Complainant to appear at the hearing and prosecute the case. A final order was entered by the Commission on July 26, 2018, dismissing the Formal Complaint with prejudice. Tr. 94-95; Respondent Exhibit 7a,7b.

22. Complainant has not had a Commission approved payment arrangement. Tr. 89-90.

23. Respondent and Complainant entered into a Company payment agreement on January 7, 2015, for the amount of \$727.44, requiring payment of the budget bill plus \$80 each month beginning February of 2015. Complainant defaulted for non-payment. Tr. 87.

24. Respondent and Complainant entered into a second Company payment agreement in September 2015 for the amount of \$696.79 requiring payment of the budget bill plus \$58 a month. Complainant defaulted for non-payment. Tr. 87, 101.

25. The account balance as of the first hearing on January 10, 2019 was \$4,562.59. Tr. 83.

26. As of the first hearing on January 10, 2019, Complainant's PCAP arrears were \$2,248.35, which is the PCAP catch-up amount. Tr. 89-90.

27. As of the first hearing on January 10, 2019, Complainant had non-PCAP arrears in the amount of \$2,314.24. Tr. 100.

28. Complainant made the following payments on her account from January 1, 2017 through the first hearing on January 10, 2019.

- a. Payment on April 17, 2017 in the sum of \$339.03.
- b. Payment on May 8, 2017 in the sum of \$308.88.
- c. Payment on June 16, 2017 in the sum of \$102.18.
- d. Payment on July 3, 2018 in the sum of \$101.91.

Tr. 83, 124-125.

29. Respondent performed a meter test on the meter serving the Kenneth Avenue property on June 27, 2017. Tr. 17-18; Respondent Exhibit 10.

30. Light load tested at 99.08 percent; full load tested at 99.83 percent; the power factor was 110.04 with a weighted average of 99.68 percent. Tr. 18-19; Respondent Exhibit 10.

31. The test results confirmed the meter, which was installed at the Kenneth Avenue property, was performing properly and was operating within the guidelines approved by the Commission. Tr. 18-19, 21.

### DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the “burden of proof.” “Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) *cert. denied*, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than not” inquiry. *Commonwealth v. \$6,425 Seized From Esquilin*, 580 A.2d 523, 529 (Pa. 2005).

Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that 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 going forward with the evidence 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).

Claims related to inflated, incorrect and erroneous bills

In her Complaint, Complainant generally asserts that she received inflated, incorrect and erroneous bills at her prior residence at 1807 Kenneth Avenue, Arnold, Pennsylvania.

At the initial hearing, Complainant testified that she lived at 1807 Kenneth Avenue from March 2014 through April 2018. Tr. 33. She moved directly from the 1807 Kenneth Avenue location to 1259 Taylor Avenue. Tr 30, 34.

Complainant testified that for most of 2016, she received statements from Respondent stating that she had a zero balance. Tr. 23-25. Complainant testified that in January 2017, she received a statement from Respondent showing an account balance with a high payment that was owed to Respondent.

Complainant testified that bills she received from Respondent in 2017, while living at the Kenneth Avenue address, were inflated and erroneous. She stated it felt like something was pulling on the power inside of her home. She testified she travels to Philadelphia approximately every month and prior to leaving, she would turn off her baseboard heaters and would turn off the electricity to her home at the electric box. Upon returning home, Complainant testified the lights would be turned on inside of the home and the heaters would be on. Tr. 30-31, 34, 37, 49. She testified there was some “third party outside source accessing the electricity in our house.” Tr. 31. In her Complaint, she averred her body is violently attacked daily from a surgery in May 2015, wherein Complainant averred an illegal surgical implant was put in her body during a routine surgery. Complainant also provided testimony regarding the alleged illegal implant in her body but did not explain how this related to her claims. Tr. 55-56.

Complainant testified that the disputed bills, showing a balance owed beginning in 2017, were deliberately manipulated by Respondent because she is disabled, in an attempt to force her into the workforce. Tr. 29. Complainant provided no further evidence to establish her claims of incorrect, inflated or erroneous bills from Respondent beginning in 2017.

Further, Complainant confirmed that there was a total of four individuals who resided at the property and that she used electric baseboards as a heating source, during the time that she and her children resided at the Kenneth Avenue address.

Respondent provided testimony from Tammy J. Taylor, a senior customer service compliance specialist, that from June 2016 through January 2017, Complainant's bills reflected a zero balance because she was on PCAP and the PCAP monthly amount applied to the account exceeded her monthly consumption charges, so no payments were required as her PCAP credit covered her monthly usage. Tr. 92-93. Ms. Taylor explained during that time period, Complainant had an actual account balance in the range of one to two thousand dollars, but her bills showed no amount due because Complainant's monthly PCAP amount exceeded her monthly consumption charges.

Respondent also introduced a detailed statement of the account for the 1807 Kenneth Avenue address from October 1, 2016 through June 12, 2018, which was admitted into evidence as Respondent Exhibit 3. The entries for usage and billing amounts confirm that PCAP credit adjustments exceeded the billing amount through December of 2016. The total billing amount due on December 27, 2016 was \$257.97, which included a supplier billing amount of \$178.47.

Beginning in January of 2017, during the winter months, Complainant's supplier billing amount increased substantially through April 4, 2017, when Complainant switched her supplier from SFE Energy Inc., to West Penn Power Company. The following represents the customer usage, supplier billing amount, and total billing from Respondent regarding the Kenneth Avenue address from December 2016 through May 2017:

Due Date	Total Monthly Billing Amount	Total Monthly Supplier Billing Amount	kWh Usage	Budget Billing Amount
December 27, 2016	\$257.97	\$178.47	1,861	\$60
January 24, 2017	\$964.39	\$678.78	7,078	\$60
February 22, 2017	\$664.54	\$464.54	4,844	\$151
March 23, 2017	\$890.72	\$595.06	6,205	\$151
April 24, 2017 <sup>3</sup>	\$711.79	\$474.51	4,948	\$151
May 23, 2017	\$277.71	\$45.65	2,383	\$151

In addition, Respondent performed a meter test on the meter serving the Kenneth Avenue property on June 27, 2017. The light load tested at 99.08 percent; full load tested at 99.83 percent; the power factor was 110.04 with a weighted average of 99.68 percent. The test results confirmed the meter was performing properly and was operating within the guidelines approved by the Commission.

Although no usage information was provided from January 2016 through May 2016, Respondent provided a usage comparison from the time period in question beginning in December 2016 through May 2017, compared with usage from December 2017 through May 2018, as follows:

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<sup>3</sup> Change in Supplier on April 4, 2017 from SFE Energy to West Penn Power Company. Respondent Exhibit 3.

Date	Average Temperature	kWh	Billing Amount
December 2016	47	1,861	\$257.97
January 2017	35	7,078	\$964.89
February 2017	36	4,844	\$664.54
March 2017	39	6,205	\$890.72
April 2017	39	4,948	\$757.44
May 2017	56	2,383	\$232.06
December 2017	42	2,886	\$316.15
January 2018	30	6,533	\$697.57
February 2018	27	6,517	\$698.29
March 2018	38	3,087	\$334.65
April 2018	35	4,516	\$483.29
May 2018	46	2,572	\$278.50

Respondent Exhibit 4.

No significant change in usage patterns or change in the number of occupants residing in the household was established, and Complainant provided no credible evidence establishing a potential cause to support her contention that the disputed bills were unreasonably high. The January 2017 and 2018 usage amounts were comparable. Complainant's usage in February 2018 was higher than the February 2017 usage. The usage in March, April and May of 2017 was comparable to that of March, April and May 2018. Furthermore, the meter test performed on June 27, 2017 confirmed that the meter was performing properly and was operating within the guidelines approved by the Commission.

In addition, Complainant's monthly bill increased in January of 2017, from December of 2016, during the winter months, through April 4, 2017, when Complainant switched her supplier from SFE Energy Inc., to West Penn Power Company.

Complainant's burden of proof regarding the alleged billing dispute is governed by *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (Opinion and Order entered March 14,

1980). In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If Complainant has submitted such evidence, the burden of going forward with evidence shifts to Respondent. If Respondent fails to rebut Complainant's evidence, then Complainant would prevail. If Respondent places into the record evidence to rebut Complainant's *prima facie* case, the burden of going forward with the evidence shifts back to Complainant. In order to satisfy the burden of proof, Complainant must rebut Respondent's evidence by a preponderance of the evidence. Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on Complainant. *Repogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (1980).

The Commonwealth Court broadened the Commission's ruling in *Waldron* in *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). The Commonwealth Court held that the Commission's requirement that 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. 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. *Bennett v. Peoples Nat. Gas Co., LLC*, Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010); *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011). This rule protects Complainant from dismissal because of an inability to produce direct proof that the meter malfunctioned.

The burden of proof always remains with Complainant and if the utility presents evidence that is co-equal or greater in weight than Complainant's, Complainant will not have met her burden of proof. The Commonwealth Court in *Milkie* emphasized that the mere proof by the utility that its measuring devices are accurate is no longer the sole determinant of whether

there is a basis to a complaint of overbilling. *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234 (Pa. 1983).

The Commission restated its position for the purpose of clarifying the *Waldron* test in *Bennett v. Peoples Nat. Gas Co., LLC*, Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010) (*Bennett*). In *Bennett*, the Commission stated:

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.... 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*, p. 6 (emphasis in the original).

More recently, in *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011), the Commission reaffirmed its position in *Bennett*, when it specified:

[T]he Waldron Rule allows a Complainant to establish a *prima facie* case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a "high bill" complaint, the Commission may consider such evidence as the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding*. (Emphasis in original).

Complainant received a billing statement from Respondent in January of 2017, showing substantially increased usage from the prior month and an account balance with a high payment that was owed to Respondent. Complainant testified that bills she received from Respondent in 2017, while living at the Kenneth Avenue address, were inflated and erroneous. She testified she traveled to Philadelphia approximately every month and prior to leaving, she would turn off her baseboard heaters and would turn off the electricity to her home at the electric box. Upon returning home, Complainant testified the lights would be turned on inside of the home and the heaters would be on. She testified there was some “third party outside source accessing the electricity in our house.”

Complainant testified that she believed the disputed bills, showing a balance owed beginning in 2017, were deliberately manipulated by Respondent because she is disabled, in order to force her into the workforce. Complainant provided no further evidence to establish her claims of incorrect, inflated or erroneous bills from Respondent beginning in 2017.

Further, Complainant confirmed that there are a total of four individuals who resided at the property and that she used electric baseboards as a heating source, during the time that she and her children resided at the Kenneth Avenue address.

At the initial hearing, Complainant did not dispute that the usage claimed by Respondent was inaccurate. She testified that she would travel from her home after turning off her electric service at the electric box, only to return home and find that the lights and electric baseboards on.

Complainant provided no evidence to support her conclusion that the metered and billed electric usage at the service location was not correct as rendered. Similarly, Complainant did not present any evidence challenging the usage determined by Respondent or the results of its meter tests. Complainant certainly was capable of using the amount of electricity calculated by Respondent. Furthermore, the meter removed from the service location tested within the two percent margin of error allowed by the Commission’s regulations at 52 Pa. Code § 57.20. Complainant’s Complaint that her bills for electric service were incorrect or inflated must fail as

Complainant did not establish these claims. Based on the evidence presented, Complainant did not meet the burden of proving Respondent provided her with incorrect or inflated bills.

The evidence also established that Complainant filed an informal complaint with the Commission on June 16, 2017, at BCS No. 3536118 and a Formal Complaint on June 16, 2017, at Docket No. C-2017-2609836. Complainant alleged that she was receiving erroneous and inflated bills from Respondent at the Kenneth Avenue address and requested a payment agreement. The informal complaint was dismissed as being a duplicate of the Formal Complaint. The Formal Complaint was settled by the Parties and Complainant received a credit adjustment in the sum of \$350. A Certificate of Satisfaction was filed on September 1, 2017. According to Complainant, the Formal Complaint filed by Complainant that forms the basis for the instant proceeding was for the same issues as the prior Formal Complaint filed by Complainant, regarding the Kenneth Avenue address.

Complainant filed another Formal Complaint on April 17, 2018, at Docket No. C-2018-3001191, alleging Respondent threatened to terminate her electric service and requesting a payment arrangement. That Formal Complaint was dismissed with prejudice by an Initial Decision entered on June 12, 2018, for failure of the Complainant to appear at the hearing and prosecute the case. A final order was entered by the Commission on July 26, 2018, dismissing the Formal Complaint with prejudice.

Although the Complaint may be properly dismissed based upon the doctrine of *res judicata*, no such determination is necessary based upon the failure of Complainant to meet her burden of proof, as discussed above.

#### Request For Payment Arrangement

In her Formal Complaint and Amended Formal Complaint, Complainant requested a payment arrangement. In its Answer to the Formal Complaint and echoed in its Answer to Amended Formal Complaint, Respondent denied that Complainant is eligible for a

payment arrangement and averred that the majority of Complainant's past due balance consist of monies which were subject to the company's PCAP program.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, (Chapter 14) applies to this proceeding. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(c) of the Public Utility Code reads as follows:

(c) Customer Assistance Programs – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa.C.S. § 1405(c). The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definition of "Customer Assistance Program").

Complainant was approved and enrolled in Respondent's PCAP program on February 25, 2016, with a balance of \$2,434.09. Complainant was removed from the program in February of 2018 because she did not recertify for the PCAP program. At the time of the initial hearing on January 10, 2019, Complainant had a total outstanding balance of \$4,562.59, which included \$2,248.35 in PCAP arrears.

Complainant has been provided with two Company payment agreements, beginning in January 2015, but defaulted on both for non-payment. In addition, from January 1, 2017, through the date of the initial hearing on January 10, 2019, Complainant made only four (4) payments on her account. In addition, Respondent objects to the approval of a payment arrangement.

Resolution of Complainant's request for a payment arrangement must be in conformity with the Commission's decision in *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (*Hewitt*). In *Hewitt*, the Commission stated it has authority to order a payment arrangement in mixed arrearage cases which are arrearages that include CAP and non-CAP charges. Here, Complainant's arrearages total \$4,562.59. This total includes PCAP arrears in the amount of \$2,248.25. In *Hewitt*, the Commission noted that it did not have the authority to grant a payment arrangement on CAP charges under Section 1405(c) of the Code, which states, "Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission." 66 Pa.C.S. § 1405(c). Therefore, Complainant cannot be granted a Commission-ordered payment arrangement on her PCAP arrears.

Furthermore, in *Hewitt*, the Commission declined to exercise its authority, to grant the complainant a payment arrangement based on the customer's poor payment history and her ability to keep company-issued payment arrangements. *Hewitt* at 10-12.

Similarly, in the present case, Complainant has a poor payment history. She has defaulted on the two Company approved payment arrangements approved on January 7, 2015 in the amount of \$727.44, requiring the payment of the budget bill plus \$80 each month beginning February 2015 and one approved in September 2015 in the amount of \$696.79 requiring the payment of the budget bill plus \$58 a month. In addition, Complainant established service at Kenneth Avenue in March 2014 and at Taylor Avenue on March 30, 2018. Complainant has made only four payments since April of 2017, the last of which being made on July 3, 2018, in the amount of \$101.91.

However, Complainant manages her household income, she is required to pay her utility bill. Importantly, by law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. W. Penn Power Co.*, 55 Pa. PUC 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which remaining customers ultimately pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (Opinion and Order entered April 8, 1988).

Accordingly, Complainant's poor payment history combined with her outstanding PCAP charges compels a denial of her request for a Commission-ordered payment arrangement. Complainant is not eligible for payment arrangement on her PCAP arrears.

#### Motion To Dismiss Amended Formal Complaint

Subsequent to the initial hearing, on April 8, 2019, Complainant filed an Amended Complaint. Complainant averred that Respondent was threatening to terminate her electric service at the Taylor Avenue location and requested a payment arrangement.

On April 29, 2019, Respondent filed an Answer to the Amended Complaint.

On October 1, 2019, a second prehearing order was entered scheduling a further call-in telephone evidentiary hearing for December 3, 2019, at 10:00 a.m. The Order provided the Parties with instructions on how to participate in the second hearing and advised the Parties of their responsibility to call into the second hearing and that they would not be called by the undersigned Presiding Officer. The Order further advised the Parties that if they did not call in to the second hearing at the scheduled date and time, the second hearing may proceed in their absence and/or the case may be dismissed with prejudice. On October 1, 2019, a further hearing notice was issued scheduling the second hearing for December 3, 2019, at 10:00 a.m. Both the further hearing notice and the second prehearing order advised the Parties that they must appear at the second hearing or they could lose their case. In addition, the further hearing notice and the second prehearing order directed the Parties to call into the second hearing at the telephone number provided. Both were sent to Complainant at the address provided by Complainant on her Complaint and Amended Complaint and were not returned as undelivered.

On December 3, 2019, at approximately 10:00 a.m., the undersigned Presiding Officer convened the second hearing and Teresa Harrold, Esquire, counsel for Respondent, called the number provided on the notice and Interim Order to participate in the second hearing. Complainant did not call into the second hearing.

Upon reconvening the second hearing, counsel for Respondent indicated that she was prepared for the second hearing and indicated she had witnesses prepared to testify on behalf of Respondent. Counsel moved for dismissal of the Amended Complaint for failure of Complainant to appear and to prosecute the Amended Complaint. Complainant did not call into the second hearing after the hearing was reconvened. Complainant has not provided an explanation for her failure to participate in the second hearing.

Respondent argued that the Amended Complaint should be dismissed with prejudice due to Complainant's failure to appear at the December 3, 2019 hearing.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

In this case, a second hearing was scheduled for December 3, 2019. Copies of the hearing notice and second prehearing order were mailed to Complainant via regular first-class mail to the address Complainant provided on the Complaint, and they were not returned as undeliverable. Since the Notice and Interim Order were mailed in the ordinary course of business, I must presume Complainant received them. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

The further hearing notice and second prehearing order advised Complainant of the importance of appearing for the December 3, 2019 hearing, instructed her on how to call in to the conference bridge, and warned her that her case may be dismissed if she did not participate.

When Complainant did not call into the conference a recess was taken to give Complainant a further opportunity to join the conference call. The further hearing reconvened in Complainant's absence and was adjourned at 10:36 a.m. At no point did Complainant call into the second hearing.

Complainant filed an Amended Formal Complaint subsequent to the initial hearing but failed to appear at the hearing on December 3, 2019 to present evidence to support the claims and requested relief in the Amended Formal Complaint. Accordingly, the Motion to Dismiss the Amended Formal Complaint made by Respondent at the December 3, 2019 hearing will be granted and the Amended Formal Complaint will be dismissed, with prejudice.

Reviewing the above findings of fact, applicable legal principles and the above analysis, a conclusion is required that Complainant did not establish her burden of proof requesting a payment arrangement and alleging incorrect billing charges and quality of service issues. Therefore, the Complaint must be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).
3. Complainant had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).
4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq.*, applies to this proceeding.

5. The Commission has the authority to review a payment arrangement to ensure compliance with the provisions of Chapter 14.

6. The Commission lacks the authority to establish payment arrangements for customers participating in PCAP programs offered by public utilities, pursuant to 66 Pa.C.S. § 1405(c).

7. Customer Assistance Program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the Commission. 66 Pa.C.S. § 1405(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral Motion to Dismiss the Amended Formal Complaint filed by Nikola Warren made by West Penn Power Company at Docket No. C-2018-3004557 at the hearing on December 3, 2019, is granted and the Amended Formal Complaint is dismissed for failure of the Complainant to appear at the December 3, 2019 hearing and to prosecute the Amended Formal Complaint.

2. That the Complaint filed by Nikola Warren against West Penn Power Company at Docket No. C-2018-3004557 is hereby dismissed with prejudice due to Complainant's failure to meet her burden of proof.

