

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Lawlor	:	
	:	
v.	:	F-2022-3032354
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a Formal Complaint that alleged overbilling by an electric utility because the Complainant failed to meet his burden of proving, by a preponderance of the evidence, that the utility violated the Public Utility Code or a Commission order or regulation.

HISTORY OF THE PROCEEDING

On April 21, 2022, the Complainant, Joseph Lawlor, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) at Docket Number F-2022-3032354. The Complaint is a timely appeal of the determination of the Commission’s Bureau of Consumer Services (BCS) on an Informal Complaint filed by Mr. Lawlor at BCS Case No. 3819274.

In his Complaint, Mr. Lawlor alleges that he was overbilled for electric service from November 2017 through December 2021. He avers that his monthly electric bills dropped

by half after his electric meter was replaced. He requests, by way of relief, that he be reimbursed for overpayments for the last four years.

On May 26, 2022, PPL filed an Answer to Mr. Lawlor's Complaint. In its Answer, PPL denies that there were incorrect charges on his account, or that his bills dropped by half after the meter was replaced. PPL avers that it tested his electric meter in February 2022 and that the meter tested 100% accurate. PPL requests that Mr. Lawlor's Complaint be denied in its entirety.

By Call-In Telephonic Hearing Notice dated May 26, 2022, an Initial Telephonic Hearing was scheduled for July 13, 2022. A Prehearing Order was issued on June 22, 2022, setting forth various procedural rules that would govern the hearing.

The hearing convened as scheduled on July 13, 2022. Mr. Lawlor appeared *pro se* and testified on behalf of himself. Mr. Lawlor also presented the testimony of Heather David in support of his Complaint. Lindsey Berkstresser, Esquire appeared on behalf of PPL and presented the testimony of Tami Roland. Ms. Roland sponsored four exhibits, all of which were admitted into the evidentiary record.

The record in this proceeding consists of a transcript of 62 pages and four PPL exhibits. The record closed on September 9, 2022, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Joseph Lawlor.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address at issue in this proceeding is 142 W. Main Street, Newmanstown, PA 17073. Tr. 8.

4. Mr. Lawlor purchased the service address in October 2017. Tr. 8.
5. Mr. Lawlor lived at the service address from October 2017 until April 2021. Tr. 15-16.
6. Heather David and her three children moved into the service address in April 2018. Tr. 21, 23, 29.
7. Mr. Lawlor, Ms. David and the three children lived at the service address from April 2018 until April 2021. Tr. 16, 21, 23, 29.
8. Mr. Lawlor moved out of the service address in April 2021. Tr. 8, 15.
9. Ms. David bought the house at the service address from Mr. Lawlor in 2022. Tr. 25.
10. There is central air conditioning in the house. Tr. 27.
11. There is an electric faux fireplace in the house. Tr. 21, 24, PPL Ex. 2.
12. On June 13, 2018, Mr. Lawlor contacted PPL to discuss his bills and informed the representative that he now had a roommate who used both an electric space heater or electric fireplace and air conditioning at times. Tr. 20-21; PPL Ex. 2.
13. Mr. Lawlor had Direct Energy Services as his alternate electricity supplier from August 2018 until December 2020. Tr. 30-31, 45.
14. The rates charged by Direct Energy impacted Mr. Lawlor's monthly PPL bills during the time he was enrolled with the company. Tr. 45.

15. Mr. Lawlor had PPL as his default service provider after December 2020. Tr. 45.
16. PPL's generation price for its default service customers changes twice a year, on June 1 and December 1. Tr. 46.
17. PPL's price to compare increased on December 1, 2021, from 0.7544 to 0.9502. Tr. 46-47.
18. The price to compare increase would have caused Mr. Lawlor's PPL bills to increase after December 1, 2021. Tr. 47.
19. In February 2022, PPL removed the electric meter for the service address and replaced it with a new meter. Tr. 41.
20. PPL tested the old meter in February of 2022. Tr. 41.
21. The old meter tested 100% accurate. Tr. 43, 50; PPL Ex. 3.
22. PPL sent a letter to Mr. Lawlor on February 18, 2022, informing him of the results of the meter test. Tr. 52; PPL Ex. 3.
23. The meter was accurately recording electricity usage at the property prior to its replacement in February 2022. Tr. 43.
24. Mr. Lawlor was enrolled in PPL's budget billing program in 2020. Tr. 44-45.
25. The monthly budget billing amount for customers enrolled in PPL's budget billing program adjusts every three months, and either increases or decreases depending on the customer's actual consumption during the prior period. Tr. 44-45.

26. Mr. Lawlor's budget billing amount was adjusted upward from \$197.00 in May of 2020 to \$312.00 beginning in June of 2020. Tr. 44-45; PPL Ex. 2.

DISCUSSION

Burden of Proof

Section 332(a) of the Pennsylvania Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Lawlor filed a Complaint against PPL alleging overbilling and seeking reimbursement for overpayments he claims to have made. Mr. Lawlor, therefore, bears the burden of proof in this proceeding.

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, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the 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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth 1982).

Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a

suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev., 166 A.2d 96 (Pa. Super. 1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984).

Overbilling Complaint

In cases of alleged high billing, the Commission applies the Waldron rule, which provides that to establish a prima facie case of overbilling, a Complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the Complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the Complainant. Malcolm Waldron v. Phila. Elec. Co., 54 Pa.P.U.C. 98 (1980); Repogle v. Pa. Elec. Co., 54 Pa.P.U.C. 528 (1980).

In Milkie, the Commonwealth Court of Pennsylvania further refined the Waldron rule by holding:

[w]hile the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Thus as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal direct proof that his meter had malfunctioned. Gary and Doris Burleson v. Pennsylvania Public Utility Commission, 501 Pa. 433, 435-6, 461 A. 2d 1234, 1235 (1983).

Milkie, 768 A.2d at 1219-1220. In Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Final Order entered Nov. 15, 2011) (Thomas), the Commission explained:

consistent with our holding in Charisse Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), the Waldron Rule allows a complainant to establish a prima facie case in a “high bill” Complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a “high bill” Complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.” *Id.* at 6 (emphasis added).

Thomas, Docket No. C-2010-2187197 at 5.

As noted, Mr. Lawlor alleges in his Formal Complaint that he was overbilled for electricity from November 2017 through December 2021. He claims in his Complaint that his bills dropped in half after his electric meter was replaced in February 2022. He testified at the hearing that his bills kept increasing after he bought the property in October 2017. Tr. 8. He testified that he lived in the house with his roommate, Heather David, and her three children. Tr. 21. Mr. Lawlor stated that he moved out of the property in April 2021, so fewer people were living in the house after that date. Tr. 9.

Mr. Lawlor stated that his electric meter was replaced in February 2022 and that his bills dropped and stayed low after the meter replacement. Tr. 11, 14. He stated that he has no dispute with any of the bills issued after the meter was replaced. Tr. 14. On cross examination, Mr. Lawlor testified that he used electricity for typical household purposes and appliances. Tr. 16. He also stated that he unplugged his major appliances when not in use. Tr. 9,

Ms. David testified on behalf of Mr. Lawlor. She confirmed during her testimony that she and her three children moved into the house with Mr. Lawlor in April 2018. Tr. 23. She

testified that she thought the electricity bills at the property were high. Tr. 24. She stated there was an electric fireplace in the basement that her son used on occasion, and that there is central air conditioning in the house. Tr. 24, 27. She confirmed that Mr. Lawlor had moved out of the house and just she and her children lived there in 2022. Tr. 25. She also testified that they were enrolled with Direct Energy as their electricity supplier from approximately June 2020 until December 2020. Tr. 30-31. Both Mr. Lawlor and Ms. David testified that their January 2022 bill was \$426.11, and that their bills went down after the meter was changed. Tr. 9, 11, 25.

PPL presented the testimony of Tami Roland, a Senior Customer Service Representative. Tr. 34. Ms. Roland sponsored the following PPL Exhibits:

- PPL Ex. 1 – An account billing, consumption, and payment summary
- PPL Ex. 2 – A customer contact summary
- PPL Ex. 3 – Meter test result letter sent to Mr. Lawlor
- PPL Ex. 4 – BCS informal complaint information and decision

Ms. Roland testified that Mr. Lawlor's account was opened in October 2017. Tr. 44. She testified that the electric meter at the property was removed and replaced with a new meter on February 12, 2022. Tr. 41. She stated that the old meter was tested and found to be recording electricity consumption at 100% accuracy. Tr. 43, 50; PPL Ex. 3.

PPL Exhibit No. 2 contains a summary of contacts between Mr. Lawlor and PPL. Tr. 37. Ms. Roland stated that Mr. Lawlor first called PPL to complain about high bills in June 2018. Tr. 44. Ms. Roland testified that he informed the PPL representative during that call that he now had a roommate who uses both a space heater and air conditioning at times. Tr. 44; PPL Ex. 2. Mr. Lawlor testified during the hearing that it may have been an electric faux fireplace rather than a space heater. Tr. 21.

Ms. Roland testified that Mr. Lawlor was on a budget billing plan with PPL. She stated that budget billing customer bills are adjusted every three months to take into account usage in the prior three-month period. Tr. 45. She testified that in June of 2020, his monthly budget billing amount increased from \$197.00 to \$312.00. Tr. 45; PPL Ex. 2. She also testified

that Mr. Lawlor was enrolled with Direct Energy as his electricity supplier from August 20, 2018, until December 23, 2020. Tr. 45. Ms. Roland explained that PPL has no control over the rates charged by alternative electricity suppliers, and that their rates will have an impact on the customer's monthly PPL bills. Tr. 45.

Mr. Lawlor had PPL as his default electricity service supplier after December 2020. Tr. 45. Ms. Roland explained that the generation prices that PPL charges its default service customers are adjusted twice a year, on June 1st and December 1st and that their PPL bills could either go up or down, depending on the adjustment. Tr. 46. She stated that PPL's electricity generation price to compare increased from 0.7544 per kWh to 0.9502 per kWh on December 1, 2021. Tr. 46-47. She testified that Mr. Lawlor's PPL bills may have gone up because of this price increase. Tr. 47.

As noted, Mr. Lawlor alleges in his complaint that his bills were excessive prior to his meter being replaced in February 2022. He opines from this assertion that the old meter must have been improperly recording his electricity consumption thereby resulting in excessive billing prior to the replacement. He states that he uses electricity for normal household purposes and that there are no space heaters in the house. He then acknowledged that there was a faux electric fireplace in the basement that Ms. David's son uses on occasion. He believes that his bills prior to the replacement were incorrect, and he seeks reimbursement for overpayments.

While it may be arguable that Mr. Lawlor, through the testimony of himself and Ms. David, presented a *prima facie* case of overbilling, I find that the evidence presented by PPL outweighs his evidence and, accordingly, conclude that Mr. Lawlor has not proven his allegation of overbilling by a preponderance of the evidence.

First, the record evidence is clear that the old meter servicing Mr. Lawlor's residence was accurately recording consumption prior to its replacement in February of 2022. Ms. Roland explained that the meter was removed and replaced, at Mr. Lawlor's request, on February 12, 2022. Tr. 41. The meter was tested for accuracy and found to be recording consumption at 100% accuracy. Tr. 43; PPL Ex. 3. PPL concluded, based on the results of the

meter test, that it had been recording his consumption accurately and that he was billed correctly for electricity prior to the replacement. Tr. 43. During the hearing, Mr. Lawlor questioned the validity of the testing performed on the meter. Tr. 11, 54. He offered no actual evidence, however, demonstrating or proving that the testing was in any way flawed. I am convinced by PPL's evidence on this issue that the old meter was working properly and accurately recording electricity consumption in his house prior to its replacement.

Having concluded that the old meter was working properly and accurately recording electricity consumption, I find that the record evidence provides alternate explanations for what Mr. Lawlor believes were high bills prior to the meter replacement. Milkie; Thomas.

First, the record evidence is undisputed that there had been five people living in the house from April 2018, when Ms. David and her three children moved in, until April 2021, when Mr. Lawlor moved out. Tr. 16, 20-21, 23. Mr. Lawlor stated to a PPL representative during a call on June 13, 2018, that there were five people living in the house and that an electric heater and air conditioning unit were sometimes used in the house. Tr. 20, 24, 44; PPL Ex. 2. Particularly, both Mr. Lawlor and Ms. David acknowledge that there is an electric faux fireplace in the basement of the house that is used on occasion by Ms. David's son. Tr. 21, 24. While both seemed to suggest that its usage was minimal, neither testified that they knew for certain how much Ms. David's son actually used it. It is possible that it was used by him more than they knew, which could increase electricity consumption. I believe that the number of residents in the house and the types of appliances acknowledged to be in use in the house provide an opportunity for potentially high and fluctuating electricity consumption.

Additionally, Mr. Lawlor was enrolled with Direct Energy as his electricity supplier from August 20, 2018, until December 23, 2020. Tr. 30-31, 45. Ms. Roland stated that PPL has no control over the rates charged by alternate electricity suppliers and that supplier rates will have an impact on a customer's monthly PPL bills. Tr. 45. The record evidence does not indicate, however, what Mr. Lawlor was billed each month by Direct Energy between August 2018 to December 2020 for electricity generation service. It is possible, therefore, that any

higher than expected bills during this time period are attributable, at least in part, to Direct Energy charges rather than PPL charges.

Ms. Roland further testified that Mr. Lawlor was switched back to PPL as his default electricity supplier after December 23, 2020. Tr. 45. She explained that PPL's generation rate for its default service customers changes twice a year and that it increased on December 1, 2021. Tr. 46-47. She testified that Mr. Lawlor's PPL bills increased at that time because of the generation rate increase. Tr. 47. Again, this offers a possible explanation for certain bills he believes were high during the time he was a PPL default service customer.

Although Mr. Lawlor may be convinced that his electric bills were too high prior to the meter replacement, and arguably presented a *prima facie* case in support of this allegation, I find that PPL has presented sufficient evidence to match or exceed the evidence offered by him. Given the totality of the record evidence, I cannot conclude that Mr. Lawlor has proven by a preponderance of the evidence that the alleged high bills issued to him prior to the meter replacement in February 2022 were the result of errors by PPL. Accordingly, I find that Mr. Lawlor has failed to carry his burden of proof to show that his PPL bills were excessive or otherwise not accurate as rendered.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. In cases of alleged high billing, to establish a prima facie case of overbilling, a complainant, must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. Waldron v. Phila. Elec. Co., 54 Pa.P.U.C. 98 (1980); Repogle v. Pa. Elec. Co., 54 Pa.P.U.C. 528 (1980).

5. Where a utility presents evidence that it has tested the customer's meter and found it to be accurate, a customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth. 2001).

6. The Waldron Rule allows a complainant to establish a prima facie case in a "high bill" Complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. Thomas v. PECO Energy Company, Docket No. C-2010-2187197 (Final Order entered Nov. 15, 2011).

7. Mr. Lawlor has failed to satisfy his burden of proof in this proceeding to demonstrate that his PPL bills were not accurate or that PPL violated the Public Utility Code, a Commission Order or Regulation or a Commission-approved tariff with regard to the bills rendered by it. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Joseph Lawlor at Lawlor v. PPL Electric Utilities Corporation, Docket Number F-2022-3032354 is dismissed.
2. That the Secretary's Bureau shall mark this case as closed.

Dated: December 15, 2022

/s/
Steven K. Haas
Administrative Law Judge