

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rebecca Bodnar	:	
	:	
v.	:	F-2022-3034494
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a Formal Complaint filed by Rebecca Bodnar (Complainant) against PPL Electric Utilities Corporation (PPL or Company) alleging that PPL misbilled her. Complainant did not establish by a preponderance of the evidence that she has been misbilled by PPL or that PPL violated any provision of the Public Utility Code (Code) or the regulations of the Commission.

HISTORY OF THE PROCEEDING

On August 3, 2022, Rebecca Bodnar (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PPL Electric Utility Corporation (PPL or Company). Complainant averred that PPL had misbilled her by overbilling her from February to May 2022. This is a timely appeal of a BCS determination of an Informal

Complaint which was dismissed by the Commission's Bureau of Consumer Services (BCS) at Case No. 3841685.¹

On September 7, 2022, PPL filed an Answer to the Complaint averring that PPL has billed the Complainant in accordance with the Public Utility Code, the Commission's regulations, and its Commission approved tariff, at all times relevant to the Complaint.

On September 14, 2022, a Notice of Telephonic Hearing was sent to the parties setting October 25, 2022, as the date for an evidentiary hearing in this matter.

On September 28, 2022, a standard form prehearing Order was issued.

An evidentiary telephonic hearing in this case convened, pursuant to Notice on October 25, 2022. Present were the *pro se* Complainant, Rebecca A. Bodnar, and counsel for PPL, Nicholas A. Stobbe, Esquire. Also present was Holly Hankerson, a witness who testified on behalf of PPL. Complainant testified on her own behalf and submitted eight exhibits that were received into evidence: Complainant Exhibit C-1, a bill for February, 2022; Complainant Exhibit C-2, a bill for March, 2022, Complainant Exhibit C-3, a bill for April, 2022; Complainant Exhibit C-4, a bill for May, 2022; Complainant Exhibit C-5, a bill for June, 2022; Complainant Exhibit C-6, a bill for July, 2022; Complainant Exhibit C-7, a bill for August, 2022; Complainant Exhibit C-8, a bill for August, 2022. PPL presented the testimony of Ms. Hankerson and offered three exhibits that were received into evidence: PPL Exhibit 1, an Account Statement associated with Complainant's account; PPL Exhibit 2, a record of Customer

¹ Informal BCS decisions are "determinations" whereas the result of a Formal Complaint is termed a "decision." In addition, informal BCS determinations are governed primarily by Sections 3.111 to 3.113, 52 Pa. Code §§ 3.111, *et seq.*, whereas Formal Complaints are governed by Chapter 5, 52 Pa. Code, 5.1 *et seq.* More importantly, informal BCS determinations expressly notify the Complainant of a right to appeal by filing a Formal Complaint. If filed, the Commission provides a hearing *de novo*. The BCS functions as an informal arbiter of disputes between a utility provider and customers. 66 Pa.C.S. § 308(d). This function usually produces cost-effective results without additional use of agency resources and time. However, the Commission has never agreed to be formally bound by these informal determinations. *See Suggs v. The Bell Tel. Co of Pa.*, Docket No. F-00162258 (Opinion and Order entered July 15, 1993).

Contacts between Complainant and PPL; and, PPL Exhibit 3, a copy of a printout of a summary of the underlying BCS Informal Complaint proceeding.

On October 26, 2022, an Order was issued denying an informal Motion from Complainant for the admission of late-filed evidence related to a space heater/dehumidifier in her basement.²

The hearing concluded and a transcript of forty-two pages was filed on November 10, 2022. The record closed on that date.

This Initial Decision dismisses the Complaint as Complainant did not establish by a preponderance of the evidence that PPL had violated any provision of the Code or the regulations of the Commission. Specifically, Complainant did not prove that she had been misbilled.

FINDINGS OF FACT

1. The Complainant in this proceeding is Rebecca Bodnar.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. Complainant receives electric service from PPL at her residence located at 322 Stone Church Road, Berwick, PA. Tr. at 5.
4. Complainant noticed a marked increase in her electric bills starting in February 2022, coincident with a power outage. Tr. at 6-7, Exhibits C-1 – C-8.

² During the course of the hearing, I asked Complainant about the nature of an electric space heater which Complainant uses to (essentially) dehumidify her basement. That device had been referred to in the underlying Bureau of Consumer Services case at BCS Case No. 3841685, which case and determination predated the evidentiary hearing on October 25, 2022.

5. Complainant contended that her bills increased at a time when she had not increased her overall electric usage. Tr. at 7.

6. Complainant's bills from February-May 2022, are the bills in controversy. Tr. at 8.

7. PPL witness Holly Hankerson is a customer service representative who has been employed in that capacity for thirty-two years. Tr. at 17.

8. The bills rendered for Complainant's account for the period February-May 2022, were higher than usual. Tr. at 20.

9. It is typical for customer bills to increase in the winter and early spring months. Tr. at 21.

10. In May 2022, Complainant's meter was removed and tested by PPL at her request, and the test established that the meter was measuring consumption at the level of accuracy required by Commission regulations. Tr. at 12; 23-24; 29-30.

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). "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*, 364 Pa. 54, 70 A.2d 854 (1950). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in her Complaint through a violation of the Public Utility Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa.C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that

presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk and W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence 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 her 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*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). As the party seeking relief from the Commission, Ms. Bodnar bears the burden of proof.

In this case, Complainant alleged that she had been overbilled by PPL during a four-month period from February to May 2022. Tr. at 8. Overbilling, if proven by a preponderance of the evidence, would fall under a quality-of-service issue which is within the Commission's jurisdiction under Section 1501 of the Public Utility Code, which states in pertinent part:

Character of service and facilities. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably

continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

Thus, the statute at 66 Pa.C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co. of Pa.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. §1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab'y Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered Dec. 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa.P.U.C. 662 (1993).

Complainant provided calculations with respect to the alleged overbilling:

The January 28th [2022] bill, which has an amount of 239.20. I'm not questioning that one. The second one was February 28th of 329.73. That's when I started noticing it going up, and that was after the power outage on February 3rd. Third exhibit is a balance of March 28th, which was the ninety-four percent increase to 312.04. Next is April 27th, with an increase of a hundred and fifty-four percent since the previous year, and the charge was 271.09. And the next one is May 26th, increase of one twenty-three percent, and the bill was 196.85.

Tr. at 9 (emphasis added); Exhibits C-1 – C-4.

The percentage increases were calculated by Complainant by comparing her 2022 bills with those for the same period in 2021. Complainant testified, "I was paying what I thought was appropriate usage for -- compared to this year and last year." Tr. at 34. On the basis of her calculations, Complainant requested a refund of approximately \$305. Tr. at 31.

Complainant contended that because the amount of her bills started increasing after a power outage on February 3, 2022, that the events were related.³ Complainant, however, did not provide any evidence to support her theory. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Util. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Complainant did not question the accuracy of her electric meter, accepting that the test performed on the meter by PPL was correct and that the meter was accurate. Tr. at 12; 23-24; 29-30.

PPL contended at hearing that Complainant had failed to meet her burden of proving by a preponderance of the evidence that PPL violated any provision of the Public Utility Code or regulation of the Commission. Tr. at 39. In its rebuttal case, PPL presented the testimony of Ms. Hankerson who provided the entirely plausible explanation for the increase in the amount billed to Complainant as the normal variation that one would see during late winter and early spring related to heating. Tr. at 20-21. I find her testimony credible.

Although there was discussion at the hearing with respect to the meter at Complainant's residence during the billing period at issue, no issue with respect to meter accuracy had been raised in the original Complaint, nor did Complainant challenge the meter's accuracy at hearing.⁴

In sum, Complainant failed to meet her burden of showing by a preponderance of the evidence that PPL violated any provision of the Public Utility Code or a regulation of the

³ Complainant asserted in her Complaint that the outage occurred on February 3, 2022. At the hearing, Complainant also raised the possibility that as a result of the outage that charges from another customer's service may have been "piggybacked" on her bills. Tr. at 33. Complainant had not made this allegation in her original Complaint, and no evidence was presented during the hearing that would indicate that Complainant's residence is anything other than a stand-alone dwelling. As with the power outage of February 3, 2022, the possibility of shared billing this was speculation on Complainant's part.

⁴ Neither the original testing documentation nor a witness qualified to testify with respect to the testing was presented by PPL, but both parties agreed that the testing had taken place and that the results showed the meter to be accurate.

Commission. Complainant's theory that her higher bills were related to a power outage was unsupported by any evidence, and consequently her Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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*, 364 Pa. 54, 70 A.2d 854 (1950).

4. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Util. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (1987)).

5. Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

6. Complainant failed to meet her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

