

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Kelly	:	
	:	
v.	:	F-2022-3030916
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s Formal Complaint because he failed to sustain his burden of proof to establish that PECO Energy Company violated any Commission orders or regulations concerning charges on his bill.

HISTORY OF THE PROCEEDING

On February 9, 2022, James Kelly (Complainant or Mr. Kelly) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that there were incorrect charges on his bill, specifically for July, August and September 2021.

On March 7, 2022¹, Respondent filed an Answer indicating the Complainant does have electric service. PECO denied the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary’s Bureau on February 15, 2022.

On March 9, 2022, an Interim Order was issued setting for a mediation conference.

After mediation was attempted, on April 19, 2022, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for May 31, 2022, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on May 17, 2022.

On May 31, 2022, an Order was issued directing a new hearing be scheduled in the matter.

On June 1, 2022, a Hearing Notice was issued which indicated that the initial hearing was scheduled for June 15, 2022, at 10:00 a.m.

The hearing took place as scheduled on June 15, 2022. The Complainant was *pro se* and presented his testimony at the hearing. PECO was present and represented by Khadijah Scott, Esq. who presented the testimony of one witness, Lauren Evans. The Respondent offered seven exhibits at the hearing, which were entered into the record in this proceeding. I then directed the Respondent to perform a meter test at the Complainant's residence and to let me know when the meter testing was scheduled. The Respondent indicated that the testing would take place at the end of July 2022.

On July 25, 2022 a Further Hearing Notice was issued which indicated that a further hearing was scheduled for September 13, 2022 at 10:00 a.m.

The hearing took place as scheduled on September 13, 2022. The Complainant appeared *pro se*. The Respondent was present and represented by Ms. Scott. The parties indicated that the meter test did not take place at the end of July 2022 but had been rescheduled for September 22, 2022. I continued the matter for the meter test to be performed.

Via Further Hearing Notice dated September 13, 2022, the matter was scheduled for another further hearing on October 11, 2022, at 10:00 a.m.

The further hearing in this matter was held as scheduled on October 11, 2022. The Complainant appeared *pro se* but did not provide any further testimony in this matter. Respondent appeared and was represented by Ms. Scott, who presented the testimony of one witness, Aaron Saunders. Respondent offered two additional exhibits which were entered into the record at the time of the hearing.

The three hearings resulted in 72 pages of transcript. The record closed on November 7, 2022, when I received the transcript from the final hearing.

FINDINGS OF FACT

1. The Complainant in this case is James Kelly, who resides at 934 Sheep Hill Road, Pottstown, Pennsylvania 19465 (Service Address). Tr. 8-9.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant rents the Service Address which is a single-family home. Tr. 13.
4. The Complainant resides at the Service Address alone. Tr. 15.
5. The Service Address is a two-bedroom and one-bathroom residence that has a total of five rooms. Tr. 16.
6. The Service Address has electric appliances, including, a washer, a dryer, refrigerator, a stove/oven, a TV and two window air conditioning units but has an oil house heater. Tr. 15.
7. The Complainant is receiving supplier electric residential service at the Service Address, which means that he has a separate supplier for his electric. Tr. 26.

8. The Complainant's bills for July, August and September 2021 were in line with prior bills for the same time period. Tr. 26-28; PECO Exh. 1.

	2021	2020
July	\$70.77	\$63.86
August	\$70.35	\$73.94
September	\$61.95	\$59.76

9. The Complainant's electric supplier is North American Power and Gas which for July and August 2021 was charging the Complainant \$0.1399/KWH while PECO's price to compare at that time was \$0.0640/KWH. Tr. 33-35; PECO Exh. 4 & 5.

10. On September 22, 2022, a high bill technician visited the Service Address to perform meter testing. Tr. 61; PECO Exh. 1a².

11. The PECO technician performed a drop load and passing load test on the meter at the Complainant's residence. Tr. 61; PECO Exh. 1a.

12. The drop load test is when all electric is turned off for the premises and the meter is checked to make sure it is idle. Tr. 61-62.

13. A passing load test is when all appliances are turned off except for one with a known load and the meter is checked to determine whether it is properly measuring that load when it is on. Tr. 62.

14. The drop load test indicated that the meter was functioning properly and there was no foreign load at the Service Address. Tr. 62; PECO Exh. 1a.

² At the time of the October 11, 2022 hearing, PECO's counsel labeled the investigation report identified by PECO's witness Mr. Saunders as PECO Exhibit No. 1. However, PECO's Exhibit No. 1 is the account statement that was entered into the record at the June 15, 2022 hearing. Therefore, I will refer to the investigation report as PECO Exh. 1a.

15. The passing load test indicated that the meter was calibrated correctly and measuring the known load properly at the Service Address. Tr. 62; PECO Exh. 1a.

16. The Complainant is being billed at the Service Address based on actual usage. Tr. 63.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *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). A preponderance of the evidence is evidence that 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). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and W. Ry. 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. 1960); *Murphy v. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 his burden of proof. The Complainant would

be required to provide 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).

High Bill Dispute

The Complainant contends that his bills are out of line for the amount of electricity he is using, specifically the months of July, August and September 2021. The Complainant asserts that he was on vacation for two weeks during this time period and did not use that much electricity.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced 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 Commission 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*, 54 Pa.P.U.C at 100.

The Commission further explained the burden of proof set forth in *Waldron* as follows:

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.*”

Thomas v. PECO Energy Co., Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011)(emphasis added).

PECO presented the testimony of Lauren Evans who stated that the Complainant’s bills for July, August and September 2021 were in line with prior bills for the same time period. Tr. 26-28; PECO Exh. 1.

	2021	2020
July	\$70.77	\$63.86
August	\$70.35	\$73.94
September	\$61.95	\$59.76

Ms. Evans also noted that the Complainant is receiving supplier electric residential service at the Service Address, which means that he has a separate supplier for his electric. Tr. 26. She indicated that the Complainant’s electric supplier is North American Power and Gas which for July and August 2021 was charging the Complainant \$0.1399/KWH while PECO’s price to compare at that time was \$0.0640/KWH. Tr. 33-35; PECO Exhs. 4 & 5.

Further, PECO presented the testimony of Aaron Saunders who performed meter testing at the Service Address on September 22, 2022. Tr. 61; PECO Exh. 1a. He testified that he performed a drop load and passing load test on the meter at the Complainant’s residence. Tr. 61; PECO Exh. 1a. Mr. Saunders stated that the drop load test is when all electric is turned off for the premises and the meter is checked to make sure it is idle. Tr. 61-62. Mr. Saunders also noted that a passing load test is when all appliances are turned off except for one with a known load and the meter is checked to determine whether it is properly measuring that load when it is on. Tr. 62. The drop load test indicated that the meter was functioning properly and there was no foreign load at the Service Address. Tr. 62; PECO Exh. 1a. The passing load test indicated

that the meter was calibrated correctly and measuring the known load properly at the Service Address. Tr. 62; PECO Exh. 1a. According to Mr. Saunders, the Complainant is being billed at the Service Address based on actual usage. Tr. 63.

Mr. Kelly alleges that his bills could not be as high as they were for the months in question because he was on vacation for two weeks during that time period. However, Mr. Kelly did not present any evidence as to why that would be the case. “Mere bald assertions ... do not constitute evidence.” *Pa. Bur. of Corr. v. City of Pittsburgh*, 516 Pa. 75 (1987); *Mid-Atl. Power Supply Ass’n of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); see also, *Steffy’s Pattern Shop v. Frontier Commc’n of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000). Mr. Kelly has not presented any evidence to establish that his bills were high for the months of July, August and September 2021. In fact, PECO presented testimony and evidence that the bills were in line with the same months from the previous year. Further, the Company performed meter testing at the Service Address which indicated that the meter was functioning properly and the Complainant was being billed on actual usage. As such, the Complainant has failed to meet his burden of proof in this matter that his bills were inaccurate, and the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant.
3. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. The accuracy of the meter is an important factor in resolving billing disputes, but it is not the sole criterion. The Commission 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 v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

5. “[T]he 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.’” *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

6. The Complainant has failed to meet his burden of establishing that his bills were inaccurate. *See* 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of James Kelly at *James Kelly v. PECO Energy Company*, Docket No. F-2022-3030916 is denied and dismissed.

2. That Docket No. F-2022-3030916 be marked closed.

Date: February 2, 2023

/s/
Marta Guhl
Administrative Law Judge