

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------|---|----------------|
| Geneva Perry | : | |
| | : | F-2022-3032577 |
| v. | : | |
| | : | |
| Duquesne Light Company | : | |

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants the request for a payment arrangement and denies the claim of incorrect usage charges on bills for failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On May 9, 2022, Geneva Perry (Complainant) filed the Formal Complaint against Duquesne Light Company (Duquesne Light, the Company or Respondent). Ms. Perry checked the box on the Formal Complaint form requesting an affordable payment arrangement.¹

On June 13, 2022, Duquesne Light filed its answer. Duquesne Light denies that Ms. Perry is entitled to a Commission-ordered payment arrangement because she received two payment arrangements, one from the Company and the other from the Commission's BCS at

¹ Ms. Perry timely appealed the decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3825250 granting her a payment arrangement.

BCS Case No. 382250 and failed to adhere to the terms of these two payment arrangements. Duquesne Light requests that the Commission deny the relief sought and dismiss the Complaint with prejudice.

The parties engaged in mediation through the Office of Administrative Law Judge's Mediation Unit. Ultimately, the matter was assigned to Administrative Law Judge (ALJ) Emily DeVoe and scheduled for an evidentiary hearing on December 6, 2022, via a Notice issued October 12, 2022.

On December 2, 2022, Duquesne Light filed a Certificate of Satisfaction, advising it had satisfied the Complaint, and Ms. Perry no longer wished to pursue the Complaint against Duquesne Light. On December 5, 2022, the Commission issued a Notice cancelling the evidentiary hearing.

On December 3, 2022, Ms. Perry emailed ALJ DeVoe, copying Duquesne Light's counsel, asking a question about the settlement reached between herself and Duquesne Light. Respondent's counsel was instructed to get in touch with Ms. Perry and answer her question. On December 5, 2022, counsel emailed ALJ DeVoe, copying Complainant, advising he had emailed Ms. Perry. Later that same evening, Ms. Perry emailed ALJ DeVoe, copying counsel, advising counsel's email did not make sense to her.

On December 6, 2022, ALJ DeVoe emailed counsel and instructed him to get in contact with Ms. Perry, by phone, if necessary, and answer her questions. Later that day, Ms. Perry emailed ALJ DeVoe, copying counsel, indicating that, based on her conversation with counsel, "I may need some legal advice." Later on December 6, 2022, counsel emailed ALJ DeVoe, copying Ms. Perry, advising he believed this matter could benefit from a referral back to the mediator to clear up what he understood to be a misunderstanding about budget billing.

On December 13, 2022, ALJ DeVoe contacted the Mediation Unit Supervisor and the original mediator advised the matter could be referred back to the Mediation Unit. On December 13, 2022, an Interim Order Referring Matter Back to Mediation was issued.

On April 21, 2023, a second Certificate of Satisfaction was filed by Duquesne Light's counsel in this matter. Ms. Perry did not file a formal objection to this Certificate of Satisfaction, but she was nonetheless dissatisfied. *See* 52 Pa. Code § 1.2.

On May 4, 2023, an Initial Call-in Telephone Hearing Notice was issued scheduling a hearing for June 13, 2023. A Prehearing Order for Telephone Hearing was also issued on May 4, 2023, informing the parties about the procedures for the hearing.

The telephone hearing convened as scheduled. Complainant appeared, self-represented, and testified on her own behalf. Complainant did not sponsor any exhibits. Duquesne Light was represented by Michael Gruin, Esquire, who called one witness, Roxanne Morris. Duquesne Light's witness sponsored pre-marked Exhibits 1-5, and 7-10, which were admitted into the record.

The record consists of the transcript of the hearing on June 13, 2023, and Duquesne Light's Exhibits 1-5 and 7-10. The record was closed on June 30, 2023, by Interim Order Closing Hearing Record. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Geneva Perry who resides at 165 Cliffside Drive, Apartment C, Monroeville, Pennsylvania 15146 (service address). Tr. 9.
2. Respondent, Duquesne Light Company, is a jurisdictional public utility providing electric service to Pennsylvania customers including Complainant.
3. Complainant is a residential heating rate electric service customer of Duquesne Light at the service address. Tr. 23; Exhibit 2.
4. Complainant resides alone. Tr. 10.

5. Complainant's gross income from work is approximately \$4,200 per month. Tr. 16.
6. Complainant began receiving service from Duquesne Light at the service address in November 2021. Tr. 15, 24; Exhibits 2 and 8.
7. On May 14, 2023, Complainant's account balance was \$7,119.10. Tr. 22; Exhibit 2.
8. Complainant's account balance includes the transferred sum of \$1,735.69 owed by Complainant to Duquesne Light for service provided by Duquesne Light to Complainant at Complainant's previous residence. Tr. 23; Exhibits 1, 2 and 8.
9. Complainant's account is enrolled in budget billing and her billings are based on actual meter readings. Tr. 22-24.
10. Complainant's current monthly budget bill amount is \$339. Tr. 25; Exhibit 2.
11. Complainant has made only 1 payment on her account since service was established in November 2021. She paid \$200 in August 2022. Tr. 24; Exhibit 2.
12. Complainant entered a payment arrangement with Duquesne Light on December 2, 2021, requiring the monthly payment of her budget bill amount plus \$73 toward her arrearage balance of \$1,735.69. Complainant defaulted on this Company-issued payment arrangement. Tr. 34; Exhibit 10.
13. On March 29, 2022, Complainant received a payment arrangement from the Commission's BCS at BCS Case No. 3825250 requiring her to pay her monthly budget bill amount plus \$87 toward her arrearage balance of \$3,096.64, which she appealed. Tr. 32, 34; Exhibit 10.

14. On August 11, 2022, Duquesne Light tested the meter at the service address and confirmed that the meter recorded usage accurately. Tr. 35-36; Exhibit 9.

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Ms. Perry is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof with respect to her claim that she is entitled to a Commission-ordered payment arrangement and that her recorded usage at the service address is incorrect.

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950) (*Se-Ling Hosiery*); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery*. Accordingly, one must review the record in this case to determine whether Complainant has satisfied her burden of proof.

Payment Arrangement

This proceeding is a *de novo* review of the BCS’s determination of an appropriate payment arrangement for Ms. Perry’s account.² *Stammel v. P.G. Energy*, Docket No. C-20027994 (Opinion and Order entered May 21, 2003) (*Stammel*); *Claypool v. T.W. Phillips Gas & Oil Co.*, Docket No. Z-00248730 (Opinion and Order entered Dec. 22, 1995). As such, Ms. Perry bears the burden of proving by substantial evidence that she is entitled to the relief she seeks. *Stammel*; 66 Pa.C.S. §332(a). With the enactment of the Responsible Utility

² A hearing *de novo* is a reviewing court’s decision of a matter anew, giving no deference to a lower court’s findings. A new hearing of a matter, conducted as if the original hearing had not taken place. *Black’s Law Dictionary* (11th ed. 2019).

Customer Protection Act, (Chapter 14), 66 Pa.C.S. §§1401-19, the Pennsylvania Legislature directed how the Commission must establish these payment arrangements.

Ms. Perry seeks an affordable payment arrangement from the Commission. Chapter 14 applies to this proceeding. Section 1405 of the Code provides in pertinent part as follows:

§ 1405. Payment arrangements.

(a) General rule.—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) Length of payment agreements. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and a customer shall not exceed beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405.

Ms. Perry testified that she lives alone in her apartment. Tr. 10. She also testified that she works from home and that her monthly gross income is \$4,200. Tr. 14-16. Ms. Perry's gross annual income would be approximately \$50,400 (\$4,200 x 12 months).

Under the federal poverty guidelines, a one-member household with \$4,200 gross monthly income exceeds 300% of the Federal poverty level. Consequently, Ms. Perry is eligible for a six-month payment arrangement ordered by the Commission.³ 66 Pa.C.S. § 1405(b)(4).

A public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which its remaining customers must pay. 66 Pa.C.S. 1402.

In the ordering paragraphs below, Ms. Perry shall be required to pay her current budget bill amount plus an amount equal to one-sixth (1/6th) of the arrearage accrued on her account, based upon her one-person household with a gross monthly income of \$4,200, pursuant to Section 1405(b)(4) of the Code.

Incorrect Charges

Although Ms. Perry did not claim there are incorrect charges on her bills in her Formal Complaint, she did raise this claim at the hearing. Ms. Perry believes she cannot be using as much electricity in her apartment as Duquesne Light bills her monthly.

Ms. Perry lives alone in her apartment, and she works from home. She is a residential heating rate customer of Duquesne Light. Other than her belief that she is being billed for more electricity than she consumes, Ms. Perry did not dispute any specific monthly bill or otherwise produce any evidence to establish her billings are inaccurate at the hearing. However, personal opinions or perceptions do not constitute substantial evidence sufficient to

³ According to the *2023 Federal Poverty Level Guidelines*, 300% of the Federal poverty level is \$43,740.00 a year for a one-person household. See *2023 Poverty Guidelines*, 88 Fed. Reg. 3424 (Jan. 19, 2023). Also available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

permit her to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (1987)).

On August 11, 2022, Duquesne Light tested the meter at the service address and confirmed that the meter recorded usage accurately.

In *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980), the Commission outlined the general dynamics for the burden of proof in a case that raises a high bill dispute. In order to determine whether a complainant has established a *prima facie* case where there are claims of unusually high bills, the Commission has declared that certain factors must be considered. While the accuracy of the meter is an important factor in resolving a billing dispute, it is not the sole criterion. *Id.* at 100. A complainant may establish a *prima facie* case by showing that: (1) the disputed bill was abnormally high when compared to prior usage patterns; and (2) his/her pattern of usage had not changed. *Id.* In looking at these criteria, one may consider the billing history of the account, any change in the number of occupants residing in the household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding. *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980). In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (*Thomas*), the Commission reiterated its position as set forth in *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Opinion and Order entered Oct. 13, 2010), which clarifies the *Waldron* rule provision that:

“a complainant [may] 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 at 5 (emphasis in original) (citations omitted).

In the instant case, Ms. Perry has failed to produce evidence that her electric bills are abnormally high. Complainant has failed to establish a *prima facie* case. Complainant’s electric bill is based upon actual meter readings. She did not dispute any specific monthly billing or provide evidence that any monthly billing is unreasonably high.

Ms. Perry has failed to meet her burden of proving her bills are abnormally high. She failed to produce evidence regarding any specific bill, an abnormally high monthly bill, or any other relevant evidence necessary for a *prima facie* case. Accordingly, Ms. Perry’s claim that her Duquesne Light bills are incorrect is denied in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.
2. Complainant has the burden of proving Respondent violated the provisions of the Public Utility Code, Commission regulations or a Commission order in providing service. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. § 1401-1419.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer or applicant. 66 Pa.C.S. § 1405(a).

5. The Public Utility Code permits a utility company to terminate service for non-payment of an undisputed delinquent account or for the failure of the customer to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406.

6. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit her to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (1987)).

7. A customer with a gross monthly household income exceeding 300% of the Federal poverty level is entitled to a six-month payment arrangement. 66 Pa.C.S. § 1405(b)(4).

8. Complainant failed to meet her burden of proving her bills are incorrect. 66 Pa.C.S. §332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Geneva Perry in *Geneva Perry v. Duquesne Light Company* at Docket No. F-2022-3032577, is granted in part and denied in part.

2. That Complainant Geneva Perry's request for a payment arrangement is granted.

3. That Complainant Geneva Perry shall pay monthly her current budget bill

