

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

444 Oxford Valley Rd. Trust LLC	:	
	:	
v.	:	C-2022-3032643
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On May 24, 2022, 444 Oxford Valley Rd Trust LLC (Complainant or 444 Oxford) filed a Formal Complaint (Complaint), through its counsel, Kristen Tyler, Esq., 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 its bills.

On June 13, 2022¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary’s Bureau on May 25, 2022.

On June 16, 2022, an Interim Order was issued setting a resolution conference with the parties in this matter.

After attempts to resolve the matter were unsuccessful, on April 27, 2023, an Initial Call-In Telephonic Hearing Notice was issued which indicated an initial hearing was scheduled for June 13, 2023, at 10:00 a.m., and the matter was assigned to me. I issued a Prehearing Order on June 5, 2023, which indicated the procedure for the hearing and other procedural issues.

The hearing took place as scheduled on January 12, 2023. The Complainant was represented by counsel, Kristen Tyler, Esq. and presented one witness, Kerry Murphy, Vice President of Real Properties. The Complainant also presented four exhibits which were entered into the record at the time of the hearing. PECO was present and represented by Khadijah Scott, Esq., who presented the testimony of two witnesses, Robert Black, Senior Analyst, and John McCawley, Director of Energy Acquisition. The Respondent offered three exhibits at the hearing which were entered into the record at that time.

The hearing resulted in a 78-page transcript. The record closed on July 13, 2023, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is 444 Oxford Valley Rd Trust LLC, that owns property at 444 Oxford Valley Plaza, on 444 Oxford Valley Road, Langhorne, Pennsylvania 19047 (Service Address). Tr. 9.
2. The Respondent in this case is PECO Energy Company.
3. The Complainant received a bill for its electric usage at the Service Address dated February 7, 2022 in the amount of \$16,502.24. Tr. 10-11; Complainant Exh. 2.

4. The Service Address is a 60,000 square foot office space. Tr. 13.
5. The Complainant's usage at the Service Address was lower than pre-COVID levels because there were fewer employees in the building. Tr. 13.
6. The Complainant is served under a variable rate for their generation charges for the electric supply. Tr. 21.
7. A customer is served under a variable rate if the customer has a measured load of greater than 100kW for any given 30-minute interval throughout the billing month. Tr. 22.
8. If the customer meets this criterion, then it is billed based on the PJM day ahead hourly prices. Tr. 22.
9. This information is available in the PECO electric tariff. Tr. 22; PECO Exh. 2.
10. In the February 7, 2022 bill for the Complainant, the generation charge for the billing period is \$10,565.92, which is calculated from the PJM hourly prices. Tr. 23-24; PECO Exh. 2.
11. The PJM hourly prices fluctuate often. Tr. 24; PECO Exh. 2.
12. The Complainant's billing was based on actual and not estimated usage. Tr. 27; PECO Exh. 2.
13. The Complainant is part of procurement class 3, which means they have a registered peak kW between 100 and 500 for any given 30-minute interval within the billing period. Tr. 36; PECO Exh. 2.

14. PJM is regulated by the Federal Energy Regulatory Commission. Tr. 49-50.

15. Customers in procurement class 3 are able to shop for another electric supplier with different rates. Tr. 51-52.

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, the 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. Phil. 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, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence more convincing, by even the smallest amount, than that 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 & 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. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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 asserts that its bill dated February 7, 2022 at the Service Address was too high. The Complainant contends that the charges were almost double from the previous month.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980), 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* at 100.

Consistent with the Commission's holding in *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Opinion and Order entered Oct. 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). *See Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

The Complainant received a bill for its electric usage at the Service Address dated February 7, 2022 in the amount of \$16,502.24. Tr. 10-11; Complainant Exh. 2. The Service Address is 60,000 square foot office space. Tr. 13. The Complainant asserts that the usage at the Service Address was lower than pre-COVID levels because there were fewer employees in the building. Tr. 13. In response, PECO asserts that Complainant is billed pursuant to PECO’s tariffed rates. Tr. 21-24; PECO Exh. 2.

It is well established that a public utility’s Commission-approved tariff carries a presumption that it is reasonable. *Bollinger v. T. W. Phillips Gas and Oil Co.*, Docket No. C-2011-2225850 (Final Order entered May 1, 2012). *See also Zucker v. Pa. Pub. Util. Comm’n*, 401 A.2d 1377 (Pa. Cmwlth. 1979). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2011) (citing *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 686 A.2d 910 (Pa. Cmwlth. 1996)).

The Complainant is served under a variable rate for their generation charges for the electric supply. Tr. 21. A customer will be served on a variable rate if the customer has a measured load of greater than 100kW for any given 30-minute interval throughout the billing month. Tr. 22. If the customer meets this criterion, then it is billed based on the PJM day ahead hourly prices. Tr. 22. This information is available in PECO’s Commission-approved electric tariff. Tr. 22; PECO Exh. 2. In the February 7, 2022 bill for the Complainant, the generation charge for the billing period is \$10,565.92, which is calculated from the PJM hourly prices. Tr. 23-24; PECO Exh. 2. The PJM hourly prices fluctuate often. Tr. 24; PECO Exh. 2. The Complainant's billing was based on actual and not estimated usage. Tr. 27; PECO Exh. 2. The

Complainant is part of procurement class 3, which means they have a registered peak kW between 100 and 500 for any given 30-minute interval within the billing period. Tr. 36; PECO Exh. 2. PJM is regulated by the Federal Energy Regulatory Commission, Tr. 49-50. Customers in procurement class 3 are able to shop for another electric supplier with different rates. Tr. 51-52.

Based on the above, it is clear that PECO billed the Complainant in accordance with its Commission-approved tariff. There is nothing in the record to indicate that PECO violated the Public Utility Code, a Commission regulation or order in in regard to the February 7, 2022 bill. The high bill was due to the PJM hourly billing rate which is allowed under PECO's tariff for procurement class 3, of which the Complainant is a part. Therefore, there are not any issues with the Complainant's billing and it has failed to meet its burden of proof in this regard.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the complainant. 66 Pa.C.S. § 332(a).
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. It is well established that a public utility's Commission-approved tariff carries a presumption that it is reasonable. *Bollinger v. T. W. Phillips Gas and Oil Co.*, Docket No. C-2011-2225850 (Final Order entered May 1, 2012). *See also, Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979).

5. A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2011) (citing *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)).

6. The Complainant has not met its burden of demonstrating that its bills were incorrect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of 444 Oxford Valley Rd Trust, LLC in 444 Oxford Valley Rd Trust. LLC v. PECO Energy Company at Docket No. C-2022-3032643 is dismissed;
2. That the record at Docket No. C-2022-3032643 be marked closed.

Date: October 6, 2023

_____/s/
Marta Guhl
Administrative Law Judge