

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sang Choe	:	
	:	
v.	:	F-2023-3041321
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision sustains in part and denies in part the Formal Complaint (“complaint”) of Sang Choe (“Complainant” or “Mr. Choe”). The complaint is sustained to the extent that it alleged PPL Electric Utilities Corporation (“Respondent” or “PPL”) overbilled Complainant for electricity. The complaint is denied to the extent it alleged PPL failed to provide reasonable service regarding a high-bill investigation.

HISTORY OF THE PROCEEDING

On June 9, 2023, Complainant filed a complaint with the Pennsylvania Public Utility Commission (“Commission”) against Respondent.¹ Complainant marked “incorrect charges are on my bill” as the reason for the complaint and alleged that Respondent incorrectly billed him based on a defective meter. (Complaint ¶¶ 4–6). As relief, Complainant requested that

¹ The Formal Complaint is an appeal from a decision issued by the Commission’s Bureau of Consumer Services (“BCS”) at BCS Case No. 3890359. (Tr. 43; PPL Exhibit 3). BCS received the Informal Complaint on February 22, 2023 and dismissed it by decision dated May 25, 2023. (Tr. 43; PPL Exhibit 3). A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Respondent: (a) refund the “incorrectly calculated fare,” (b) complete a detailed inspection of the meter and (c) compensate Complainant for mental and physical time/stress. (Complaint ¶ 6).

The Commission served the complaint on Respondent on June 16, 2023.

On July 6, 2023, Respondent filed its “Answer of PPL Electric Utilities Corporation to the Complaint of Sang Choe” (“answer”) in which it admitted and denied various allegations in the complaint. In its answer, Respondent admitted to being Complainant’s electric provider, but denied that there were any incorrect charges on Complainant’s bill. (Answer ¶¶ 4–5). Respondent also stated that it initially issued Complainant an estimated bill on January 5, 2023 for electric service between November 30, 2022 and January 4, 2023; however, this bill was subsequently cancelled upon discovery that customer data was not transferring from the meter data management system to the customer service system. (Answer ¶ 5). Respondent further averred that a new bill reflecting actual usage was issued on January 19, 2023. (Answer ¶ 5).

Also, on July 6, 2023, Respondent filed its “Preliminary Objection of PPL Electric Utilities Corporation to the Complaint of Sang Choe” (“POs”), which were accompanied by a notice to plead that required Complainant to respond within ten days of the date of service. In its POs, Respondent asserted that Complainant’s request for damages in the complaint should be dismissed, under 52 Pa. Code § 5.101(a)(2), because the Commission has no power to award damages. (POs ¶¶ 5, 9).

Complainant did not file a response to the POs.

On August 9, 2023, an Initial Call-In Telephone Hearing Notice (“Hearing Notice”) was issued scheduling a telephonic hearing on October 17, 2023 and assigning me as presiding officer.

On August 10, 2023, the undersigned issued a Prehearing Order addressing various procedures that would govern the hearing. Also, on August 10, 2023, the undersigned

issued an “Order Granting Preliminary Objections of PPL Electric Utilities Corporation,” which struck the request for damages from the complaint.

On October 17, 2023, the hearing was held as scheduled. The Commission contracted with an interpreter service to provide Korean to English interpretation for the hearing because Mr. Choe’s primary language was Korean. Charles Kim was the interpreter for the hearing. (Tr. 6). Mr. Kim stated, under oath, that he was fluent in Korean and English and that he was certified as an interpreter by the Administrative Office of Pennsylvania Courts. (Tr. 7). There was no objection to Mr. Kim being the interpreter for the hearing. (Tr. 7).

Sang Choe appeared and represented himself at the hearing. Mr. Choe sponsored Choe Exhibit 1 – Handwritten spreadsheet of kilowatt-hours (“kWh”) used and monthly bill amounts from 2019 to 2023. Choe Exhibit 1 was admitted into evidence without objection.

Respondent was represented by Attorney Nicholas A. Stobbe at the hearing, who presented Alicia Watkinson – Customer Contact Supervisor at PPL and Tami Rolan – Senior Customer Service Representative at PPL as witnesses. The witnesses sponsored the following five exhibits: PPL Exhibit 1 – Account Activity Statement, PPL Exhibit 2 – Account Contact History, PPL Exhibit 3 – Informal Case View, PPL Exhibit 4 –Usage Details Chart from October 31, 2019 to October 2, 2023 and PPL Exhibit 6 – Daily Collections Readings Chart from November 30, 2022 to January 4, 2023.² PPL Exhibits 1 – 4 and PPL Exhibit 6 were admitted into evidence without objection.

The record closed on November 2, 2023, when the 59-page transcript was filed with the Commission.

FINDINGS OF FACT

1. Complainant is Sang Choe, who resides at 53B Pennwick Drive, Lititz, PA, 17543 (“service property”) and he has resided there since April 2018. (Tr. 14, 18).

² The document pre-marked as PPL Exhibit 5 was not presented at the hearing.

2. The service property is an apartment with: (a) two bedrooms, (b) a kitchen, (c) a living room and (d) a bathroom. (Tr. 19-20).

3. The sole heating source for the service property is electric heat, and no supplemental heaters are used. (Tr. 18, 20).

4. The service property has other electrical appliances such as washer, dryer, air conditioning and dishwasher. (Tr. 20).

5. Three people reside at the service property, which consists of two adults and one minor. (Tr. 17-18).

6. There were no changes to the service property for more than five years. (Tr. 19).

7. Respondent is PPL Electric Utilities Corporation, which provides electric service to Complainant. (Tr. 14).

8. Complainant contested kWh usage reflected on his PPL bills from August 2022 until September 2023. (Tr. 14-15, 17, 19).

9. Complainant first reached out to PPL representatives about his bill in January 2023 and has reached out multiple times since then. (Tr. 15, 20).

10. Complainant asked PPL to have the meter checked in February 2023 or March 2023, but did not have PPL check it due to being told he had to pay for it. (Tr. 20).

11. Maintenance at the service property spoke with PPL and maintenance advised that meter was okay. (Tr. 20).

12. Alicia Watkinson is a customer contact service supervisor at PPL, who has worked for PPL for 17 years, with 19 months in her current position that required her to supervise customer service agents and handle escalated customer inquiries. (Tr. 24-25).

13. In December 2022, PPL discovered that customers meter data was not being sent from the PPL command center to its data management systems (“December 2022 data transfer error”). (Tr. 27).

14. Based on the December 2022 data transfer error, PPL issued Mr. Choe an estimated bill for December 2022 that was based on his prior year usage for the same period. (Tr. 27).

15. On January 5, 2023, Respondent issued Complainant an estimated bill in the amount of \$207.78 based on an estimated usage of 1001 kWh for the December 2022 billing period, which covered November 30, 2022 to January 4, 2023. (Tr. 28; PPL Exhibit 1).

16. Complainant’s actual kWh usage for the period from November 30, 2022 to January 4, 2023 was 1845 kWh based on daily meter readings for the service property. (Tr. 28).

17. On January 17, 2023, Respondent cancelled the January 5, 2023 bill. (PPL Exhibit 1).

18. On January 19, 2023, Respondent issued Complainant a bill for his actual use that accounted for the underestimation of 841 kWh used from the estimated January 5, 2023 bill. (Tr. 29).

19. Respondent billed Complainant for the following kWh usage based on actual meter readings from 2019 to 2023 (Choe Exhibit 1 and PPL Exhibit 1):

	2019	2020	2021	2022	2023
January	X	01/02 bill 1336 kWh ----- 01/31 bill 1215 kWh	01/04 bill 1114 kWh	01/04 bill 944 kWh	01/19 bill 1842 kWh ----- 01/31 bill 1527 kWh
February	X	X	02/03 bill 1157 kWh	02/02 bill 1342 kWh	X
March	X	03/03 bill 1093 kWh	03/05 bill 1175 kWh	03/03 bill 1022 kWh	03/02 bill 1732 kWh
April	X	04/01 bill 760 kWh	04/06 bill 764 kWh	04/01 bill 713 kWh	04/03 bill 1451 kWh
May	X	05/01 bill 654 kWh	05/05 bill 551 kWh	05/03 bill 666 kWh	05/03 bill 1172 kWh
June	X	06/02 bill 574 kWh	06/04 bill 617 kWh	06/02 bill 552 kWh	06/02 bill 923 kWh
July	X	07/01 bill 669 kWh	07/06 bill 770 kWh	07/01 bill 568 kWh	07/03 bill 1090 kWh
August	X	08/03 bill 883 kWh	08/04 bill 561 kWh	08/02 bill 842 kWh ----- 08/31 bill 954 kWh	08/02 bill 1357 kWh ----- 08/31 bill 927 kWh
September	X	09/01 bill 667 kWh	09/02 bill 701 kWh	09/30 bill 772 kWh	X
October	10/31 bill 557 kWh	10/02 bill 495 kWh	10/04 bill 503 kWh	10/31 bill 989 kWh	10/02 bill 364 kWh
November	X	11/02 bill 564 kWh	11/02 bill 451 kWh	11/30 bill 1193 kWh	X
December	12/02 bill 970 kWh	12/02 bill 696 kWh	12/02 bill 786 kWh	X	X

20. Complainant made a double payment of \$138.33 on June 5, 2023 and Respondent applied the balance to Complainant's July 2023 bill. (Tr. 30-31; PPL Exhibit 1).

21. Respondent's "price to compare" has increased since 2019. (Tr. 30).
22. Complainant's kWh usage increased in the wintertime. (Tr. 30, 34; PPL Exhibit 4).
23. Complainant has increased kWh usage over the last few years until it drastically decreased on August 22, 2023. (Tr. 30).
24. On April 20, 2023, Respondent offered to test Complainant's meter for a \$35 fee, but Complainant declined. (Tr. 36).
25. On April 27, 2023, Complainant declined any assistance from Respondent's customer service representative and requested to speak to a supervisor. (Tr. 36; PPL Exhibit 2).
26. On May 2, 2023, a representative for Respondent called Complainant and left a message. (Tr.36-37).
27. Tami Roland is a senior customer service representative at PPL, who has worked for PPL for 32 years, with eight years in her current position. (Tr. 41-42).
28. BCS dismissed Complainant's Informal Complaint for this billing dispute on May 25, 2023. (Tr. 43).

DISCUSSION

Legal Standard

As a matter of law, to establish a legally sufficient claim, 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). The offense must also be a violation of the Public Utility Code, a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code (Code) provides that a Complainant, as the party seeking affirmative relief from the Commission, has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 with some additional 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); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). As the party seeking relief from the Commission, Mr. Choe bears the burden of proof in this case. 66 Pa.C.S. § 332(a).

In this case, Complainant makes an allegation of overbilling. (Tr. 14–15). Overbilling, if proven by a preponderance of the evidence, falls 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:

[c]haracter 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).

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. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980) ("*Waldron*"); *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980).

In *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (“*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.

768 A.2d at 1219-1220 (citing *Burleson v. Pa. Pub. Util. Comm’n*, 461 A. 2d 1234, 1235 (1983)) (footnote omitted) (emphasis in original).

The Commission restated its position for the purpose of clarifying the *Waldron* test in *Bennett v. Peoples Natural Gas Co., LLC*, Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010) (“*Bennett*”). In *Bennett*, the Commission stated:

[w]hile a comparison of the disputed monthly bill to the Complainant’s billing history and the consistency of her usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant’s disputed high bill Also, this interpretation does not allow for other relevant facts or circumstances with probative value to be considered as evidence supportive of a high bill complaint. *Waldron* does not limit the establishment of a *prima facie* case to the above two elements alone. Rather, the Commission may consider 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.

Bennett at 6. (emphasis in the original).

In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (“*Thomas*”), the Commission explained that:

[C]onsistent with our holding in *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.*”

Thomas at 5 (citation omitted) (emphasis in original).

The Commission has also considered circumstances where a Complainant contends that their utility bill is inordinately large as compared to their perceived utility usage. In *Kirby v. PPL Electric Utilities Corp.*, the Commission ruled that, “[c]omplainant’s testimony consisted solely of his opinion that these charges are too high. Regardless of how earnestly Complainant believes the complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit him to sustain his burden of proof.” *Kirby v. PPL Elec. Util. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

Issues

In this case, Mr. Choe alleged that PPL overbilled billed him for electricity based on higher-than-normal kWh usage between August 2022 and September 2023 and PPL failed to resolve the issue. (Tr. 14–15, 17, 19–20). In support of his claim, Mr. Choe testified that his kWh usage spiked in August 2022 without reason and that nothing at the service property had changed since he moved there in April 2018. (Tr. 14–19). Mr. Choe further testified that the service property is a two-bedroom apartment with: (1) a kitchen, living room and one bathroom, (2) electric heat, (3) three people residing there, (4) an electric washer/dryer and (5) dishwasher.

(Tr. 17–20). Mr. Choe also provided that that he began reaching out to PPL about the billing issues in January 2023 and multiple times thereafter without resolution. (Tr. 15, 20).

In opposition, PPL presented testimony from Alicia Watkinson, a customer contact service supervisor for PPL, testimony from Tami Roland, a senior customer service representative and PPL Exhibits 1 – 4 and 6. (Tr. 24-25, 41-42). Ms. Watkinson testified that: (1) PPL experienced a data transfer error with its meter in December 2022 that caused it to issue Mr. Choe an estimated bill for December 2022 based on his prior year usage for the same period, (2) the estimated December 2022 bill was for \$207.78 based on estimated usage of 1001 kWh from November 20, 2022 to January 4, 2023, (3) PPL subsequently discovered Mr. Choe’s actual kWh usage for that same period was 1845 kWh based on daily meter readings, (4) PPL then cancelled the estimated bill and issued Mr. Choe a new bill in the amount of \$369.26 based on the actual kWh usage. (Tr. 27–29; PPL Exhibit 1). Ms. Watkinson further testified that Mr. Choe’s kWh usage increased during the wintertime, his usage has increased over the last few years and that PPL’s “price to compare” has increased since 2019. (Tr. 30, 34; PPL Exhibit 4). Ms. Watkinson also provided that Mr. Choe declined PPL’s offer to test the meter on April 20, 2023, he declined assistance from PPL on the telephone on April 27, 2023 and he failed to return PPL’s call on May 2, 2023 when a message was left for him. (Tr. 36–37).

Analysis

High Bill Claim

Based on the evidence presented, I find that Mr. Choe presented sufficient credible testimony to meet his burden of proof under the *Waldron* Rule as clarified by the Commission in *Bennet* and *Thomas*. First, Mr. Choe provided uncontradicted testimony that the same three people (i.e., Mr. Choe, his wife and his minor child) have lived at the service property and that there were no changes to the service property for over five years. (Tr. 17-19). Thus, Mr. Choe clearly established that there was no basis for a dramatic change in usage on these grounds.

Next, the prevailing case law focuses on the issue of billing history. *Thomas*. Mr. Choe testified that his electric bill showed a spike in kWh usage starting in August 2022 and lasting until September 2023. (Tr. 14-15, 17, 19). Documentation admitted at the hearing showed that kWh use starting in August 2022 was consistently and sometimes dramatically higher compared to prior years in the same month until billing for October 2023. (PPL Exhibit 1 and Choe Exhibit 1). The percentage of the increases were as follows:

(Table on next page)

	kWh use for 2021	kWh Use for 2022	kWh Use for 2023	Approximate Percentage Increase
For Aug. kWh use (billed in Aug./Sept.)	701 kWh	954 kWh		36.09%
For Sept. kWh use (billed in Sept./Oct.)	503 kWh	772 kWh		53.47%
For Oct. kWh use (billed in Oct./Nov..)	451 kWh	989 kWh		119.29%
For Nov. kWh use (billed in Nov./Dec.)	786 kWh	1193 kWh		51.78%
For Dec. kWh use (billed in Jan.)	944 kWh	1842 kWh		95.12%
For Jan. kWh use (billed in Jan./Feb.)		1342 kWh	1527 kWh	13.78%
For Feb. kWh use (billed in March)		1022 kWh	1732 kWh	69.47%
For March kWh use (billed in April)		713 kWh	1451 kWh	103.50%
For April kWh use (billed in May)		666 kWh	1172 kWh	75.97%
For May kWh use (billed in June)		552 kWh	923 kWh	67.21%
For June kWh use (billed in July)		568 kWh	1090 kWh	91.90%
For July kWh use (billed in Aug.)		842 kWh	1357 kWh	61.16%

For the 12-month period that Mr. Choe contested, there was an average increase in kWh use of 69.89% for the service property with the highest increase in kWh use being 119.29% when compared to the same period the prior year.

Respondent offered minimal evidence to contradict Mr. Choe’s “high bill” claim. The only argument offered by PPL was that Mr. Choe’s kWh use increased over the last few years in general and especially during the wintertime. However, this does not explain the dramatic 69.89% average increase in kWh usage during the approximately 12-month timeframe contested by Mr. Choe. Moreover, as reflected below from PPL Exhibit 4, the temperature during the contested timeframe varied, but did not always correspond with the fluctuations in kWh usage and did not support PPL’s claim for such dramatic increases in kWh usage.

	2021	2022	2023	Temperature Difference
For Aug. (billed in Aug./Sept.)	09/02 bill 77°	08/31 bill 78°		+1°
For Sept. (billed in Sept./Oct.)	10/04 bill 69°	09/30 bill 68°		-1°
For Oct. (billed in Oct./Nov..)	11/02 bill 61°	10/31 bill 54°		-7°
For Nov. (billed in Nov./Dec.)	12/02 bill 43°	11/30 bill 47°		+4°
For Dec. (billed in Jan.)	01/04 bill 41°	01/19 bill 36°		-5°
For Jan. (billed in Jan./Feb.)		02/02 bill 27°	01/31 bill 39°	+12°
For Feb. (billed in March)		03/03 bill 37°	03/02 bill 41°	+4°
For March (billed in April)		04/01 bill 45°	04/03 bill 43°	-2°
For April (billed in May)		05/03 bill 52°	05/03 bill 56°	+4°

For May (billed in June)		06/02 bill 66°	06/02 bill 57°	-9°
For June (billed in July)		07/01 bill 73°	07/03 bill 70°	-3°
For July (billed in Aug.)		08/02 bill 79°	08/02 bill 78°	-1°

No explanation offered by PPL is sufficient to rebut the convincing evidence presented by Mr. Choe to prove the meter readings obtained for kWh usage from approximately August 2022 to August 2023 were inaccurate. Mr. Choe provided sufficient evidence to show the meter was not working properly based on circumstantial evidence in accordance with *Waldron, Bennet and Thomas*. Thus, the complaint is sustained as to the violation of 66 Pa.C.S. § 1501 on the issue of PPL failing to provide Mr. Choe with an accurate bill for kWh use.

Unreasonable Customer Service Claim

During the approximately 12-month timeframe where Mr. Choe contested his bill, he credibly testified that he reached out to PPL to raise his kWh usage concerns starting in January 2023 and made repeated attempts to resolve the issue with PPL without success. (Tr. 15, 20). Mr. Choe also indicated that he made a request to have his meter checked in either February 2023 or March 2023, but he ultimately relied on building maintenance to advise him that the meter was okay because of the fee PPL charged to check the meter. (Tr. 20).

For PPL, Ms. Watkinson credibly testified that PPL offered to test Mr. Choe’s meter for a \$35 fee on April 20, 2023. (Tr. 36). Ms. Watkinson also testified, without contradiction, that Mr. Choe declined assistance from a PPL customer representative on April 27, 2023 and that PPL called him on May 2, 2023 and left a message that Mr. Choe did not return. (Tr. 36–37). Ultimately, PPL never tested Mr. Choe’s meter.

Under Commission regulations, a public utility is required to test the accuracy of a meter upon written request of the customer upon payment of the specified fee. 52 Pa. Code § 57.22. If the meter were found to be outside of the accuracy limits set forth in the regulation,

then the fee is refunded to the customer. *Id.* In this case, PPL complied with 52 Pa. Code § 57.22 when it offered to test Mr. Choe’s meter within a reasonable timeframe after receiving his request. The fact that Mr. Choe declined to have the test completed still satisfies PPL’s requirements to provide reasonable service on that ground. Thus, the complaint is denied as to the violation of 66 Pa.C.S. § 1501 on the issue of PPL’s failure to provide reasonable service after receipt of the “high bill” complaint.

Relief

Having found a violation of 66 Pa.C.S. § 1501 in regard to PPL’s overbilling of Mr. Choe from approximately August 2022 to August 2023, the Commission is authorized to impose a maximum civil penalty of \$1,000 per day. 66 Pa.C.S. § 3301. The Commission regulations at 52 Pa. Code § 69.1201 set forth ten factors that the Commission will consider in evaluating and determining whether a fine for violating a Commission order, regulation or statute is appropriate. The factors and standards that are considered by the Commission include the following:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and

improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa. Code § 69.1201.

The first criterion to consider is whether PPL's conduct was of a serious nature or whether it was less egregious, such as an administrative or technical error. In this case, PPL misbilled Mr. Choe and does not appear to have taken any intentional act against him, such as denying him service or otherwise causing harm to Mr. Choe or his property. I find that this qualifies as an administrative error that warrants a lower penalty.

The second criterion is whether the resulting consequences of the conduct were of a serious nature, such as personal injury or property damage. Mr. Choe continued to pay the charged billing amounts each month as a result of the higher meter reading. However, the

financial damages are not serious and there is no other damage, physical or personal, alleged. Thus, I conclude the consequences are not serious and warrant a lower penalty.

The third criterion is whether the conduct at issue was deemed intentional or negligent. PPL's conduct here was a negligent oversight and a misunderstanding of the effect the weather had on Mr. Choe's kWh usage. Thus, I conclude the conduct warrants a lower penalty.

The fourth criterion is whether the utility made efforts to modify internal practices and procedures to address the conduct and prevent similar conduct, and the amount of time it took for the implementation of these measures. The billing error in this case occurred over several months and PPL failed to find and correct the error during that period and has not made any efforts to rectify the overall billing error regarding Mr. Choe. Thus, I conclude a higher penalty may be warranted under this factor.

The fifth criterion is the number of customers affected. The evidence in the record only supports that Mr. Choe was impacted. Thus, a lower penalty is warranted.

The sixth criterion is a consideration of PPL's compliance history. No evidence was presented that PPL has a poor compliance record. Thus, I conclude a lower penalty is warranted.

The seventh criterion is whether the regulated entity cooperated with the Commission's investigation. The record contains no evidence that there was an investigation by the Commission and therefore this criterion works neither to mitigate nor to aggravate the penalty to be imposed.

The eighth criterion is the amount of the civil penalty or fine necessary to deter future violations, with consideration of the size of the utility. PPL is a large utility with an extensive territory. In light of PPL's size, the limited consequences from this error, the length of

time over which the error occurred, the rejected efforts of PPL and the potential for repetition, I conclude that there should be a penalty imposed by the Commission.

The ninth criterion is past Commission decisions. Neither party cited any prior Commission decisions involving unreasonable customer service in how PPL records consumption amounts, and/or charges its customers for electric service based on the recorded consumption. However,

Mr. Choe did not request a civil penalty in his complaint and instead requested an unspecified refund for incorrect meter readings. However, based on the aforementioned factors, I find that a civil penalty of \$100 per month for each of the 12 months from August 2022 to August 2023, for billing errors is appropriate in this matter.³ This civil penalty is consistent with the Commission's prior decision in *Risser v. PPL Elec. Util. Corp.*, Docket No. F-2017-2612481 (Final Order entered Apr. 27, 2018). This amounts to \$1200, which should be sufficient to deter future violations by PPL, in consideration of all the other relevant factors cited herein. In addition, PPL will be ordered to conduct a meter test at the service property, waive any fee in connection with performing the test and provide the results to Mr. Choe.

Mr. Choe also requested a refund for the "incorrectly calculated fare." Based on violations at issue, I find that Mr. Choe is entitled to receive credit on his account for the bills issued for kWh usage from August 2022 to August 2023. In this case, PPL billed Mr. Choe for an average increase of 69.89% in kWh usage during the approximately 12-month timeframe that was not supported by the record. Accordingly, I conclude that PPL shall recalculate the bills for kWh usage from August 2022 to August 2023 using the kWh usage for the prior month and year. Specifically, PPL shall recalculate Mr. Choe's kWh usage as follows:

- August 2022 – 701 kWh
- September 2022 – 503 kWh
- October 2022 – 451 kWh

³ Mr. Choe also asked for damages in his complaint, which was stricken from the complaint in my August 10, 2023 order granting PPL's POs.

- November 2022 – 786 kWh
- December 2022 – 944 kWh
- January 2023 – 1342 kWh
- February 2023 – 1022 kWh
- March 2023 – 713 kWh
- April 2023 – 666 kWh
- May 2023 – 552 kWh
- June 2023 – 568 kWh
- July 842 kWh

PPL shall then credit Mr. Wallace’s account with the difference between the prior and new bills. Additionally, because the billing inaccuracies in this case occurred through no fault of Mr. Choe, any late payment charges should also be credited to Mr. Choe’s account.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Section 1501 of the Public Utility Code governs any allegations of unreasonable or inadequate service. 66 Pa.C.S. § 1501.
3. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
4. 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).
5. The act or failure to act 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.

6. "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).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. 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); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

10. 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 v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011)

11. Complainant met the burden of proving Respondent improperly charged Complainant for electric service between August 2022 and August 2023 which Complainant did not use. 66 Pa.C.S. § 332(a), 1501; *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

12. Complainant did not meet the burden of proving Respondent provided unreasonable service in regard to conducting a “high bill” investigation. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

13. The Commission is authorized to consider and impose civil monetary penalties against a public utility company. 52 Pa. Code § 69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Sang Choe in *Sang Choe v. PPL Electric Utilities Corporation* at Docket No. F-2023-3041321 is sustained in part and denied in part.
2. That Complainant’s request for a refund is granted.
3. That within 30 days of the date of the entry of a final Commission Order in this proceeding, and consistent with the findings set forth herein, Respondent is directed to recalculate the bills issued to Complainant based on kWh usage from August 2022 to August 2023 using the kWh usage from the prior month and year and shall credit Complainant’s account with the difference between the prior and current calculation. Respondent shall also file

documentation certifying it completed this action at this docket number with the Secretary of the Commission.

4. That any late fees charged to Complainant related to the bills from August 2022 to August 2023 shall be waived.

5. That Respondent shall complete a meter test for 53B Pennwick Drive, Lititz, PA, 17543 for accuracy in recording Complainant's electric usage and waive any fee associated with performing the test.

6. That within 60 days from the entry date of the Final Commission Order, Respondent shall provide the results of the meter test conducted at 53B Pennwick Drive, Lititz, PA, 17543 to Complainant.

7. That Respondent is directed to pay a total of \$1200 in civil penalties by sending a certified check or money order payable to the "Commonwealth of Pennsylvania" with the docket number of this proceeding listed on the check within 30 days from the entry date of the Final Commission Order and send to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

8. That a copy of the final Commission Order in this proceeding shall be served upon the Financial and Assessment Chief, Office of Administrative Services, and the Commission's Bureau of Technical Utility Services.

9. That, if PPL Electric Utilities Corporation fails to make the civil penalty payment required by Ordering Paragraph No. 7 above, within 30 days of the entry of a final Commission Order in this proceeding, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

