

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn Zerfuss
John F. Coleman, Jr.

Joseph McAndrew

F-2023-3041730

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Joseph McAndrew (Mr. McAndrew or Complainant) filed on March 25, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, issued on March 8, 2024. PPL Electric Utilities Corporation (PPL) filed Reply Exceptions on April 8, 2024. Upon consideration of the Exceptions, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding

On June 29, 2023, the Complainant filed a Formal Complaint (Complaint) against PPL, effectuating a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) in Informal Complaint No. 3902770. In the Complaint, Mr. McAndrew indicated that he had incorrect charges on his bill. Complaint at 2, ¶ 5. Mr. McAndrew explained he was issued an estimated bill in the amount of \$433.90 for December 2022 and believed this amount to be incorrect. *Id.* at 3, ¶ 6. Mr. McAndrew noted that he made a payment of \$191.34, the same amount as his November 2022 bill, and subsequently received a bill in the amount of \$361.70. As relief, Mr. McAndrew requested a refund from PPL in the amount of \$170.36. *Id.*

PPL filed an Answer to the Complaint on August 3, 2023 (Answer). In its Answer, PPL denied the material factual allegations and conclusions of law in the Complaint. Specifically, PPL admitted that Mr. McAndrew had received an estimated bill for electrical service provided in December 2022 but denied that the estimated bill was not "trued-up" to Mr. McAndrew's actual metered electric usage. Answer at 2. PPL next outlined issues with the transfer of customer meter data to its customer service system that led to an underestimation of Mr. McAndrew's bill and required the issuance of an estimated bill. *Id.* at 2-3. PPL averred it had access to actual metered electric usage and included the unbilled portion of the December 2022 period on the Complainant's January 2023 bill. *Id.* PPL requested the Commission deny and dismiss Mr. McAndrew's Complaint "in its entirety and with prejudice." *Id.* at 6.

A hearing convened, as scheduled, on November 15, 2023. PPL, appearing with counsel, presented two witnesses, and submitted five (5) exhibits that were admitted to the record. The Complainant appeared *pro se* and offered no exhibits. The record in this proceeding was closed on December 13, 2023.

The Initial Decision of ALJ Brady was issued on March 8, 2024. In his Initial Decision, the ALJ recommended that the Commission dismiss Mr. McAndrew's Complaint for failing to meet his evidentiary burden of proving, by a preponderance of the evidence, that PPL violated its tariff, the Public Utility Code (Code), or a Commission Order or Regulation.

As noted, *supra*, McAndrew filed Exceptions on March 25, 2024.¹ PPL filed Reply Exceptions on April 8, 2024.

II. Discussion

A. Legal Standards

1. Burden of Proof

Pursuant to Section 332(a) of the Code, the Complainant, as the proponent of a rule or order, bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that PPL is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). This showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than the evidence presented by PPL. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹ On March 28, 2024, the Commission's Secretary served a copy of the Exceptions on All Parties of Record pursuant to 52 Pa. Code § 5.533 because there was no certificate of service or other indication that the Parties of Record to this proceeding were served with the Exceptions.

This Commission’s decisions must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & West Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980). “[O]pinions and conclusions cannot be relied upon as substantial evidence in a decision by [the Commission].” *Norman v Phila. Gas Works*, Docket No. C- 2018-2640719 at 30 (Opinion and Order entered October 7, 2021) (*Norman*).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to PPL to present persuasive evidence rebutting that of the Complainant. If PPL’s evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide additional evidence to rebut that of PPL. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983) (*Burleson*). While the evidentiary 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 to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*).

2. Overbilling Complaint

Where a complainant alleges overbilling by their utility provider, the Commission utilizes the *Waldron* rule. *See, Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (1980) (*Waldron*). *Waldron* and its progeny hold that to establish a *prima facie* case of overbilling, the Complainant must prove, by a preponderance of the evidence: (1) that the number of occupants in the household has not changed; (2) that the potential for energy utilization was low; and (3) that the complainant’s billing history shows no prior abnormalities. *Waldron; Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (1980). Once the Complainant shows a *prima facie* case, the burden of proof shifts to PPL; however, the burden of persuasion never shifts and always remains with the Complainant. *Id.*

The Commonwealth Court of Pennsylvania clarified the *Waldron* rule in *Milkie*, holding:

While the 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.

Milkie, 768 A.2d at 1219-1220, citing *Burleson*, 461 A.2d at 1235. (Emphasis in original). In *Thomas v. PECO Energy Co.*, the Commission contemplated the types of evidence that might establish a *prima facie* case pursuant to *Waldron*:

[C]onsistent with our holding in *Charisse 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.”

Docket No. C-2010-2187197 at 5 (Opinion and Order entered November 15, 2011) citing *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 at 6 (Opinion and Order entered October 13, 2010).

B. Initial Decision

In the Initial Decision, ALJ Brady made twelve (12) Findings of Fact and reached four (4) Conclusions of Law. I.D. at 2-3, 6. The Findings of Fact and Conclusions of Law are incorporated herein by reference and adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In his Initial Decision, ALJ Brady found, after a hearing and review of the record, that “[t]he actual reason Mr. McAndrew’s electric bill increased was that on December 1, 2022, PPL’s rate increased approximately 54% from 9.5 cents/kWh to 14.6 cents/kWh in accordance with PPL’s Commission-approved tariff.” In making this finding, ALJ Brady referred to three years of historic metered usage data for the residence and noted “[t]he estimated bill was based on generally the same amount of kWhs as the previous three years” and was consistent with PPL’s tariff. Therefore, the ALJ concluded that the Complainant failed to satisfy his burden of proving that PPL violated its tariff, the Code, or a Commission Regulation or Order. Accordingly, the ALJ recommended that the Commission deny the Complaint. I.D. at 5.

C. Exceptions and Replies

As noted, *supra*, on March 25, 2024, Mr. McAndrew timely filed his Exceptions to the Initial Decision which consist of two handwritten pages, formatted as a letter. The Exceptions reflect Mr. McAndrew’s general disagreement with the Initial Decision and raise two distinct issues with ALJ Brady’s analysis.

First, Mr. McAndrew contests the ALJ’s Finding of Fact No. 4 and argues “that the PPL (MDMS) failed, and PPL used this failed system to send out bills to me based on estimated usage.” Exc. at 1. Mr. McAndrew does not raise a specific issue with

this Finding of Fact, and instead requests the Commission “look at this statement.” *Id.* Therefore, it appears that this Exception is a general critique of how the ALJ considered the facts and policies surrounding the estimated bill issued to Mr. McAndrew in this matter.

Mr. McAndrew also takes issue with Finding of Fact No. 5 and reiterates his arguments surrounding “the (MDMS) failed system” while also referring to a conversation he allegedly had with a PPL customer service representative. Exc. at 2. Specifically, Mr. McAndrew relays the contents of the conversation as follows:

This estimated usage is also based on a failed, faulty system. So I then called the PPL 800 customer service number. The representative said PPL use [*sic*] to read meters at peoples [*sic*] homes, now they just estimate. They use your previous year’s bill for the same month and increase it. They estimate that everyone used more electricity every month, whether they really do or not ... I asked how do they estimate? She said well there is a small room behind my desk, that is for estimating, but no one has ever gone in that room while I worked here, for years.

Id.

PPL filed its Reply Exceptions on April 8, 2024. In its Reply, PPL asks the Commission to deny the Exceptions filed by Mr. McAndrew, adopt the Initial Decision of ALJ Brady without modification, and dismiss this matter in its entirety. R. Exc. at 1.

PPL responds to Mr. McAndrew’s Exception No. 1 by asserting that ALJ Brady properly considered the estimated bill in this matter. R. Exc. at 1. Noting that it is “unclear what Mr. McAndrew is excepting to in pointing out this portion of the ID,” PPL avers the record evidence fully explains the technical and procedural bases for issuance of an estimated bill. *Id.* at 2. PPL also points to the Commission’s Regulations

for its position that Commission regulations “permit PPL Electric to issue estimated billed [*sic*] for customers due to exigent circumstances, such as ‘equipment failure.’” *Id.* citing 52 Pa. Code § 56.12(2), (3). PPL states it offered “unrebutted evidence” regarding possible reasons for the increased bill amounts, including an increase in the Company’s “price to compare” from 9.5 cents to 14.6 cents that, paired with relatively consistent consumption by Mr. McAndrew for corresponding billing periods, explains why the December 2022 bill may have been higher than in previous years. *Id.* at 2-3. PPL also refers to the steps taken by the Company to ensure the circumstances leading to estimated bills in this matter do not occur in the future. *Id.* at 3. Finally, the Company notes its explanation of the “true-up” process used to reconcile Mr. McAndrew’s estimated bill and subsequent bill issued on January 25, 202[3], pointing out that the Company had access to actual meter data “[a]t all times relevant to the Complaint.” *Id.* at 3 (citing Tr. at 19, 22; PPL Exhs. 5-7). The Company requests the Commission deny Mr. McAndrew’s Exception No. 1. *Id.*

In response to Mr. McAndrew’s Exception No. 2, PPL argues the Complainant substantially repeats the contents of Exception No. 1 and relies on extra-record evidence that should be disregarded. R. Exc. at 3. PPL refers to the testimony of its witness, Ms. Alicia Watkinson, for support of its position that PPL issued only one estimated bill to Mr. McAndrew, with the lone estimated bill rendered on December 29, 2022, and a subsequent bill being “reflective of the underestimated usage by the Complainant in the preceding bill period, as well as the Complainant’s consumption for the January billing period. *Id.* at 4 (citing Tr. at 17-18, 19; PPL Exhs. 1, 5.) PPL also contests Mr. McAndrew’s assertion the estimated bill was incorrectly high, pointing out that McAndrew’s usage has “been consistent and fluctuated with seasonal temperatures,” as shown by PPL Exhibit 5. *Id.* (*see also*, Tr. at 25).

Finally, PPL addresses the factual averments made in Exception No. 2, asserting these “constitute extra-record evidence that potentially could have been – but

was not – introduced during the November 15, 2023 Evidentiary Hearing.” R. Exc. at 6. In particular, PPL argues that Mr. McAndrew’s extra-record assertion that a PPL representative told him “all estimated bills are overestimated” is weakened by the fact PPL underestimated Mr. McAndrew’s December 29, 2022 bill by 141 kWh, and included the 141 kWh on a subsequent bill. *Id.* PPL also points to 52 Pa. Code § 5.431 and Commission precedent for its request that the Commission disregard any portions of the Complainant’s Exceptions relying on extra-record evidence. *Id.* citing 52 Pa. Code § 5.431; *see Application of Apollo Gas Company*, Docket No. A-120450F003, 1994 PUC LEXIS 45 (1994). PPL, relying on the above argument, asks the Commission to deny Exception No. 2 and adopt the Initial Decision without modification. *Id.*

III. Disposition

We note that any argument or Exception not specifically addressed shall be deemed to be considered and denied without further discussion or consideration. The Commission is not required to consider expressly, or at length, each contention or argument made by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

For the reasons set forth below, we shall deny Mr. McAndrew’s Exceptions and adopt the Initial Decision of ALJ Brady, issued on March 8, 2024. We find that the Initial Decision properly considered, weighed, and applied the evidence that the Parties presented and correctly found that Mr. McAndrew failed to carry his evidentiary burden.

In applying the *Waldron* standard to the evidence in this matter, we find the Complainant failed to establish a *prima facie* case of overbilling. While Mr. McAndrew briefly testified that “the kids are all gone,” he did not provide any information regarding the time of this change and whether it had impacted the electric usage patterns at his

service address. Tr. at 11. Indeed, the evidence submitted by PPL shows that usage patterns for the months in question were similar, with the December 2022 billing period in line with historical consumption data. *See*, PPL Exh. 5. Looking at historical data for the same billing period, the Complainant used 2,205 kWh of electricity in 2019, 1,938 kWh of electricity in 2020, 2,137 kWh of electricity in 2021, and 2,263 kWh² of electricity in 2022. *Id.* Given the lack of substantial change in usage patterns, the reason for the Complainant’s higher bill in December 2022 was an increase to PPL’s “price to compare” (PTC) rate. In accordance with PPL’s Commission-approved tariff, the Company’s PTC increased from 9.5 cents to 14.6 cents on December 1, 2022, an increase of approximately 54%. I.D. at 5; Tr. at 29.

Turning to the Complainant’s Exceptions, we find they should be denied. The Complainant’s Exceptions claim he was issued multiple estimated bills, or multiple bills, formulated using the “failed MDMS system.” The evidence in this matter shows that the Company had access to actual daily meter data for the Complainant’s meter but an error in the MDMS system prevented the transfer of this data. Tr. at 17-19. These errors required the Company to issue estimated bills to customers for the December 2022 billing period, with the Company calculating the estimate using the historical average daily usage and multiplying it by the number of days in the billing period. *Id.* at 18. The Complainant was issued one estimated bill in December 2022, which was “trued up” to include the unbilled amount reflecting the 141 kWh of usage on the January 2023 bill. *Id.* at 19-20. Based on this information and analysis, we find no support for the Complainant’s Exceptions and shall deny his Exceptions No. 1 and No. 2.

For these reasons, we agree with the ALJ that the Complainant failed to satisfy his burden of proving that PPL violated its tariff, the Code, or a Commission

² We note the estimated usage of 2,263 kWhs was less than the actual metered usage of 2,404 kWhs. Tr. at 19; PPL Exh 6.

Regulation or Order. Therefore, we shall adopt the Initial Decision of the ALJ and dismiss the Complaint.

IV. Conclusion

Based on the foregoing discussion and our review of the applicable law, the record and the filings in this proceeding, we shall deny the Exceptions filed by Joseph McAndrew, and adopt the Initial Decision issued by ALJ F. Joseph Brady on March 8, 2024, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Joseph McAndrew filed on March 25, 2024, to the Initial Decision issued by Administrative Law Judge F. Joseph Brady at Docket No. F-2023-3041730 on March 8, 2024, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on March 8, 2024, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Joseph McAndrew on June 29, 2023, against PPL Electric Utilities Corporation at Docket No. F-2023-3041730, is denied and dismissed, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024