

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Latifah Sellers	:	
	:	
v.	:	F-2024-3048282
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On March 25, 2024, Latifah Sellers (Complainant or Ms. Sellers) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3958751, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Complainant indicated that she was having reliability, safety or quality problems with her service and there were incorrect charges on her bills. The Complainant requested that her outstanding balance be expunged.

On May 6, 2024, Respondent filed an Answer denying the material allegations of the Complaint.²

On June 21, 2024, a Hearing Notice was issued which indicated an initial call-in hearing was scheduled in the matter for August 6, 2024, at 1:30 p.m., and assigned the matter to me. I issued a Prehearing Order on June 24, 2024.

The initial hearing in this matter was held as scheduled on August 6, 2024. The Complainant appeared *pro se* and testified on her own behalf. The Complainant offered no exhibits. Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of two witnesses, Aaron Saunders, a High Bill Investigator and Ramona Milburn, a Regulatory Assessor. Respondent offered seven exhibits which were entered into the record at the time of the hearing.

The hearing resulted in a 58-page transcript. The record closed on August 26, 2024, when I received the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Latifah Sellers, who resides at 405 York Street, Second Floor, Pottstown, Pennsylvania 19464 (Service Address). Tr. 15-16.
2. The Respondent in this case is PECO Energy Company.

² The Complaint was served on the respondent on April 16, 2024.

3. The Complainant resides at the Service Address but does not own the Service Address. Tr. 36; PECO Exhibit 2.

4. The Complainant receives gas and electric service from PECO. Tr.19, 35-36; PECO Exhibit 1.

5. On June 14, 2023, the Complainant contacted PECO and informed a customer service agent that she was having issues with her electrical service. Tr. 17-19; PECO Exhibit 3.

6. On June 21, 2023, PECO conducted an investigation into foreign wiring at the Service address. Tr. 27; PECO Exhibit 3.

7. During the June 21, 2023, inspection, the PECO investigator found that portions of the electric service to the Complainant's second floor apartment were "wired to the first-floor customer." Tr. 28; PECO Exhibit 3.

8. The portions of the Complainant's apartment wired to the first-floor customer found during the June 21, 2023, inspection "benefitted" the Complainant because the occupant of the first-floor apartment or the owner of the property was being billed for a portion of the Complainant's usage of electricity. Tr. 30.

9. During the June 21, 2023, inspection, the PECO investigator also found "foreign piping" because gas piping for a hallway radiator and a furnace were connected to the Complainant's apartment. Tr. 28; PECO Exhibit 3.

10. Upon the discovery of foreign piping, PECO transferred billing for the gas portion of the Complainant's bill to the Complainant's landlord. Tr. 28-29, 36; PECO Exhibit 1, 2.

11. The Complainant was not charged for gas service after June 23, 2023. Tr. 28, 36; PECO Exhibit 1, 2.

12. On or about August 8, 2023, the Complainant again contacted PECO and informed a customer service agent that she was having issues with her electrical service. Tr. 17-19; PECO Exhibit 5.

13. On August 15, 2023, PECO conducted a second investigation into foreign wiring at the Service address. Tr. 29; PECO Exhibit 4.

14. During the August 15, 2023, inspection, the PECO investigator found no changes to the piping or the wiring at the Service Address. Tr. 30; PECO Exhibit 4.

15. PECO issued High Bill Investigation Reports dated December 13, 2023, to the Complainant informing her that PECO closed its investigation based on her June 24, 2023, and August 8, 2023 complaints and advising her of the outcome of the inspections conducted by PECO. Tr. 39; PECO Exhibit 5.

16. PECO did not advise Ms. Sellers that she no longer had an electric bill in her name. Tr. 39.

17. If a customer is disputing a bill, PECO suspends collection activity until the billing dispute is resolved. Tr. 37.

18. Although collection and termination activity is suspended pending resolution of a billing dispute, PECO continues to bill the customer, and the customer remains responsible for utility usage until the dispute is resolved. Tr. 37-38.

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. Sub. 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). A preponderance of the evidence is evidence that is 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 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 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).

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).

The Complainant contends that she was improperly billed for utility usage and that she should not have been billed after reporting “foreign wiring” to PECO. As the remedy for the improper billing, she asks that her utility bill be “expunged.”

The burden of proof for “high bill” complaints has been explained in *Waldron v. Phila. Elec. 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* at 100.

The Commission 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).

The Complainant contends that on multiple occasions PECO customer service representatives informed her that she was not responsible for utility usage due to “foreign wiring.” Tr. 17, 19 -21, 25.

At the hearing, Ms. Sellers used the term “foreign wiring.” Additionally, in her testimony, she acknowledged that she was only contesting charges shown on her electric bill. Tr. 16. Further, she also testified that she was aware that “foreign piping” for gas service had been found in her apartment by Aaron, a PECO inspector and that she would not be charged for usage following the discovery of the foreign piping. Tr. 19-20, 23. Ms. Sellers strenuously argued that PECO representatives told her that her bill would be placed on hold and “expunged” and that she expected that such a commitment made by a PECO representative would be implemented. Tr. 16, 23.

In Commission proceedings and decisions “foreign load” is a term of art that refers to a situation where a ratepayer tenant incurs service usage charges without receiving the full or exclusive benefit of the service. The consequences of a situation involving foreign load are governed by Section 1529.1 of the Public Utility Code, 66 Pa.C.S. §1529.1.

The Commission has consistently held that a “foreign load” is deemed to exist when a ratepayer-tenant’s meter in a multi-tenant dwelling registers utility service usage from which the tenant derives no benefit or only a shared benefit. Even though the ratepayer-tenants in a multi-tenant dwelling have meters that register their individual utility service usage, a ratepayer-tenant whose meter also registers usage from which the tenant derives no benefit or only a shared benefit is not “individually metered” for the purpose of applying Section 1529.1, and, consequently, the tenant’s account, for which the owner of the property becomes immediately responsible, must be put in the owner’s name. *Stewart v. Equitable Gas Co.*, Docket No. C-00014708 (Order entered Oct. 31, 2001). *See also, Bryce v. Duquesne Light Co.*, Docket No. Z-00223698 (Order entered Sept. 1, 1994), *Santos v. Metro. Edison Co.*, Docket No. C-00967757 (Order entered Aug. 7, 1997).

While Ms. Sellers may have believed that she would not be responsible for her electric bill after speaking to a PECO representative, it appears that she may not have fully understood the underlying concept of “foreign” utility service. Indeed, during her testimony she acknowledged that she is “not aware or fully educated on what foreign wiring is.” Tr. 16. It also appears that she equated foreign load with lack of service or functionality. For example, she stated “The gas [foreign load] was not discovered until the representative Aaron came out to the property . . . [and] I know that the [gas] works, but I was told at that point that it didn’t work.” Tr. 19-20.³

³ Ms. Sellers also appeared to be confused as to the relationship between PECO and the Commission. See Tr. 24-25.

Ms. Sellers provided no documentary evidence in support of her testimony.

PECO's witnesses testified that such a statement was inconsistent with PECO policy. Tr. 28-30, 37-39. In addition, they suggested that the Complainant may have misunderstood the distinction between PECO's policy of placing an account on hold while a billing complaint is pending and its policy concerning the transfer of liability for usage where foreign wiring causes a customer to be billed for service not received by the customer. Tr. 28. Further, they testified and provided documentary evidence demonstrating that, to the extent that foreign wiring exists at the Service Address, electricity usage in certain portions of the Complainant's apartment was billed to the customer of record for the first-floor unit rather than the Complainant. Tr. 28-29, 36; PECO Exhibit 1, 2.

In this case, the Complainant failed to provide any evidence other than her own testimony to support her claim that she was being improperly billed by PECO for electric service due to a foreign load at the Service Address. It is well established that “[m]ere bald assertions ... do not constitute evidence.” *Mid-Atl. Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)); see also *Steffy's Pattern Shop v. Frontier Commc'n of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

Contrary to the Complainant, PECO provided credible testimony and evidence that the Complainant was properly billed for her utility usage and that she was not misinformed by PECO representatives as to the outcome of the investigation into her complaints or her liability for utility service. As a result, I conclude that the Complainant has failed to meet her burden to demonstrate that her electricity bills were incorrect, and her Complaint must 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. A complainant must show, by a preponderance of the evidence, 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 (Opinion and Order entered Feb. 8, 1990); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

4. 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.

5. Complainant has failed to carry her burden of proof that there were incorrect charges on her bill. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Latifah Sellers at Latifah Sellers v. PECO Energy Company, Docket No. F-2024-3048282 is denied and dismissed;
2. That the record at Docket No. F-2024-3048282 be marked closed.

Date: October 23, 2024

/s/
Arlene Ashton
Administrative Law Judge