

Decision No. R14-1285

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14F-0354EG

KEVIN BARELA,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ON FORMAL COMPLAINT**

Mailed Date: October 24, 2014

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I. STATEMENT**A. Background**

1. On April 17, 2014, Mr. Kevin Barela (Complainant) filed a Formal Complaint against Public Service Company of Colorado (Respondent or Public Service) alleging that a faulty electric meter resulted in overpayments by Complainant to Respondent for electric service from November 8, 1995 until the meter was replaced on October 17, 2013. Complainant seeks a refund for the overpayments.

2. On May 12, 2014, Respondent filed its Answer to the Complaint. While Respondent admits that Complainant's kWh usage has decreased, Respondent denies that the decrease is 175 kWh a month less since the electric meter was replaced. Respondent also denies that Complainant's old meter was inaccurate or installed incorrectly in 1995 or that Respondent is entitled to a refund.

3. The Formal Complaint was set for hearing on July 7, 2014 by a Notice of Hearing issued by the Director of the Commission on April 22, 2014.

4. By Interim Decision No. R14-0606-I, issued June 5, 2014, the hearing was re-scheduled for July 10, 2014.

5. At the scheduled date and time, the hearing was held. Appearances were entered by Complainant, Mr. Kevin Barela and by Respondent, Public Service. Witnesses testifying on behalf of Complainant included Mr. Barela and Ms. Sabine Barela. Complainant entered into evidence Hearing Exhibit No. 1. Witnesses testifying on behalf of Complainant included Ms. Marie Lynch; Ms. Coral Breidenbach; and, Mr. Richard Kohama. Respondent entered into evidence Hearing Exhibit Nos. 2, 3, 4, and 5.

B. Findings of Fact

6. According to the testimony of Complainant, he has lived in his home since 1988, and has had a problem with the electric meter attached to his house since at least 1995. Complainant stated that sometime in 1995, the electric meter on his house was replaced, and immediately, the new meter began to register higher than normal kilowatt consumption, resulting in higher than normal electric bills. Complainant is not sure why the meter was replaced in 1995.

7. Complainant represented that the usual consumption for his house was approximately 400 kilowatt hours per month; however, it increased to 700 kilowatt hours per month when the new meter was installed in 1995. Complainant contacted Respondent repeatedly to complain about the meter problem, but according to Complainant, Respondent merely advised Complainant to conduct a breaker test on his own and offered advice on energy efficiency.

8. At some point in 1995 Complainant conducted a breaker test in which all the breakers on the electric service panel attached to his house were shut off. Complainant testified that despite the fact that all the breakers were shut off, the meter continued to run. The breaker test was conducted several times with the same result, the meter continued to run.

9. Complainant indicated that he continually contacted Respondent over the years regarding his concerns with the meter with no success. According to the Complainant, Respondent either stated that the higher consumption was due to the wiring in the house, or that Complainant needed to make his house more energy efficient by replacing the windows.

10. It was not until sometime in 2003 or 2004 that Respondent sent a technician to Complainant's house to test the meter. Complainant testified, and his wife corroborated his testimony, that the technician conducted a breaker test at which time the meter continued to run.

Respondent's technician stated that the continuous running of the meter, even with the breakers switched off was normal and left the meter in place.

11. In July of 2013, Complainant again had a high reading of approximately 1100 kilowatt hours in a one month period. Again Complainant called Respondent and was again advised to conduct his own breaker test. Subsequently, Complainant had an electrician test the meter. The electrician conducted a breaker test by removing all the breakers from the service panel and the meter continued to run.

12. Complainant continued to call Respondent until it agreed to send a technician out on October 17, 2013. According to the Complainant, the technician replaced the meter at that time. Since the meter was replaced, Complainant's recorded kilowatt hour usage has dropped to an average of 233 kilowatt hours per month. The new meter, replaced on October 17, 2013, has consistently recorded much lower electric usage than the previous meter.

13. Complainant asserts that he has been overcharged by Respondent for nearly 20 years and as a result, seeks a refund in the amount of \$3,336.00.

14. Complainant's witness, his wife, corroborates Complainant's testimony. She testified that she was confused as to why they had to conduct their own breaker tests since they are not qualified electricians. She was also confused as to why Public Service would not send a technician to their home, despite their repeated attempts to have someone look at the electric meter.

15. Ms. Barela also stated that she was home when the technicians did go to their home to look at the meter. She testified that when the technician was at their home on October 17, 2013, he had tools and probes which he used to test the meter. According to Ms. Barela, the technician "shut everything off" and the meter continued to run. It was her

testimony that the technician indicated that he had never seen anything like that before. It was at that point that the technician replaced the meter with a digital meter.

16. Complainant entered into the record Hearing Exhibit No. 1 which is a billing history of Complainant's monthly electric usage, provided by Respondent, which indicates monthly electric usage from January 24, 2003 until April 28, 2014. The cover letter attached to the billing usage history is dated May 13, 2014. According to Complainant, Hearing Exhibit No. 1 shows that Complainant's electricity usage generally hovered around 730 to over 900 kilowatt hours per month. At times, Complainant's energy usage was recorded as high as 1317 kilowatt hours per month.¹ After the meter was replaced in October of 2013, it appears to Complainant that the recorded electric usage dropped considerably from November 22, 2013 through April 28, 2014.

17. Complainant requests a refund for the last 18 months of overcharges on his electric bill which he calculates at \$3,336.00, which Complainant feels is warranted due to the angst caused by Public Service's lack of response to his concerns.

18. Respondent's witness Ms. Lynch, a customer advocate for the company was assigned to investigate Complainant's allegations. Ms. Lynch confirms that the thrust of Complainant's allegations are that an inaccurate electric meter was installed at his house for many years until it was replaced in October of 2013, and that Complainant feels he is entitled to a refund due to overcharges based on the faulty electric meter.

19. Ms. Lynch sponsored Hearing Exhibit No. 2 entitled *Final Report*, which is her response to the Commission regarding Complainant's informal complaint. According to her

¹ See, Hearing Exhibit No. 1, p. 2 of 4 for the period of 07/28/09.

Final Report, Ms. Lynch states that records for actual meter readings were obtained and billed for electricity usage by Complainant since 2003. The Final Report further indicates discussions Complainant had with Respondent regarding factors that could be affecting the electric usage.

20. The Final Report goes on to state that the meter test, which was ordered on September 11, 2013, found the electric meter in question to be working within Commission-approved parameters. Because of delays in the meter test, a \$100 credit was applied to Complainant's account. Specifically, Respondent maintains that the meter test found the meter to be within the Commission standards of ± 2 percent. The meter tested at 100.08 percent on a full load, and 100.14 percent on a light load, according to Respondent.² In addition, Ms. Lynch stated that a "no load" test was also run on the meter which was identified under the Findings/Conclusions section of Hearing Exhibit No. 5 as a "one hour consumption test." That test also indicated that the meter was running within required parameters according to Ms. Lynch. The Final Report concludes by stating as follows: "Xcel Energy is only responsible to the point of attachment and we cannot determine how a customer uses their energy, we can only validate that the meter is functioning within the Commission standards."

21. Ms. Lynch stated that a copy of Hearing Exhibit Nos. 3 and 5, as well as Hearing Exhibit No. 4, which is a copy of Respondent's applicable tariff provisions related to Electric Service Standards. Ms. Lynch affirmed that the meter number found in Exhibit Nos. 3 and 5 corresponds to the serial number of Complainant's electric meter, and the date of the meter test indicated in both hearing exhibits also corresponds to the date Complainant's electric meter was tested.

² See, Hearing Exhibit No. 3, a summary of the meter test results conducted on October 29, 2013, and Hearing Exhibit No. 5, Xcel Energy Electric Meter Department – Electric Meter Special Test Report.

22. Respondent witness Ms. Breidenbach, a journeyman meter man for Respondent testified that she prepared the summary report identified as Hearing Exhibit No. 3, and the comprehensive meter report identified as Hearing Exhibit No. 5. Ms. Breidenbach conducted the testing on Complainant's electric meter.

23. Ms. Breidenbach testified that the no load test conducted on Complainant's electric meter revealed no creep in the meter. In addition, Ms. Breidenbach conducted a one-hour consumption test and the electric meter registered the correct consumption. Ms. Breidenbach also stated that the seal attached to the meter was intact and the meter cover was intact indicating that it appeared that no one had tampered with the meter.

24. In addition, Ms. Breidenbach testified that she ran three accuracy tests to ensure the accuracy of the meter. The first test was a full load test which runs the meter at 30 amps and the electric meter was found to be operating accurately. Ms. Breidenbach also ran a 3 amp test, which is considered a light load and that test also found the electric meter to be operating accurately. Ms. Breidenbach represented that the tests were run three times to ensure accuracy.

25. Ms. Breidenbach stated that there could be an instance when a meter would move after power was shut off to the meter. She explained that one of the coils in the meter remains energized after the power is shut off and could slowly move the electric meter disk until the disk moves to what is known as the "creep hole" which will then engage with what is known as the "potential flux" which will stop the disk after approximately one-half turn.

26. Mr. Kohama, a senior meter man also testified on behalf of Respondent. According to Mr. Kohama, he spoke directly with the Complainant on the telephone and indicated he was "pretty sure" he recalled Complainant requesting a shop test of the electric

meter. Mr. Kohama stated that he did not conduct a field test of the meter, but merely removed it and replaced the meter with a digital meter.

27. Mr. Kohama also denied ever making statements to Ms. Barela that he saw the meter in question continuing to run after the breakers were shut off. Mr. Kohama also denied telling Complainant that there were options Mr. Kohama could try in order to repair the electric meter. Mr. Kohama also denied making any statements to Ms. Barela regarding the steps he would take to conduct a breaker test. Mr. Kohama did not provide any evidence regarding what occurred during his visit to Complainant's home other than his testimony denying any conversations having to do with testing the meter.

28. Although Mr. Kohama admitted he had tools with him to field test the meter, he denies conducting any field tests of Complainant's meter. Finally, Mr. Kohama indicated that a work order was prepared in order to look at Complainant's meter, but he could not produce such a work order, instead indicating that it is done on the computer and no record now exists of that work order.

II. FINDINGS AND CONCLUSIONS

A. Burden of Proof

29. As the party bringing the Formal Complaint, Complainant bears the burden of proof with respect to the relief sought; and the burden of proof is by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1500 of the Commission's Rules of Practice and Procedure. The evidence must be "substantial evidence," which the Colorado Supreme Court has defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict

when the conclusion sought to be drawn from it is one of fact for the jury.” *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)).

30. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

31. Commission Rule 4 CCR 723-3-3302 of the Commission’s Rules Regulating Electric Utilities sets out the standards for service meter accuracy. Subsection (a) of Rule 3302 provides that no service watt-hour meter, that among other things, “creeps, shall be placed in service or allowed to remain in service without proper adjustment and correction.” Subsection (b) of Rule 3302 sets out the standard for service watt-hour meter accuracy, which provides for a margin of error in registration of plus or minus 2 percent, either at light load or at heavy load.

32. Rule 4 CCR 723-3-3305 addresses meter testing. Subsection (a) requires a utility furnishing metered electric service to “test the accuracy of any electric meter upon request of a customer.” Subsection (b) provides that should a customer dispute the accuracy of a meter even after it has been tested, the utility is to make the disputed meter available for independent testing by a qualified meter testing facility of the customer’s choosing. The customer would bear the costs of the independent meter testing if the meter is found to be accurate within the limits of Rule 3302. If the meter is found to be inaccurate beyond the Rule 3302 limits, the utility is to bear the costs associated with conducting the test.

33. Rule 4 CCR 723-3-3402 sets out the required adjustments for meter and billing errors and the adjustments to customer charges for electricity a utility must make for electricity

incorrectly metered or billed. In the event of overbilling, a utility is to refund for the period during which the overbilling occurred, not to exceed two years.

34. It is clear from the evidence in this matter that Complainant experienced years of frustration in attempting to convince Respondent to address his concerns. Since 1995, Complainant attempted numerous times to persuade Respondent to send a technician to his home to test the electric meter to determine whether it was recording his electric usage correctly to no avail. Respondent did not dispute these claims.

35. Although Complainant continuously contacted Respondent beginning in 1995, remarkably, Respondent did not respond by sending a technician to Complainant's house to inspect the meter until 2003 or 2004. At that time, Complainant indicated that the technician, after conducting a breaker test concluded that the meter disk continued to run. Respondent did not dispute this fact. However, Respondent did nothing further to address the meter issue. It wasn't until 2013 after repeated requests by Complainant, that Respondent finally replaced the meter in order to shop test it, despite Complainant's request that the meter be field tested at his house.

36. Although Respondent's witness Mr. Kohama disputed that Complainant ever requested a shop test, his testimony is simply not credible. Mr. Kohama, in curt, short replies to questions posed at hearing, stated that it he was "pretty sure" that Complainant did not request a field test of the meter. However, despite the fact that Mr. Kohama stated that a work order was prepared for the October 2013 visit to Complainant's home, he could not produce any work orders or notes to support his statements that Complainant only requested a shop test of the meter. Mr. Kohama also denied telling Respondent's wife that he would perform a breaker test on the meter and that despite the fact that he testified that a field test is normally conducted on

the meter, it was nonetheless his testimony that no field test was conducted because a shop test was requested.

37. Complainant's energy usage since January 2003 is captured in Hearing Exhibit No. 1. Complainant's energy usage by month does appear to, on the average, be higher prior to the installation of the new meter in October 2013. However, no other evidence is available to explain the elevated energy consumption prior to October 2013. While Complainant asserts that consumption was recorded as high as 1300 kilowatt-hours per month, it is noted that those peak usage periods were recorded during the summer months when energy usage is typically higher due to the use of air conditioners. Public Service witness Ms. Lynch posited her own theories as to why the electrical consumption changed after the installation of the new meter; however, none of those theories were substantiated.

38. While the preponderance of evidence shows that Respondent acted egregiously in responding to Complainant's concerns; nonetheless, the tests conducted on Complainant's meter show that it was operating within acceptable parameters pursuant to Rule 3302(b). Ms. Breidenbach's credible testimony was detailed in the types of tests she conducted on the meter and the manner in which she verified her initial findings that the meter was operating within acceptable parameters and that it did not exhibit any creep. The tests conducted and the results as recorded by Ms. Breidenbach are in conformance with Rule 4 CCR 723-3-3306 regarding maintenance and retention of meter tests.

39. Nevertheless, there is no record of evidence that Respondent complied with the provisions of Rule 3305(b) since Complainant continued to dispute the accuracy of the meter, even after the results of the test were made available to him. According to Rule 3305(b), when a customer requests and receives a meter test pursuant to Rule 3305(a), and continues to dispute

the meter's accuracy, the utility is to make the disputed meter available for independent testing by a qualified meter testing facility of the customer's choosing upon written request by the customer.

40. Because it is reasonable to assume that the typical residential customer of Respondent would not be aware of the existence of Rule 3305(b), Respondent should have notified Complainant of the options available to him upon the completion and recording of the shop test results. This did not occur. Consequently, Complainant will now be given the option of requesting that the meter be tested by an independent testing facility of his choosing. Respondent will be required to make the meter available to an independent facility for testing of Complainant's choosing if that is Complainant's desire. In addition, despite the standards of Rule 3305(c) regarding who should pay for the testing, Respondent will be required to pay for the independent testing no matter the outcome of that testing.

41. If as a result of the independent testing, it is found that the meter does indeed creep as suspected by Complainant, then Respondent will be required to refund Complainant any overbilling for the two years previous to the replacement of the meter pursuant to Rule 3402.

42. If as a result of the independent testing, it is found that the meter does not creep, and it measures consumption within the parameters of Rule 3302(b), the matter will be closed and the Formal Complaint dismissed with prejudice.

43. Should Complainant choose to go forward with the independent testing of the meter, that request must be made as a filing in this proceeding within 5 days after the effective date of this Decision. The filing must contain Complainant's request for independent testing, along with the name, address, and telephone number of the facility Complainant has chosen for the independent testing.

44. The result of the meter test by the qualified independent meter testing facility is to be filed with the Commission and made available to Respondent within 5 days after the results of the meter testing are received by Complainant.

45. In the event Complainant chooses to have the meter tested independently, Respondent will make the meter available to the testing facility no later than 2 business days after the request by Complainant is received.

46. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3305(b), Complainant, Mr. Kevin Barela shall inform the Commission and Respondent, Public Service Company of Colorado by writing, within 5 days after the effective date of this Decision whether he requests that the electric meter which is the subject of this Formal Complaint be tested by a qualified independent testing facility.

2. The request for independent testing, if Complainant chooses to make such a request, shall include not only the request, but also the name, address and telephone number of the qualified independent testing facility Complainant has chosen.

3. In the event Complainant chooses to have the meter tested independently, Respondent shall make the meter available to the testing facility no later than 2 business days after the request by Complainant is received.

4. The result of the meter test by the qualified independent meter testing facility shall be filed with the Commission and made available to Respondent within 5 days after the result of the meter testing is received by Complainant.

5. If as a result of the independent testing, it is found that the meter does not creep, and it measures consumption within the parameters of 4 CCR 723-3-3302(b), this Proceeding shall be closed and the Formal Complaint dismissed with prejudice.

6. If as a result of the independent testing, it is found that the meter does creep, Respondent shall be required to refund Complainant any overbilling for the two years previous to the replacement of the meter as calculated by Respondent, pursuant to Rule 4 CCR 723-3-3402.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the Decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the Decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedures stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director