

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Ann Castaneira,

Complainant

v.

Docket No. F-2014-2404158

PPL Electric Utilities Corporation,

Respondent

**MAIN BRIEF OF COMPLAINANT**

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## **I. INTRODUCTION**

Pursuant to 52 Pa. Code § 5.501 and in accordance with the Briefing Order dated March 23, 2015, the Complainants in the above-captioned matter respectfully submit this Main Brief and in support of their Formal Complaint set forth the following.

## **II. FACTUAL BACKGROUND**

Complainants Ann and Ian Castaneira (“Complainants” or “Castaneiras”) reside at 320 Rosedale Avenue, Highspire, Pennsylvania. The home is a two-story structure built in 1911 with a listed living area of approximately 3,088 square feet. PPL Exhibit 9. Their household has a residential account for electric distribution service with PPL Electric Utilities Group (“Respondent” or “PPL”). The account number is 46350-66012. *See*, Complaint. Four individuals live in the house, the Castaneiras and their two daughters. *See*, TR 9, 38.

Respondent PPL is an Electric Distribution Company (“EDC”) licensed and regulated by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to render safe, adequate, reliable and reasonable service to its customers in the Commonwealth. PPL is the electric distribution service provider in Highspire, PA, where Complainants reside.

## **III. PROCEDURAL HISTORY**

On or about January 27, 2014, Complainants filed their Formal Complaint at the Commission. The filing was in the nature of an appeal from an adverse informal decision from the Bureau of Consumer Services (BCS 2687491). In their Complaint, the Castaneiras alleged inaccurate billing and requested an investigation and a refund of overbilled amounts. *See*, Complaint.

The Commission's Secretary's Bureau served PPL with the Complaint on or about February 5, 2014. On February 25, 2014, PPL filed an Answer claiming that their meter was 100% accurate, the bills were in accordance with the electric items in the house, and that the Complainants hot tub was the likely cause of high bills.

Initially, the matter was set for hearing on April 14, 2014 before Administrative Law Judge Kandace F. Melillo. The case was continued to allow time for settlement and was then reassigned to Administrative Law Judge Susan D. Colwell. On June 26, 2014, Judge Colwell issued an Order directing the parties to provide available dates for a hearing. By notice issued July 15, 2014, an initial hearing was scheduled for September 14, 2014.

At the September 14, 2014 hearing, the parties presented testimony and offered hearing Exhibits in support of their positions. At the conclusion of the September hearing, the Presiding Officer allowed the record to remain open for the introduction of additional evidence. On February 24, 2015, a second hearing was held and Complainants presented additional testimony. Following the second hearing, the Presiding Officer issued a Briefing Order providing that the parties should file briefs in the case. This Main Brief is submitted in accordance with the Briefing Order.

#### **IV. LEGAL ARGUMENT**

##### **A. The Complainants Have Met Their Burden of Proof**

The Public Utility Code provides that, as the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy this burden, Complainant must establish that Respondent was responsible for the problem alleged in her Complaint through a violation of the Public Utility Code, such as 66 Pa. C.S. § 1501, or a

regulation or Order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. § 701; *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196, 1990 Pa. PUC LEXIS 19 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, *alloc. den.*, 602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980).

In *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98, 1980 Pa. PUC LEXIS 90 (1980), the Commission explained the process of meeting the burden of proof to establish inadequate service under 66 Pa. C.S. § 1501, due to overbilling. In accordance with *Waldron*, the complainant has the burden to put forth evidence establishing a *prima facie* case that he/she was overcharged for service. Case law holds that when a complainant has presented testimony that: (1) the number of occupants in a household has not changed; (2) the potential for energy utilization was low; and, (3) the complainant's prior billing history showed no previous abnormalities, then he/she has established a *prima facie* case. *Dyckman v. PPL Electric Utilities Corporation*, Docket No. C-20030661, Order entered December 16, 2004; *Replogle v. Pennsylvania Electric Company*, 54 PA PUC 528, 1980 Pa. PUC LEXIS 20 (1980). These evidentiary criteria allow a complainant to establish a *prima facie* case of overbilling by showing that usage was unchanged from prior periods and yet the utility bills for the same period were higher than previous bills. *Burleson v. Pa. P.U.C.*, 461 A.2d 1234, 1235 (Pa. 1983).

Once the complainant has established a *prima facie* case, the burden of going forward, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence that is at least co-equal. *Waldron, supra*. If the utility rebuts a complainant's evidence, the burden of going forward shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95.

As stated by the Commonwealth Court in *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Commw. 2001),

...the controlling principle is that even when 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 or her case by evidence which would support a finding that the metered usage exceeded the actual usage.

*Milkie* at 1219-1220.

In the instant matter, as set forth in more detail below, the preponderance of the evidence demonstrates that the Complainant has been overbilled for a significant period of time. The household has consisted of four members throughout the time in questions, and the family has endeavored mightily to keep electric use as low as possible. Although PPL has argued that their meter is accurate and the Complainant's home could conceivably use the power they are billed, Complainants show conclusively that they have taken countless measures to reduce usage to no avail. Further, Complainants have offered convincing evidence that they have eliminated other possible sources of power surges and excessive electricity use, and that an undersized transformer installed and maintained by PPL is responsible for increasing power usage in the home. Complainants' evidence is sufficient to satisfy the burden of proof and compels a ruling in their favor.

**B. The Respondent Has Violated the Public Utility Code and the Commission's Regulations**

In this matter, the Complainant has shown that PPL has failed to provide adequate, efficient, safe and reasonable electric service in violation of the applicable state statutes and Commission regulations. Complainants presented convincing evidence that they experienced significant issues with inaccurate metering, overbilling, power surges and spikes, transformer malfunctions and other problems. Respondent has not adequately addressed the many service failures that Complainant has identified and has been complaining of for a number of years. These failures have resulted in Complainants having to overpay for electricity, having to spend significant amounts of money in costly repairs and replacements and having to put up with inadequate service at their home.

Section 1501 of the Public Utility Code provides, in pertinent part:

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;

Similarly, Section 57.194 of the Commission's regulations establish certain minimum benchmarks for Electric Distribution Companies (EDCs), such as,

(h) An EDC shall take measures necessary to meet the reliability performance benchmarks and minimum performance standards established by the Commission...

(2) An EDC shall inspect, maintain and operate its distribution system, analyze reliability results, and take corrective measures as necessary to achieve performance benchmarks and performance standards.

52 Pa. Code § 57.194.

The Public Utility Code and the Commission's regulations set service standards which the utility must meet, and give the Commission the powers to enforce those standards. Under Section 501 of the Public Utility Code, 66 Pa. C.S. § 501, the Commission has exclusive jurisdiction over the reasonableness, adequacy, and sufficiency of public utility services. *Bell Tel. Co. v. Uni-Lite, Inc.*, 439 A.2d 763 (Pa. Super. 1982). Section 501 gives the Commission general administrative authority over all public utilities in the Commonwealth and it has full power and authority to enforce, execute, and carry out its regulations and orders. *Honey Brook Water Co. v. Pennsylvania Pub. Util. Comm'n*, 647 A.2d 653 (Pa. Cmmw. 1994), *appeal denied* by 655 A.2d 518 (Pa. 1995). Under 66 Pa. C.S. § 1312, if the utility's billing practices are found to be improper, the Commission can order a refund of the alleged excessive charges plus interest to the customer to make her whole. *Pettko v. Pennsylvania-American Water Co.*, 2010 Pa. Dist. & Cnty. Dec. LEXIS 422 (Aug. 27, 2010).

In this matter, Complainant has experienced service problems since they moved to their current residence in 2009. TR 8. The Castaneiras started dealing with PPL on the issue informally when they were contacted by the company and representatives came to their home. TR 9. They were contacted by PPL after they complained about high bills. To this day, the Castaneiras are getting bills in excess of \$600 per month. TR 9. Complainants also experienced power spikes occurring at odd times of the day. For example, on April 24, 2014, the Castaneiras noticed power shot up at 4 a.m., when the entire family was sleeping and not using any power.

TR 41; Complainant Exhibit K. The family's efforts to deal with these problems have had little effect.

The Company was well aware of the concerns the Complainants had about high bills and service issues. PPL initially called in reference to a very high bill they had back in September 2010. TR 10. The Company said they were concerned because they noticed exceptionally high usage on certain months and were wondering what was going on. They sent their people to talk to the family and to check out the house, and they asked the typical questions about appliances and usage. At the time, the Castaneiras had different TVs, a pool, a hot tub, but much of the equipment at the home was not used in a constant or even a regular basis. TR 10. However, records from PPL appear to show electric usage even when the power was out for the entire borough. *See*, Complainant Exhibit B; TR 25-27.

Throughout the periods of time in question, the Castaneiras were very prudent with their use of electricity. They have a large flat screen TV in the third floor of the house that is used some three times a year. TR 10. Most of the time, during the day, the light are completely turned off because nobody is home. They have a larger home, but they do not use their appliances haphazardly or "willy-nilly." TR 9. Mrs. Castaneira is generally not home during the day and the kids are out at school. *Id.* Mr. Castaneira testified that even when he is at home working, he uses his desk light and his computer, but the rest of the house is turned off. Despite these efforts to conserve power, usage "shot through the roof." TR 10.

In addition to being frugal with their use of electricity, the Castaneira family implemented a number of steps to reduce electric usage and followed the recommendations of PPL and others to eliminate any possible issues on their end. In 2009 the family had a performance assessment done because PPL suggested that they have their house checked out to

see if everything is operating correctly. The assessment would reveal what type of leakage they were experiencing in the house and what type of insulation they had. TR 10-11. The assessors found that all electrical appliances were working normally, but they suggested improving the insulation, which they did. TR 11.

The Castaneiras participated in a Dauphin County program that assisted with improving the insulation on their home. PPL put them in discussion with Dauphin County and they became part of the county's WRAP program. They came out to their home and put in the largest WRAP program that had ever been done in the county at the time. The family agreed to do the WRAP program because they were told they were losing heat from the house. However, after the insulation was improved according to the recommendations, there was no change in the high bills. TR 13, 35. An interesting aspect of the WRAP program evaluation is that PPL contractors calculated estimated energy costs based on the configuration of the home and the appliances and equipment in the house. TR 33. The estimated energy costs amount to approximately \$258.86, which is a fraction of the \$600.00 bills the Castaneiras receive each month from PPL. *See*, Complainant Exhibit F.

When PPL or home assessors suggested steps the Castaneiras might take to eliminate possible causes of high bills, they followed the recommendations, even when it meant incurring additional expense. When PPL blamed the high bills on the pool, they turned it off. TR 15. At one point, the pool was shut down because there was a problem with a filter that could not be replaced. *Id.* Whether the pool was running or shut down, the family's bills remained high. TR 41-43; Complainant Exhibit L. When it was suggested that perhaps the hot tub was the culprit, the homeowners would turn it off one or two months at a time. TR 11, 15. Despite these efforts, the Castaneiras saw no appreciable difference in the high bills. When it was suggested that their

two electric water heaters were the problem, they had the water heaters checked by electricians, who concluded that they were working fine. In one instance, the family went away for a camping trip and all four members took showers when they returned. There was no significant change in usage between the time the hot water heaters were dormant and when they were being used extensively. *See*, TR 37-38; Complainant Exhibit H. The Castaneiras later changed the water heaters to gas and saw no appreciable reduction in electric usage. TR 14, 39-40; Complainant Exhibit I. Also, and they shut off the entire third floor of their house, but there was no change in the bill. TR 14.

After Complainants had done everything they could think to do to lower their high bills with no palpable result, they came to realize that the problem was not in the house. At one point, a gentleman from PPL came to the house to check on the problem. The PPL technician saw there was no power in the house and said he saw no specific power causing spikes or usage. TR 14. When he put the meter outside, the meter was moving very slowly, and then suddenly, the same meter began to move very quickly, even though nothing had been turned on or changed. The PPL man checked the circuits again and nothing showed the amount of usage that was being registered on the meter. TR 15. Every time something was suggested, the Complainants fixed the issue. They insulated the home, changed hot water heaters, turned appliances off, improved appliances. None of these internal measures had an effect on the high bills. TR 17.

Sometime last year, Complainants began to suspect that the problems they have been experiencing for years may be the result of PPL's failure to properly install and maintain the right transformer to serve their residence. Mr. Castaneira testified that they had a transformer outside of their house blow up several times. TR 12. However, the issue became more apparent in 2014 when the power went out in their hometown of Highspire because of a severe storm. TR

16. In this occasion, the power went out and came back, but later in the day, the transformer exploded. TR 16. According to Mr. Castaneira, his review of the daily energy usage reports showed that the household was using power, even though there was no power at the house or anywhere in Highspire. The records do not indicate the second loss of power that occurred as a result of the transformer blowing out. TR 16.

What happened after the incident with the transformer confirmed the Castaneiras' suspicion that PPL's equipment may be responsible for the high bills they have experience over the years. The foreman of the crew that came out to replace the blown-out transformer indicated to Mr. Castaneira that the problem stemmed from a transformer that was too small. This PPL foreman stated that the old transformer had a rating of 10 kVA, and the home should have a much larger 25 kVA transformer. TR 16. When Mr. Castaneira asked whether the undersized transformer could affect the home's electric bill, the response from PPL was that such an effect was possible because the transformer would be overworked. The PPL employee added that if the transformer is overworking, it can cause increased bills to the home and it can cause surges and power spikes. TR 16.

Even after identifying the transformer problem, PPL refused to resolve the issue. Mr. Castaneira testified that when he requested PPL to replace the transformer with the right sized equipment, he was told that the company had refused to provide the 25 kVA transformer needed. Instead, the Complainants would have to settle for a 15 kVA transformer, which is what PPL was willing to provide. TR 16-17. PPL personnel acknowledged that, although a 15 kVA transformer would be better, it might still blow up again. TR 17. The transformer replacement made a difference in power consumption, as the power usage dropped for a period of time soon after the transformer was changed. TR 40; *See*, Complainant Exhibit J. It became clear to the

Castaneiras that the transformer had an effect on the fluctuations in the power they experienced.

TR 17

The conclusion reached by the Complainants that PPL's transformer was responsible for the overbilling issues was confirmed by the expert testimony of electrical engineer Dabis Camero. At hearing, he opined that the undersized transformer was at least partially responsible for the high bills. TR 222. Based on his knowledge of the case, Mr. Camero made clear that the undersized and overloaded transformer also explained the fact that, over the years, the 10 kVA transformers had to be replaced repeatedly after blowing out. TR 237. In other words, the transformers installed and maintained by PPL are inadequate, inefficient and unsafe in violation of the Public Utility Code.

In addition to affecting the transformer itself, the overload condition also affected electric usage inside the house. According to Mr. Camero, when a transformer is undersized and overloaded, voltage drops and the current of the loads increases based on a mathematical formula.<sup>1</sup> The increase in current increases the readings at the meter. TR 237. Thus, even though PPL's tests may show that the meter was accurate, the meter was registering excessive usage caused by the undersized transformer. *See*, PPL Exhibit 6. Some of PPL's own readings show power peaks of more than 18 kVA and 21 kVA, which would create an overload condition for a 10 kVA transformer, considering there is another home served by the transformer. *See*, PPL Exhibit 10B. The Complainants' power usage reports also show sustained high usage during periods when there was no unusual electric use at the home.<sup>2</sup> This also means that the 15

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<sup>1</sup> At the overloaded transformer, voltage drops based on the formula  $p=v*i$ , where p equals power, v equals voltage and i equals impedance. TR 237.

<sup>2</sup> For example, on the hour-by-hour chart for January 11, 2011 usage registered at levels above 10 kw between approximately 4 pm and 8 pm, peaking at about 13 kw. Similarly, on March 24, 2014, between 8 am and 12 pm usage registers at approximately 18 kWh for the full four hours. *See*, Complainant Exhibit \_\_\_\_ (Spikes).

kVA transformer serving the property currently is inadequate and inefficient because it is not properly sized to handle peak usage periods for the two homes. TR 239.

The transformer overload problem is also responsible for a shortened life cycle for the electrical equipment in the home. Elevated transient peak currents resulting from an undersized transformer causes damage to devices inside the property. TR 237, 222. Again, as explained by Mr. Camero, the mathematical formulas that govern electricity consumption lead to the conclusion that the Castaneiras' power demand would increase exponentially as a result of the reduction in voltage from the undersized transformer.<sup>3</sup> TR 238. This causes the devices to work harder and shortens the lifespan of the equipment.

Another negative consequence of PPL's undersized, overloaded transformer is its possible effect on safety. As Mr. Camero explained, overtaxation of transformers may have been responsible for multiple transformer failures. TR 239. If a transformer exceeds its nameplate rating, it could explode, absent appropriate protections to shut it off. TR 248, 239. It is apparent that at least one of the failed transformers had no safety shut-off because the fire department had to be called when neighbors saw fire coming from the transformer. TR 239-40. This combination of factors can create a dangerous condition.

### **C. The Complainant Is Entitled to Refunds and Other Relief**

In their Complaint, the Castaneiras requested an investigation and a refund from PPL of overbilled amounts. Section 1312 of the Public Utility Code provides that the Commission may order a refund in "any matter involving rates" where the Commission finds that the rate charged

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<sup>3</sup> On the equipment side, current increases with a drop in voltage based on the formula  $p=c^2 * i *r$ , where p equals power, c equals current, i equal impedance and r equals resistance (which is constant). TR 248.

by the utility is “unjust or unreasonable.” 66 Pa. C.S. § 1312. This section of the Public Utility Code also provides that,

the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment

66 Pa. C.S. § 1312.

Complainants respectfully submits that the evidence set forth above justifies a ruling from the Commission compelling PPL to refund the Castaneiras for overbilling going back four years from the filing of this Complaint. During this time, the Complainants have spent significant resources in attempting to address high electric bills from PPL following recommendations from PPL to shut down or replace equipment in their home. All this time, the utility has failed to install a properly sized transformer to serve their home, which could have prevented the overbilling issues the Complainants experienced since 2009.

The amount of the overbilling, and therefore, the amount of the refund owed to the Complainants is difficult to calculate. In large part, a firm figure is illusive because the Castaneiras have never known what their baseline electric usage should be. They have been living with this problem since they moved into their current home. The calculations of potential energy use from PPL are unhelpful because, as shown at hearing, the Complainants were frugal and prudent with their use of electricity. The formulas for power usage presented by Mr. Camero indicate that the issue with the transformer caused greater electric consumption in the home, but any calculation using the formulas would be merely a snapshot in time. Further in depth analysis by an expert is necessary to ascertain the full impact of PPL’s failure to use the right-sized equipment at the Castaneira home.

Based on the record, and the realities of this matter, Complainants respectfully request that the Commission issue an order granted the following relief:

1. PPL must eliminate any outstanding balance or arrearage in the Complainants' account;
2. PPL must replace the current 15 kVA transformer currently serving the Complainants' home with a 25 kVA transformer, or a properly-sized transformer to serve the Castaneiras' home and any other structures served by the transformer;
3. An independent electrical engineer, or a person with similar qualifications, must conduct a study, at PPL's expense, to determine the appropriate amount of a refund owed to Complainants;
4. PPL must refund the amount determined by the independent expert, with interest, for the four-year period preceding the filing of the Complaint in this matter.

These remedies are justified by the evidence presented in this case and represent a reasonable resolution of this matter.

## V. CONCLUSION

Based on the foregoing, Complainant respectfully requests that the Commission sustain the Complaint in this matter and issue an Order granting the relief requested.

Respectfully requested,



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April 21, 2015

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via regular and/or electronic mail:

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