

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ann Castaneira	:	
	:	
v.	:	Docket No. F-2014-2404158
	:	
PPL Electric Utilities Corporation	:	

**EXCEPTIONS OF
COMPLAINANTS TO
INITIAL DECISION**

Edward G. Lanza, Esq.
THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
Phone: (717) 576-2696
Fax: (717) 798-9897
Email: ed@lanzafirm.com

Date: August 31, 2015

Counsel for Complainants

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. EXCEPTIONS.....1

A. Exception No. 1: The ALJ Erred in Rejecting Complainants’ Evidence of PPL’s Violations of the Public Utility Code.....1

B. Exception No. 2: The ALJ Erred in Failing to Accept PPL’s Own Statements Regarding the Transformer Problems3

C. Exception No. 3: The ALJ Erred in Discounting the Testimony of Complainant’s Expert4

III. CONCLUSION8

I. INTRODUCTION

Pursuant to Section 5.533 of the Commission's regulations, 52 Pa. Code § 5.533, Complainants Ann and Ian Castaneira hereby submit these Exceptions to the Initial Decision of Administrative Law Judge Susan D. Colwell issued on August 10, 2015 ("ID" or "Decision"). In her Decision, ALJ Colwell improperly dismissed the Complaint against PPL Electric Utilities ("PPL") for a perceived failure on the part of Complainants to carry their burden of proof. ID at 37.

For the reasons set forth in these exceptions, Complainants urge the Commission to reject ALJ Colwell's Initial Decision and sustain the Formal Complaint in this matter. Complainants have met their burden of proof and showed, by a preponderance of the evidence, that PPL has overcharged them for electricity and failed to provide them with reasonable service. The ALJ has come to the conclusion that the Complaint should be dismissed solely on the basis of her blind acceptance of every fact favorable to PPL and her unwarranted rejection of every piece of evidence that incriminates the utility. The Commission should correct these errors and rule in favor of Complainant on this matter.

II. EXCEPTIONS

A. **Exception No. 1: The ALJ Erred in Rejecting Complainants' Evidence of PPL's Violations of the Public Utility Code**

ALJ Colwell found that "Complainants have not sustained their burden of proving that the utility has acted improperly or that the service it offers this household is anything other than adequate, efficient, safe, and reasonable as required by the Public Utility Code." ID at 32-33. The judge bases her conclusion on her belief that the evidence presented by the utility is more

credible and reliable than the evidence presented by Complainants. This assessment of the credibility and reliability of the evidence is flawed and should be rejected by the Commission.

The decision by ALJ Colwell to accept PPL's theory that the water heaters that Complainants replaced were responsible for elevated electric bills (ID at 18) is misguided and should be reversed. The judge reaches this conclusion by reviewing historical usage data provided by PPL. PPL Exh. 1. The Presiding Officer mistakenly assumes that the reduction in usage reflected in the exhibit is related to the replacement of the water heaters, which occurred in March 2014. In fact, the reduced usage numbers reflect the fact that PPL replaced a 10 kVa transformer for a larger capacity transformer of 15 kVa in February 2014. This reduction in usage actually proves what Complainants argued all along, which is that an undersized transformer was creating higher monthly bills and causing damage to Complainants' appliances. Complainant's MB at 10-11. In her Initial Decision, Judge Colwell acknowledges that the usage reduction coincides with the transformer upgrade, but dismisses this evidence by labeling it "an inconvenient coincidence." ID at 29-30. It is not an inconvenient coincidence, but rather the result of PPL finally doing what Complainants had sought since they realized that the undersized transformer was the problem.

The Initial Decision fails to address the reason that the transformer was upgraded in the first place. The judge accepts PPL's contention that the transformer installed at the Castaneira's home should be sufficient for the two homes served. ID at 28. However, in addition with the usage reduction after the replacement, the Company failed to explain why the transformer was upgraded at all. It is reasonable to conclude that the transformer was upgraded because it was undersized, but the judge failed to reach that conclusion. The decision fails to address, and PPL failed to explain, why if 10 kVa was adequate before the upgrade, a 15 kVa transformer was

necessary in February 2014. The upgrade is consistent with Complainants' contention that, based on statements from PPL personnel, a 25 kVa transformer was needed to address the many problems the Castaneiras experienced for years.

The ALJ's decision with regard to this issue is flawed and, as such, should be rejected.

B. Exception No. 2: The ALJ Erred in Failing to Accept PPL's Own Statements Regarding the Transformer Problems

In her Initial Decision, ALJ Colwell found that the Complainants' testimony regarding PPL's admissions that a larger transformer was needed to address issues that Complainants were experiencing was hearsay. The Judge decided that "what Complainants testified that the utility employees said throughout the years preceding this case is pure hearsay, uncorroborated, and not a permissible basis for a finding of fact or conclusion of any kind." ID at 22. However, the very discussion and legal analysis that the judge relies on to reach this finding actually leads to the opposite conclusion. In other words, Pennsylvania hearsay law says that an agency may rely on evidence that would otherwise be classified as hearsay if (1) it falls within one of the exceptions to the hearsay rule, or (2) is not objected to and is corroborated by record evidence. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmmw. Ct. 1976).

The evidence that Judge Colwell refers to as "pure hearsay" is in fact excepted from the hearsay rule. Complainants testified that a foreman of the crew that came out to replace the undersized transformer in February 2014 indicated to the Castaneiras that the problem they had been experiencing stemmed from the transformer being too small. TR 16; MB at 10. The PPL employee went on to explain that the undersized transformer could affect the home's electric bill because the equipment would be overworked. *Id.* These statements by PPL personnel support Complainants' contention that an undersized transformer was responsible for high bills at their home, and therefore, they constitute declarations against PPL's interests in this matter. As Judge

Colwell correctly found, declarations against interest, while hearsay, are excepted from the hearsay rule. ID at 35 (citing, *inter alia*, *Heddings v. Steele*, 526 A. 2d 349 (Pa. 1987)).

Admissions against interest made by a party have long been held to be admissible in civil proceedings and administrative hearings as a recognized exception to the hearsay rule. ID at 21-22; *Murphy v. Com. Dept. of Public Welfare*, 480 A.2d 382, 386 (Pa. 1984).

Further, PPL's declarations against interest also are corroborated by other record evidence in the case. In addition to the testimony of Complainants, the record shows that there was a marked reduction, albeit temporary, in electric usage when the transformer was upgraded from 10 kVa to 15 kVa in February 2014. *See*, Exception No. 1, *supra*. As discussed above, this is not a coincidence. As expert witness Dabis Camero testified, an undersized and overloaded transformer will result in increases to metered usage. MB 11-12; TR 237-39. These separate pieces of evidence confirm Complainants' assertions that the small transformer was the cause of the high bills. Therefore, the so-called hearsay evidence is corroborated by the record and should have been admitted to support a finding in favor of Complainant.

For the reasons set forth above, the Commission should reject ALJ Colwell's decision that the statements in questions are hearsay and should not be the basis of a finding in favor of Complainant. Admissible evidence that an undersized transformer leads to higher electric bills supports the Complainants' case, and therefore, the Commission should sustain the Formal Complaint and grant the relief requested.

C. Exception No. 3: The ALJ Erred in Discounting the Testimony of Complainant's Expert

In her decision, ALJ Colwell acknowledged that Complainant's Witness, Dabis Camero, possessed specialized knowledge, but ruled that his opinion carried less weight than the testimony of PPL's experts. ID at 26. According to the judge, Mr. Camero's testimony was less

credible because (1) he relied on unreliable testimony regarding the number of times the Castaneiras' transformer had to be replaced, (2) he was unable to articulate the basis for his opinion that decreased voltage resulted in an increase in electric usage, (3) his testimony was not based on individualized reading for each appliance, and (4) he is a "close friend" of the Complainants. ID at 12, 25-27.

First, regarding the relationship between the Castaneiras and Mr. Camero, it is inaccurate to say that they are close friends. Mr. Camero and the Castaneiras are acquaintances, not close friends, as the judge mistakenly found. However, even if the finding of a close friendship is accepted, this does not mean that the testimony should be discounted. If the evidence is competent and supported by the facts, it should be given due consideration. Certainly, the judge did not view the relationship between PPL and its expert witnesses with any suspicion when she decided that the testimony of the Company's experts was more credible. Mr. Hadginske and Mr. Matter are both employees of PPL and dependent on the Company for their salaries. It would not be unreasonable to conclude that these witnesses might be inclined to offer testimony favorable to PPL because they derive their employment and pay from the Company. Their testimony might be viewed as biased because there may be consequences to these employees if their testimony negatively affected the Company in a litigated proceeding before the Commission. However, ALJ Colwell seems satisfied that these witnesses are impartial compared to Mr. Camero, and they are believed to be offering completely reliable evidence. In the same way that PPL's witnesses are deemed reliable, Mr. Camero should be viewed as credible to the extent he testified in connection to facts he learned as he prepared to testify. No bias should be imputed to Mr. Camero that does not taint PPL's witnesses as well.

Further, Mr. Camero's opinion was based on his specialized knowledge in electrical engineering. When he testified that a decrease in voltage leads to an increase in electric usage he relied on a well-known formula that was not contested by PPL. MB at 11-12; TR 238, 248. It is inaccurate to say, as the judge did in her Initial Decision, that Mr. Camero failed to articulate the basis for his opinion that a decrease in voltage leads to an increase in electric usage. ID at 27. The basis for his calculation is the formula he presented at the hearing, which was not questioned by PPL, but which the Presiding Officer completely ignored in her decision. Had Judge Colwell not overlooked the expert testimony of Mr. Camero in this regard, she would have reached the conclusion that, mathematically speaking, a decrease in voltage results in an increase in usage. This evidence supports the conclusion that PPL's undersized transformer was responsible for the Complainants' high bills.

In addition, ALJ Colwell's erroneously concluded that Mr. Camero did not measure readings for each appliance, and therefore, he should not be believed when he testified that the undersized transformer caused high bills. ID at 27. Readings from individual appliances is not as relevant as it might appear to the judge because, as Mr. Camero testified, low voltage from an undersized transformer will result in more current, higher consumption and a quicker deterioration of the electrical appliances in the home. MB at 12; TR 222, 237. Readings from damaged devices should have been seen as less reliable by the Presiding Officer. Instead, she focused on the fact that Mr. Camero did not take individualized readings to conclude that his testimony was less credible than PPL's witnesses. The Commission should reconsider this finding as it is based on an assumption that damaged equipment produced accurate usage and consumption readings.

Lastly, Judge Colwell concluded that Mr. Camero's testimony was less reliable because it was based, in part, on the number of times Complainants alleged the transformer malfunctioned and had to be replaced. In spite of sworn testimony from Complainants that they experienced a transformer blowout several times, the Judge chose to believe PPL's assertion that the transformer was replaced only "one time in recent years." ID at 27. The judge reasoned that the Company's business records carry more weight than the recollection of the individuals who suffered through these malfunctions over the course of many years. Complainants have been dealing with this issue since they moved into their current home in 2004. ID at 6. PPL's records are only kept for a limited period of time (in the case of billing records, the Company keeps the information for a maximum of four years). What the judge refers to as "unsubstantiated and conflicting memories" are the best and most far-reaching evidence of what has been happening at the Castaneiras' residence for more than ten years. Lay people should not be expected to keep detailed records of PPL's equipment malfunction as if they had the foreknowledge that they would need to sue the utility to try to address an ongoing service problem. And, the Company's records should not be taken as gospel because they are not kept for unlimited periods of time. There was no evidence on the record that PPL had looked up records going back to 2004 to find how many times the transformer was replaced.

For the reasons set forth above, the Commission should reject the Presiding Officer's findings regarding the credibility and reliability of the Complainants' expert witness. The Commission should give Mr. Camero's testimony full and fair consideration and should reverse the decision of Judge Colwell in this matter.

III. CONCLUSION

For the reasons set forth above, Complainants respectfully requests that the Commission grant these exceptions and issue a Final Order that substantially rejects the ALJ's August 10, 2015 Initial Decision and sustains the Formal Complaint in this proceeding.

Respectfully submitted,



Edward G. Lanza, Esq.
THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
Phone: (717) 576-2696
Fax: (717) 798-9897
Email: ed@lanzafirm.com

Date: August 31, 2015

Counsel for Complainant

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:

Hon. Susan D. Colwell
Administrative Law Judge
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
scolwell@pa.gov

Kimberly Krupka, Esq.
Gross McGinley, LLP
33 South 7th Street
P.O. Box 4060
Allentown, PA 18105-4060
kkrupka@grossmcginley.com

Ann & Ian Castaneira
320 Rosedale Avenue
Highspire, PA 17034
castaneira@comcast.net

Date: August 31, 2015



Edward G. Lanza, Esq.