

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------------------|---|----------------|
| Tyise Ballard | : | |
| | : | |
| v. | : | F-2015-2521323 |
| | : | |
| PPL Electric Utilities Corporation | : | |

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric distribution company (EDC) averring she had been incorrectly billed for usage on a meter attached to 797 Alter Street, 3rd Floor, Hazleton because she never lived at that address. Complainant averred she lived at 799 Alter Street, 3rd floor, a separately metered apartment located in the same dwelling. Complainant requests bills for the meter attached to 797 Alter Street, 3rd floor be removed from her account. This decision finds there are no incorrect charges currently on the account; however, Complainant shall be given eight months to pay the re-billed corrected amount. The EDC shall be directed to pay a civil penalty in the amount of \$250.

HISTORY OF THE PROCEEDINGS

On December 29, 2015, Tyise Ballard (Complainant) filed a formal complaint (Complaint) against PPL Electric Utilities Corporation alleging errors in her service bill and quality of service issues. She averred she had been incorrectly billed for usage on a meter attached to 797 Alter Street, 3rd Floor, Hazleton, Pennsylvania because she did not live in that

part of the house. She lived in 799 Alter Street, 3rd floor, which is the same house. She requests bills for the meter attached to 797 Alter Street, 3rd floor be removed from her account.

On January 10, 2016, PPL Electric Utilities Corporation (Respondent or PPL) filed an Answer to the Complaint. The Answer admits that incorrect billings were sent in the past, but that was subsequently corrected and the Complainant was properly re-billed. The Respondent requested that the Complaint be denied.

By Notice dated January 22, 2016, this case was assigned to me. I issued a Prehearing Order on February 1, 2016.

On February 19, 2016, a telephonic hearing was held. Both parties appeared. The Complainant appeared on her own behalf, the Respondent was represented by Kimberly Krupka, Esq. The Complainant submitted one exhibit and Respondent submitted 10 exhibits. All were admitted into the record. The record in this matter closed on March 21, 2016, the day the transcript was filed.

FINDINGS OF FACT

1. The Complainant is a current customer of the Respondent and receives electric service at 301 West Blaine Street, Apt. 2, McAdoo, Pennsylvania. N.T. 6.

2. Respondent is an electric distribution company.

3. Complainant disputes billings regarding a prior residence at 799 Alter Street, 3rd floor, Hazleton, Pennsylvania. N.T. 6.

4. One three-story house is divided into 3 apartments numbered 797, 799, and 799 1/2 Alter Street, respectively. N.T. 16. Exhibit PPL-5.

5. Despite Complainant's belief that she resided at 799 on the 3rd floor; she actually lived on the third floor and her meter is associated with 797, 3rd floor. N.T. 16-17. Exhibit PPL-5.

6. The house is divided into 3 apartments, such that 799 is the whole first floor, 799 ½ is the second floor, and 797 is the third floor. N.T. 17, Exhibit PPL-5.

7. Complainant is willing to pay for what she used in electric service, but she believes she was billed for usage at the wrong meter. N.T. 20.

8. Kimberly Gerhard is a customer service representative at PPL. N.T. 22.

9. Complainant began service with a mailing address of 799 Alter Street, on or about September 2, 2014. N.T. 25. Exhibit PPL-2A.

10. On September 2, 2014, Complainant was initially connected in error to the meter associated with 799 Alter Street, First Floor, when she should have been connected to 797 Alter Street, Third Floor. Exhibit PPL 2B.

11. When Complainant called PPL to complain about a power outage on September 4, 2014, PPL's records showed active service at 799 Alter Street, which contradicted the reported outage at the same address. N.T. 25. Exhibit PPL 2A.

12. On September 4, 2014, a PPL technician visited the service property, and verified that the proper meter for Complainant's premises was a different meter number than the one associated with Complainant's account. N.T. 25. Exhibit PPL 2A.

13. PPL knew or should have known there was a mixed meter situation involving Complainant's meter on September 4, 2014, but the Company continued to bill her for usage associated with a different apartment located on the first floor of the house for approximately eight months, until April 2, 2015. N.T. 25-26. Exhibits PPL-2A and PPL-2B.

14. On September 4, 2014, Deidra Anderson lived on the first floor, at 799 Alter Street. N.T. 26.

15. In April, 2015, Complainant's residence was disconnected from the wrong meter number 60775692, and connected to meter number 12227854, which is associated with 797 Alter Street, 3rd Floor in the same house as 799 Alter Street. N.T. 26-28.

16. PPL rebilled Deidra Anderson, cancelled all billing under Complainant for 799 Alter Street, and transferred \$541.75 credit from her voided account 71420-35235 to a new active account associated with 797 Alter Street at Account No. 58378-45025. N.T. 26. Exhibit PPL-2B.

17. In April, 2015, PPL completed a rebill, based upon incorrect billings from September 3, 2014 through February 26, 2015. Exhibit PPL-2A, N.T. 27.

18. On or about April 2, 2015, Complainant's charges at 799 Alter Street were cancelled; she received a credit of \$541.75, and was rebilled at a new account number on the correct meter for charges accumulated at 797 Alter St., 3rd Floor. N.T. 28. Exhibit PPL 1B. N.T. 26-28. Exhibits PPL-1A, PPL-1B and PPL-2B.

19. There is also a separate meter number associated with 799 ½ Alter Street. N.T. 32-35. Exhibit PPL-6.

20. PPL cancelled all late payment charges and Tyise Ballard was rebilled in 2015, after the company performed a meter investigation on March 10, 2015, and found a meter mix up. Exhibit PPL-6. N.T. 40.

21. On April 20, 2015, the Complainant filed an informal complaint with the PUC's Bureau of Consumer Services (BCS) at BCS Case No. 3336124. Exhibit C-1; Exhibit PPL-4.

22. The informal complaint challenged the make-up bill of \$2,928.19 with a due date of May 22, 2015. Exh. PPL-4

23. On May 15, 2015, BCS determined that the make-up bill was correct as rendered, and issued an informal decision stating such. Exhibit PPL-4

24. The Respondent incorrectly billed two of its customers, Deidra Anderson and Complainant over the time period of September, 2014 through February, 2015. N.T. 22-28.

25. The Respondent re-billed the Complainant for her actual consumption on April 2, 2015, but did not give her a payment arrangement or extra time to pay her bill. Exhibits PPL-1A, PPL-2A, PPL2B.

DISCUSSION

Complainant is willing to pay for her usage, but believes Respondent incorrectly billed her for another apartment located at 797 Alter Street, 3rd Floor, Hazleton, Pennsylvania for the time period of September 4, 2014 through the current time. She requests these charges be removed from her current account.

Burden of Proof

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. §332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 PA PUC 300 (1976). Such a showing must be by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa.Cmmw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.*, 602 A.2d 863 (1992). That is, a party must present evidence more convincing,

by even the smallest amount, than that presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. PA Public Utility Comm'n, 67 Pa.Cmmw. 597, 447 A.2d 1100 (1982), Edan Transportation Corp. v. PA Public Utility Comm'n, 154 Pa.Cmmw. 21, 623 A.2d 6 (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 Western Ry. v. Pa. Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1960); Murphy v. Dep't of Public Welfare, White Haven Center, 85 Pa.Comm. 23, 480 A.2d 382 (1984).

Ms. Ballard's situation is commonly referred to as a "mixed meter" situation. In such situations, two neighbors are being charged for each other's usage instead of their own. Commission regulations govern the appropriate steps to be taken to correct such a situation. Specifically, Section 56.14 of the Commission's regulations provides:

§ 56.14. Previously unbilled utility service.

When a utility renders a make-up bill for previously unbilled utility service resulting from utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill by at least 50% and at least \$50:

- (1) The utility shall review the bill with the ratepayer and make a reasonable attempt to enter into a payment agreement.
- (2) The period of the payment agreement may, at the option of the ratepayer, extend at least as long as:
 - (i) The period during which the excess amount accrued.
 - (ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

52 Pa. Code § 56.14. Section 56.14 was discussed recently in Pamela Reeve v. PPL Electric Utilities Corporation, Docket No. C-2010-2169033, (Final Order entered May 6, 2011)(Reever).

In Reever, PPL added \$1,445.32 to Ms. Reeve's electric bill once it discovered that she was being billed for usage in another residential unit due to a meter mix up. The Presiding Officer found that, even though it was unquestioned that the meter mix up was not Ms. Reeve's fault, the meter mix up was also not PPL's fault. Instead, the Presiding Officer stated that the meter mix up was "only an unfortunate set of facts which result[ed] in a back billing situation to make up for Complainant's unbilled usage." The Presiding Officer directed PPL to "use the maximum number of monthly repayments allowed to make the repayment as painless as possible upon the Complainant." In that case, the repayment period was twenty-nine (29) months, the length of time Ms. Reeve lived at the service address while the meter mix up existed.

In the instant case, Complainant is a current customer of the Respondent and receives electric service at 301 West Blaine Street, Apt. 2, McAdoo, Pennsylvania. N.T. 6. Complainant disputes billings regarding a prior residence at 799 Alter Street, 3rd floor, Hazleton, Pennsylvania. N.T. 6. One three-story house is divided into 3 apartments numbered 797, 799, and 799 1/2 Alter Street, respectively. N.T. 16. Exhibit PPL-5. Complainant insists she resided at 799 on the 3rd floor, but PPL contends her meter is associated with 797, 3rd floor. The house is divided into 3 apartments, such that 799 is the whole first floor, 799 1/2 is the second floor, and 797 is the third floor. N.T. 17, Exhibit PPL-5.

Complainant is willing to pay for what she used in electric service, but she believes she was billed for usage at the wrong meter. N.T. 20. She requests these charges be removed from her account. Complainant has failed to prove there is another apartment on the third floor, not her own, which has another meter associated with it.

Kimberly Gerhard is a customer service representative at PPL. N.T. 22. Complainant began service with a mailing address of 799 Alter Street, on or about September 2, 2014. N.T. 25. Exhibit PPL-2A. On September 2, 2014, Complainant was initially connected in

error to the meter associated with 799 Alter Street, First Floor, when she should have been connected to 797 Alter Street, Third Floor. Exhibit PPL 2B. When Complainant called PPL to complain about a power outage on September 4, 2014, PPL's records showed active service at 799 Alter Street, which contradicted the reported outage. N.T. 25. Exhibit PPL 2A.

Although Ms. Gerhard testified that first contact with Complainant occurred on September 2, 2015, and on September 4, PPL received a call that there was no power; Ms. Gerhard is referring to Exhibit PPL-2A, which states these events took place in 2014 rather than 2015. Thus, I find that on September 4, 2014, a PPL technician visited the service property, and verified that the proper meter for Complainant's premises was a different meter number than the one associated with Complainant's account. N.T. 25. Exhibit PPL 2A.

PPL knew or should have known there was a mixed meter situation involving Complainant's meter on September 4, 2014, but the Company continued to bill her for usage associated with a different apartment located on the first floor of the house for approximately eight months, until April 2, 2015. N.T. 25-26. Exhibits PPL-2A and PPL-2B.

On September 4, 2014, Deidra Anderson lived at on the first floor, at 799 Alter Street. N.T. 26. In 2015, Complainant's residence was disconnected from the wrong meter number 60775692, and connected to meter number 12227854, which is associated with 797 Alter Street, 3rd Floor in the same house as 799 Alter Street. N.T. 26-28.

PPL rebilled Deidra Anderson, cancelled all billing under Ms. Ballard's name for 799 Alter Street, First Floor, and PPL transferred \$541.75 credit from Complainant's voided account to a new active account associated with 797 Alter Street, Third Floor. N.T. 26. Exhibit PPL-2B. PPL then connected Complainant's account to the correct meter servicing her residence, meter number 12227854. N.T. 26. In April, 2015, PPL completed a rebill, based upon incorrect billings from September 3, 2014 through February 26, 2015. Exhibit PPL-2A, N.T. 27. On or about April 2, 2015, Complainant's charges at 799 Alter Street were cancelled; she received a credit of \$541.75, and was rebilled at a new account number on the correct meter for charges then accumulated associated with an address of 797 Alter St., 3rd Floor. N.T. 28.

Exhibit PPL 1B. N.T. 26-28. Exhibits PPL-1A, PPL-1B and PPL-2B. There is also a separate meter number associated with the second floor apartment, 799 ½ Alter Street. N.T. 32-35.

Exhibit PPL-6. PPL cancelled all late payment charges and Tyise Ballard was rebilled in 2015, after the company performed a meter investigation on or about March 10, 2015, and found a meter mix up. Exhibit PPL-6. N.T. 40.

On April 20, 2015, the Complainant filed an informal complaint with the PUC's Bureau of Consumer Services (BCS) at BCS Case No. 3336124. Exhibit C-1; Exhibit PPL-4. The informal complaint challenged the make-up bill of \$2,928.19 with a due date of May 22, 2015. Exhibit PPL-4. On May 15, 2015, BCS determined that the make-up bill was correct as rendered, and issued an informal decision stating such. Exhibit PPL-4. The Respondent incorrectly billed two of its customers, Deidra Anderson and Complainant over the time period of September, 2014 through February, 2015. N.T. 22-28. The Respondent re-billed the Complainant for her actual consumption on April 2, 2015, but did not give her extra time to pay her bill. Exhibits PPL-1A, PPL-2A, PPL-2B.

In this Complaint, the Complainant presented one exhibit comprising of a BCS Decision rendered December 15, 2015. Exhibit C-1. She offered no bills or lease to support her claim that she resided at 799 Alter Street, Third Floor during the time period in question. There were no photographs or floor plan drawings to show how the separate apartments are divided in one three-story house at 797 – 799 Alter Street. Complainant offered no evidence other than her testimony to show there are two apartments on the third floor. I am unpersuaded by Complainant's testimony that the third floor is split between two apartments. I am persuaded by PPL's witness Ms. Gerhard that there is only one meter associated with the third floor apartment, and the meter is associated with the address 797 Alter Street, Third Floor.

It is not contested that PPL made errors in the Complainant's billing, since September 4, 2014, when PPL knew or should have known the meter attached to Complainant's apartment was not the same meter for the apartment. PPL knew or should have known the meter associated with Complainant's account was not the meter actually measuring the Complainant's usage during that eight month period of time. It is unknown if Complainant's outage on

September 4, 2014 was because of nonpayment or nonuse in another portion of the house, in another apartment, possibly on the first floor. Regardless, when the technician visited the premises and noted the meter mix up on September 4, 2014, a correction should have been made at that time. The company only switched meters and rebilled Complainant when she again complained in March, 2015, and after PPL conducted a further meter investigation.

PPL Exhibit 1A shows Ms. Ballard's mailing address was 799 Alter Street, First Floor. However, from the opening of her account on September 2, 2014, until April 2, 2015, PPL did not have the meters and accounts properly configured. The situation changed when, in March, 2015, PPL conducted a meter mix investigation at 799 Alter Street. Exhibit PPL-6.

Respondent is required to provide safe, adequate, reasonable and effective service to its customers. 66 Pa. C.S. §1501. The Respondent is also required to render a monthly bill to customers. 52 Pa. Code §56.11. Also, a customer is responsible for paying for the service they use. 52 Pa. Code §56.14.

By failing to bill the Complainant in accordance with the meter attached to her apartment, from the time period of September 4, 2014 until approximately April 2, 2015, the Respondent did not meet the requirements of reasonable service within the meaning of 66 Pa. C.S. §1501.

However, a customer is responsible for paying for the service they use. 52 Pa. Code §56.14. The bill rendered must be determined in accordance with the utility's approved tariff and the applicable regulations. I am persuaded by PPL's witness and exhibits to find that when the re-bill occurred in April, 2015, it was for then accurate charges regarding the account. Late charges had been removed. I am not persuaded by Ms. Ballard's testimony that there are two apartments located on the third floor, and that she should only be responsible for electric usage tied to 799 Alter St., Third Floor, as there is no meter associated with this address. I am persuaded to believe the third floor apartment is tied to one meter associated with the address 797 Alter St., Third Floor.

Although I find a “billing error” under 52 Pa. Code §56.14, the amount re-billed is accurate. Complainant has failed to show the re-billed amount is inaccurate. The initial inaccurate connection may be understandable due to confusion; however, when the customer reported an outage at her property, and PPL’s records showed her service was active, this indicated a meter mix up. Also, when PPL’s technician visited the property on September 4, 2014, and saw the mix up, the Company should have performed a meter investigation at that time. Instead, it continued to bill the Complainant for usage associated with the 799 Alder Street, First Floor apartment. The Respondent acknowledged the errors made and corrected the account information of the two accounts involved. The Respondent did not offer Complainant a payment arrangement when it re-billed Complainant. These actions constitute unreasonable service under the meaning of 66 Pa. C.S.A. § 1501. Although I find Complainant owes the amount re-billed, PPL shall be directed to give Complainant eight months to pay the outstanding balance. Additionally, PPL shall be directed to pay a civil penalty for unreasonable service. 52 Pa. Code § 56.14(2)(i).

Civil Penalty

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors (Rosi Factors) that the Commission will consider in evaluating, *inter alia*, litigated proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate. The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

Considering these factors, PPL knew or should have known there was a meter mix up on September 4, 2014, close to the time Complainant initiated the account on September 2, 2014, when Complainant claimed she had no power, but PPL's records showed she did. PPL delayed conducting a full meter investigation until March, 2015, even though its technician noted mixed meter numbers on September 4, 2014. From September 4, 2014 through March, 2015, PPL continued to bill for usage on the first floor, even though Complainant resided on the third floor of the house. PPL did eventually conduct a meter investigation on or about March 3, 2015, and then initiated a rebill in April, 2015, crediting Complainant's account \$541.75.

PPL's actions may have resulted in overcharges and late charges on Complainant's account. There is insufficient evidence to show intentional fraudulent behavior. However, it did take the utility eight months to correct the meter mix-up once it was discovered and there does not appear to be any involvement of top-level management in correcting the conduct. There is no evidence of property damage or personal injury as a result of the meter mix-up. There were two customers impacted by the meter mix-up, Deidra Anderson (tenant on the first floor) and Complainant. See Katchan v. PPL Electric Utilities Corporation, F-2011-2239323. (Final Order entered April 11, 2012). In the Katchan case, PPL neglected to properly bill for a period of 8 years. The ALJ directed a 4-year payment arrangement be issued and no civil penalty was issued. This case is evidence of other meter mix-ups involving PPL.

In other cases, the Commission has held moderate civil penalties are warranted in situations involving negligent unreasonable delays in the handling of high bill investigations which can constitute unreasonable service contributing to arrearages. See Diedrich v. PECO Energy Company, F-2010-2191381, Order entered July 19, 2012). In the Diedrich case, the Commission issued a \$250 civil penalty for delays in handling the high bill investigation, which it found to constitute unreasonable service and contribute to the Complainant's arrearages from August through October 2009. In that case, PECO replaced a defective meter when it conducted its field investigation, communicated with the Complainant throughout the high bill investigation, and reduced the Complainant's bills for the time period of August through October 2009.

Similar to the Dietrich case, there is insufficient evidence here to show the bills were unreasonably high. However, PPL should have corrected the meter mix up in September, 2014, when it knew or should have known there was confusion as to the mailing address, and the actual meter's address. This constitutes unreasonable service in violation of 66 Pa. C.S.A. § 1501; accordingly, a moderately low civil penalty of \$250 is appropriate. This civil penalty should act as a deterrent for future violations. Additionally, giving Complainant eight (8) months to pay back her arrearage, is reasonable and consistent with the Commission's regulations. 52 Pa. Code § 56.14.

CONCLUSION

The Respondent is responsible for the Complainant receiving a monthly bill that reflected some one else's usage not her own, and the Complainant not being billed correctly for eight months. The Complainant met her burden of proving each of these points. However, the Complainant failed to meet her burden of proving that she is not responsible for paying for the electricity that she used at 797 Alter Street, Third Floor and failed to show that the final bill rendered was incorrect. As it took eight months for PPL to rebill the correct amount, so shall Complainant be awarded eight months to pay off the outstanding re-billed balance on the account of approximately \$2,505.82.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this complaint. 66 Pa. C.S.A. § 701.
2. The Respondent violated 66 Pa. C.S. §1501.
3. The Respondent violated 52 Pa. Code §56.11.
4. The Complainant failed to prove that the make-up bill dated April 2, 2015 crediting her new account in the amount of \$541.75, and billing her a total amount of \$2,505.82 is incorrect. Burleson v. PA PUC, 501 Pa. 433, 461 A. 2d 1234 (1983).
5. Complainant is entitled to the period during which the meters were mixed, eight months, within which time to pay the make-up bill. 52 Pa. Code § 56.14(2)(i).

