

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph V. Calabro	:	
	:	
v.	:	F-2016-2561149
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision dismisses a complaint filed by a customer of an electric distribution company who averred that the company improperly terminated his utility service, causing monetary loss to the customer in terms of spoiled food and other loss. The complaint is dismissed because the customer failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff with regard to the service provided.

HISTORY OF THE PROCEEDING

On August 11, 2016, Joseph V. Calabro filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against PPL Electric Utilities Corporation (PPL), at Docket Number F-2016-2561149. The complaint is a timely appeal of a decision of the Commission's Bureau of Consumer Services, case number 3454185. In his complaint, Mr. Calabro asserted that PPL improperly terminated his utility service, causing monetary loss in terms of spoiled food and causing other loss through the inconvenience of having to stay at a

friend's house in order to operate his breathing equipment. Mr. Calabro also asserted that he never received any notification of the impending termination of service, as required by the Pennsylvania Public Utility Code. The formal complaint was served on PPL electronically by the Commission's Secretary.¹

On August 31, 2016, PPL filed an answer to Mr. Calabro's complaint. In its answer, PPL admitted or denied the various averments made by Mr. Calabro. In particular, PPL denied that it failed to provide the legally required pre-termination notices to Mr. Calabro, and asserted that it had complied with all applicable legal notification requirements. PPL concluded its answer by requesting that the complaint be dismissed.

By telephonic hearing notice dated September 23, 2016, an initial telephonic hearing was scheduled for this matter on Tuesday, October 25, 2016, at 10:00 a.m. and I was assigned as the Presiding Officer. A prehearing order was issued on September 28, 2016 setting forth various rules governing the upcoming hearing.

The hearing convened on October 25, 2016 as scheduled. Mr. Calabro appeared *pro se*. Graig M. Schultz, Esquire appeared on behalf of PPL. Mr. Calabro provided testimony on his behalf. Mr. Schultz presented one witness who sponsored two exhibits that were admitted into the record. A 48-page transcript of the hearing was made. The record in this proceeding closed on November 3, 2016 when the transcript was submitted to the Commission.

Mr. Calabro's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

¹ PPL has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on August 11, 2016.

FINDINGS OF FACT

1. The Complainant in this case is Joseph V. Calabro.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 109 South Main Street, Apartment 2, Pittston, PA 18640.
4. Mr. Calabro has lived at the service address for approximately two and a half to three years. Tr. 8.
5. Mr. Calabro was in and out of the hospital for approximately 20 days in May 2016. Tr. 19.
6. Mr. Calabro was in and out of the hospital from the middle of June 2016 through the end of June 2016. Tr. 12.
7. Mr. Calabro was hospitalized for 15 to 18 total days in June 2016. Tr. 20.
8. While in the hospital, Mr. Calabro left his cell phone at home, and the phone was turned off during those times. Tr. 12, 13.
9. Marilyn Nunez has been a customer service representative for PPL for 17 years and receives calls for reasons such as account and billing inquiries. Tr. 31.
10. Ms. Nunez is familiar with Mr. Calabro's PPL account. Tr. 32.
11. PPL Exhibit 2A is an account contact history. Tr. 38.

12. PPL Exhibit 5 is the collection activity detail for Mr. Calabro's account. Tr. 34.

13. Ms. Nunez is familiar with PPL's pre-termination requirements. Tr. 32.

14. Ms. Nunez testified that, prior to terminating a customer's service for non-payment, PPL is required to send a ten-day shut-off notice, following which it is required to make two three-day calls, one in the morning and one in the afternoon. Tr. 32.

15. PPL mailed a termination letter to Mr. Calabro's service address on June 8, 2016, indicating that service could be terminated on or after June 22, 2016 if Mr. Calabro failed to pay his past due balance of \$77.04. Tr. 33-35; PPL Exhibit 2A.

16. PPL subsequently made two separate three-day notice telephone calls to Mr. Calabro at his service address. Tr. 35; PPL Exhibit 5.

17. The first three-day notice telephone call was made on June 17, 2016, when PPL called Mr. Calabro at his service address, received his voice mail, and left a message regarding possible termination of service - the message was left at 11:28 AM. Tr. 35; PPL Exhibit 5.

18. The second three-day notice telephone call was made on June 20, 2016, when PPL called Mr. Calabro at his service address, received his voice mail, and left a message regarding possible termination of service - the message was left at 6:16 PM (18:16 as listed on PPL Exhibit 5). Tr. 35; PPL Exhibit 5.

19. Mr. Calabro did not respond to the termination letter or either of the three-day notice telephone calls. Tr. 33.

20. After Mr. Calabro failed to respond to the termination letter or either of the three-day notice telephone calls, PPL terminated service to Mr. Calabro's service address on June 28, 2016. Tr. 33.

21. After service was terminated to Mr. Calabro's service address, Mr. Calabro paid the necessary \$77.04 to have service restored, and he made the payment on June 28, 2016. Tr. 35.

22. PPL then restored the service within 24 hours in accordance with PPL's policies, and service was restored on June 29, 2016. Tr. 35.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Calabro averred that his service was improperly terminated by PPL and requested that he be reimbursed for his resulting monetary loss. Mr. Calabro, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Decisions of the Commission must be supported by substantial evidence.

2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

1) Mr. Calabro's claims for general legal damages

In his complaint and during the hearing, Mr. Calabro asserted that PPL improperly terminated his utility service, causing monetary loss in terms of spoiled food and causing other loss through the inconvenience of having to stay at a friend's house in order to operate his breathing equipment. However, as noted by the Pennsylvania Supreme Court in the case of Elkin v. Bell Telephone:

In spite of the PUC's rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, we recognized in Feingold v. Bell of Pennsylvania that the Courts of Common Pleas have original jurisdiction to entertain suits for damages against public utilities based upon asserted failure to provide adequate services, even though the subject matter of the complaint is encompassed by the Public Utility Law. Traditional judicial remedies such as damages had been preserved by the Public Utility Law, and since the legislature had withheld from the PUC the power to award damages, this Court concluded that the courts must have jurisdiction over all damage actions.

Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (*citing* Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977)); *see also*, Poorbaugh v. Pa. P.U.C., 666 A.2d 744 (Pa.Cmwlth. 1995).

It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945).

Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Id. at 794. *See also*, Rose Kollar, and Robert and Audrey Pavuchak v. Pennsylvania-American Water Company, Docket No. C-20042788; Jerry Prosser v. Columbia Gas of Pa, Inc., Docket No. C-20066376.

Given these limitations, even if Mr. Calabro could prove that PPL is responsible for his money damages in terms of lost food and the inconvenience of having to stay with a friend while his power was shut off, he would need to pursue those matters in a court of general legal jurisdiction such as a Magisterial District Court or a Court of Common Pleas. As a result, I cannot rule on any of Mr. Calabro's requests for such general legal damages, and those portions of the complaint are dismissed.

2) Mr. Calabro's claim that PPL failed to provide notice of termination

In his complaint and during the hearing, Mr. Calabro asserted that PPL did not provide the required legal notice prior to terminating his utility service. If proven, such claims may be redressed by the PUC and appropriate sanctions could be imposed against PPL.

The Commission's regulations, as set forth at 52 Pa.Code § 56.91 *et. seq.*, require a utility company to take the following actions prior to terminating utility service:

A public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination

* * *

[A public utility may not terminate service without attempting personal customer contact via 2 separate phone calls at least 3 days prior to termination. Calls made on 2 separate days, with one call prior to 5 p.m. and the other call after 5 p.m. and with the calls being at least 2 hours apart, shall satisfy this requirement.]

* * *

Immediately preceding the termination of service, [the utility] shall attempt to make personal contact with a responsible adult occupant at the residence of the customer.

52 Pa.Code §§ 56.91(a), 56.93(a), 56.93(b), 56.94.

During the hearing, Mr. Calabro testified that he did not receive any notice in the mail, nor did he receive any phone calls as his phone was inoperable at the time because he was hospitalized. Tr. 9. Mr. Calabro further testified that his phone was at his home during the times that he was in the hospital, and that it was physically turned off. Tr. 12, 13. Finally, Mr. Calabro testified that no one came to his door prior to the interruption of service. Tr. 9.

As to the timeframe of his hospitalization, Mr. Calabro testified that he was in and out of the hospital for approximately 20 days in May 2016 (Tr. 19), that he was in and out of the hospital from the middle of June 2016 through the end of June 2016 (Tr. 12), and that he was hospitalized for 15 to 18 total days in June 2016. Tr. 20. When pressed for details by counsel for PPL, however, Mr. Calabro was unable to provide any specific dates of hospitalization.

In response, Ms. Nunez testified that PPL mailed a termination letter to Mr. Calabro's service address on June 8, 2016, indicating that service could be terminated on or after June 22, 2016 if Mr. Calabro failed to pay his past due balance of \$77.04. Tr. 33; PPL Exhibit 2A. Ms. Nunez further testified that PPL subsequently made two separate three-day notice telephone calls to Mr. Calabro at his service address, and left two separate voice mail messages regarding the impending termination of service due to non-payment. Tr. 35; PPL Exhibit 5. Ms. Nunez further testified that the dates and times of the letter, phone calls and voice mail messages were memorialized on PPL Exhibit 5. Finally, Ms. Nunez testified that Mr. Calabro did not

respond to the termination letter or either of the three-day notice telephone calls (Tr. 32, 33), and that PPL then terminated service to Mr. Calabro's service address on June 28, 2016. Tr. 32, 33.

Counsel for PPL moved for the admission of PPL Exhibit 2A and PPL Exhibit 5 into the record. Tr. 44, 45. The exhibits were offered to show customer contacts between PPL and Mr. Calabro and to demonstrate that PPL had sent out a termination letter and made the required three-day notice telephone calls to advise Mr. Calabro of the impending termination of service. Tr. 34, 35, 38. Mr. Calabro did not object to those exhibits, and they were entered into the record. Tr. 44, 45.

Although Mr. Calabro did not object to the PPL exhibits, it was clear from the testimony presented that Ms. Nunez, the PPL witness, was not the person who made the letter or phone contacts with Mr. Calabro, nor was she the person who actually prepared the PPL exhibits which were entered into the record. Therefore, despite the lack of a legal objection by Mr. Calabro, I conclude that the exhibits are comprised of hearsay statements and do not constitute competent evidence under Pennsylvania Rule of Evidence 802 unless they fit within one or more exceptions to the hearsay rule.

One exception to the hearsay rule is the so-called "business records exception." Although the business records exception to the hearsay rule is generally governed by Pennsylvania Rule of Evidence 803(6), for purposes of administrative proceedings the business records exception is governed by the following statute:

(b) General Rule. - A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.

42 Pa. C.S. § 6108. The statute places the burden on the proponent of the evidence to show circumstantial trustworthiness. Binder on Pennsylvania Evidence, 7th Edition, at 395.

At the hearing, Ms. Nunez credibly testified that she is familiar with the manner in which the PPL exhibits are prepared, through her 17 years of employment with PPL as a customer service representative. Tr. 31, 34, 35, 38. Ms. Nunez further testified that such documents are routinely prepared whenever a customer service representative has any kind of customer contact, and that such preparation occurs in the normal course of business for all customer service representatives. Tr. 38. Given the testimony of Ms. Nunez, I conclude that the PPL exhibits have been properly authenticated and that the exhibits are circumstantially trustworthy and fit the business records exception to the hearsay rule under 42 Pa.C.S. § 6108.

Given the evidence presented, although I conclude that Mr. Calabro established a *prima facie* case through his testimony, I further conclude that PPL rebutted Mr. Calabro's testimony via the testimony of Ms. Nunez and the exhibits that were entered into the record. Following PPL's presentation of evidence, Mr. Calabro did not offer any contrary evidence to rebut the information contained in the PPL exhibits concerning the initial termination letter and the two separate three-day phone messages that PPL provided to Mr. Calabro prior to termination of service. I also note that, although Mr. Calabro testified that no one came to his door prior to termination of service, and although PPL did not specifically address those assertions in its testimony, I do not find Mr. Calabro's testimony to be credible and I conclude that he has not established that PPL failed to attempt personal door contact prior to termination of service.

As noted above, although the burden of going forward with evidence may shift from one party to another, the burden of proof never shifts; it always remains on the complainant. *See, Milkie, supra*. Considering all the evidence, I conclude that Mr. Calabro has not met his burden of proof to demonstrate that PPL failed to meet its various statutory and regulatory notice requirements prior to shutting off service to Mr. Calabro's service address. That being the case, Mr. Calabro's complaint regarding alleged lack of notice will be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

6. Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western

Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlt 23, 480 A.2d 382 (1984).

7. The Public Utility Commission does not have the legal authority to award money damages to a complainant, and does not have the legal authority to consider such claims. Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980).

8. Prior to terminating utility service, a utility company must send a 10 day letter to the customer, must make two separate phone calls at specified times of the day at least three days prior to termination, and must attempt to make personal contact immediately prior to terminating utility service. 52 Pa.Code §§ 56.91(a), 56.93(a), 56.93(b), 56.94.

9. The Public Utility Code contains certain protections for consumers with physician-verified medical conditions. 52 Pa.Code §§ 56.111 et. seq.

10. The Public Utility Code requires every public utility to furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S. § 1501.

11. Mr. Calabro has failed to satisfy his burden of proof in this proceeding to demonstrate that PPL in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

