



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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REFER TO OUR FILE

January 29, 2007

C-20066231

RICHARD H KUNTZ
477 WEST FOURTH STREET
LOCK HAVEN PA 17745

Richard H. Kuntz
v.
PPL Electric Utilities Corporation

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on January 26, 2007 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encs
cert. mail
MH

DOCUMENT
FOLDER

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 26, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Richard H. Kuntz

v.

PPL Electric Utilities Corporation

:
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: Docket No. C-20066231
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:

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Exceptions of the Complainant, Richard H. Kuntz, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Kandace F. Melillo issued October 25, 2006. PPL Electric Utilities Corporation (PPL) filed Reply Exceptions on November 17, 2006.

History of the Proceeding

From January 2001 to January 2004, a period of thirty-seven months, Mr. Kuntz was billed for and paid no more than the PPL customer charge of \$6.55 per month for his electric service due to a stopped meter. This customer charge did not include any usage charges (Finding of Fact No. 3). On January 19, 2004, Mr. Kuntz's meter was changed by PPL, and on February 27, 2004, he was billed for \$2,470.98 for three years of

unbilled usage of 34,340 kwh plus 103 kwh usage on the new meter since the meter change. (Finding of Fact No. 4; PPL Hearing Exh. No. 7).

Mr. Kuntz filed an informal complaint with the Bureau of Consumer Services (BCS) on March 4, 2004, regarding the rebilling. The BCS informal decision, issued on January 11, 2005, found that the rebilled amount was accurate based upon consumption patterns, but noted that PPL had offered a 10% conservation credit. Thus, BCS determined that PPL should issue an adjustment of 3,400 kwh, to reflect the 10% conservation credit. (Finding of Fact No. 5). PPL issued a new bill for \$2,228.07 to reflect the conservation credit of 3400 kwh as well as the 103 kwh of usage recorded on the new meter. (Finding of Fact No. 6).

On February 15, 2005, Mr. Kuntz filed a Formal Complaint with the Commission at Docket No. F-01603251, which was an appeal of the BCS decision dated January 11, 2005. The Commission's Final Order in Mr. Kuntz's Formal Complaint (*September 23 Order*) concluded that a slight adjustment was required in the rebilling, and that, instead of rebilling for 30,940 kwh to reflect a 10% conservation adjustment, that PPL should have rebilled for 29,736 kwh. Thus, PPL was ordered to rebill for 29,736 kwh in metered usage for January 2001 through January 2004, within thirty (30) days of the effective date of the Final Order, at rates then in effect, and to cancel all other billings. (Finding of Fact No. 8). PPL completed the rebilling within thirty days of the *September 23 Order*. (Finding of Fact No. 11).

On December 9, 2005, Mr. Kuntz filed the instant Formal Complaint with the Commission against PPL alleging that PPL had failed to comply with the *September 23 Order* at Docket No. F-01603251. Specifically, Mr. Kuntz claimed: (1) that PPL had not re-billed him for the reduced kilowatt hours as required by the *September 23 Order*; (2) that PPL had charged him for late payments; and (3) that PPL had failed to credit him for his

customer charge payments. PPL's Answer denied that Mr. Kuntz was not provided the appropriate credit as a result of the *September 23 Order*, and that all further charges were correct as billed. (I.D. at 1).

An Initial Telephone Hearing was held before the ALJ on August 29, 2006, and was transcribed. Mr. Kuntz, who proceeded *pro se*, testified in his own behalf and presented no exhibits. PPL, which was represented by counsel presented the testimony of one witness and introduced eight exhibits, all of which were admitted. (PPL Exh. 1-8). Since this proceeding involved allegations of noncompliance by PPL of the Commission's *September 23 Order*, the ALJ took notice of the findings and conclusions from that Order as binding on the Parties. 66 Pa. C.S. § 316. The Parties indicated that they did not wish to file briefs. The record closed on September 19, 2006, with the receipt of the transcript. The record consists of 82 pages of transcript, the testimony of Complainant and one PPL witness, and eight PPL exhibits. (I.D. at 3).

On October 25, 2006, the ALJ issued her Initial Decision, wherein she concluded that PPL had met its burden of proof with regard to its obligation to comply with the Commission Order in *Richard Kuntz v. PPL Electric Utilities Corporation* at Docket No. F-01603251 concerning the rebilling of Mr. Kuntz's account. The ALJ also concluded that Mr. Kuntz had failed to meet his burden of proof with regard to his allegations that PPL had violated the Public Utility Code or Commission regulations with respect to its service to him. (I.D. at 12).

Mr. Kuntz filed Exceptions to the Initial Decision on November 7, 2006, and PPL replied to those Exceptions on November 17, 2006.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The public utility in this proceeding has the burden of proof involving any alleged violation by it of any lawful determination or order of the Commission to show that the utility has complied with the determination or order of the Commission. 66 Pa. C.S. § 315(b).

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ made twenty-two Findings of Fact and reached five Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In his first Exception, Mr. Kuntz contends that PPL did not rebill his account in a timely fashion because the rebilling occurred more than thirty days after July 29, 2005, the date the ALJ signed the Initial Decision at Docket No. F-01603251. (Exc. at 1).

Mr. Kuntz believes that the rebilling of his PPL account for 29,736 kwh should have occurred within thirty days of the date of the Initial Decision. PPL replies that the final Order in that proceeding was issued on September 23, 2005, and that PPL issued a revised bill to Mr. Kuntz consistent with both our *September 23 Order* and the ALJ's Initial Decision which stated that "within thirty (30) days of the effective date of the Commission Order, Respondent shall rebill the Complainant . . ." PPL states that the rebilling was completed on October 5, 2005, and reissued on October 13, 2005. (R. Exc. at 3; PPL Hearing Exh. 3).

Upon review of the record, we conclude that PPL complied with its obligation to rebill Mr. Kuntz in a timely fashion. The purpose of allowing time to elapse between the issuance of an Initial Decision and the effective date of a Commission Order is to give the parties the opportunity to file Exceptions to the ALJ's Initial Decision. Since no Exceptions were received in that proceeding, the Initial Decision became final on September 23, 2005, the effective date of our Order adopting the Initial Decision. The purpose of the time difference was to allow for due process, not to delay the rebilling. Mr. Kuntz's first Exception is denied.

In his Exceptions, Mr. Kuntz also contends that the credits for late charges, minimum charges and the large payment he made in response to a termination notice from PPL are not properly reflected in the calculation of his bill. (Exc. at 1-2). He sets forth his own calculation and then states that he does not intend to pay any more than the \$26.66 he believes he owes. (Exc. at 2). PPL replies that the ALJ relied on substantial

and uncontradicted evidence of record in reaching her conclusions.

With regard to the late payment charges, Mr. Kuntz contends that \$177.34, not \$139.41, is the correct amount of late charges that PPL should remove from his bill. (Tr. at 68). Mr. Kuntz calculated the \$177.34 figure from exhibits he attached to his Exceptions. Since these documents were not offered into evidence at the hearing, we will not consider them now. We agree with the ALJ that, based upon the business records submitted into evidence by PPL at the hearing, the correct amount of the late charges to be credited to Mr. Kuntz's bill is \$139.41. (Finding of Fact No. 18). Mr. Kuntz's Exception concerning late charges is denied.

Mr. Kuntz made a payment of \$1,687.87 to PPL after receiving a termination notice. In his Exceptions, Mr. Kuntz objects to the ALJ's statement that he did not have to make such a large payment towards the unpaid balance in order to retain his service. (Exc. at 3; Finding of Fact No. 20).

Mr. Kuntz states in his Exceptions that he "figured what I felt I owed and paid it." (Exc. at 3). Mr. Kuntz also stated as much at the hearing. (Tr. at 59). In answer to the ALJ's question concerning the minimum payment that PPL would accept from Mr. Kuntz, the witness stated that PPL would have accepted a smaller payment but Mr. Kuntz did not want to set up such an arrangement. (Tr. at 59-60). Since the evidence of record supports the ALJ's statement, we will deny Mr. Kuntz's Exception with regard to the large payment made in response to PPL's termination notice.

Mr. Kuntz insists that he has been billed twice for his monthly customer charge but has offered no evidence to support his position. With regard to the proper crediting of the minimum charges paid by Mr. Kuntz during the period when his meter was not functioning, we find that the evidence of record clearly establishes that \$2,142.06

for which Mr. Kuntz was billed includes only usage charges and that Mr. Kuntz was fully credited for all amounts he paid from January 2001 through January 2004 on his customer charge. (Finding of Fact No. 10; PPL Hearing Exh. 3).

On the issues of the proper crediting of late charges, minimum charges and his payment made in response to PPL's termination notice, Mr. Kuntz had the burden of proof under 66 Pa. C.S. § 332(a). To satisfy this burden, a complainant must demonstrate that the named utility was responsible for the problem involved in the Complaint, due to a violation of the Public Utility Code or a regulation 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). (I.D. at 10).

Upon review and consideration of the record, we find that the ALJ fully considered each of these three issues in her Initial Decision and included a complete explanation of each of the charges or credits on Mr. Kuntz's account in her discussion. We find that the ALJ correctly concluded that PPL's position was fully supported by its business records and that Mr. Kuntz has failed to meet his burden of proof.

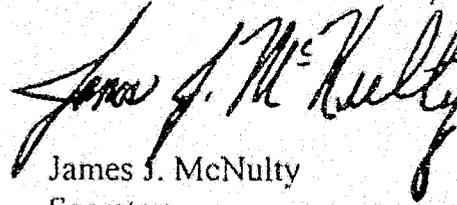
PPL has agreed to remove \$139.41 in late payment charges and to reduce his monthly payment on the unpaid balance to \$15 per month. We agree with the ALJ that this is reasonable. After the \$139.41 in late payment charges are removed, the remaining balance to be repaid, at the new rate of \$15 per month, is \$492.12. (I.D. at 11).

THEREFORE,

IT IS ORDERED:

1. That the Exceptions of Richard H. Kuntz are denied.
2. That the Complaint of Richard H. Kuntz is dismissed for the Complainant's failure to carry the burden of proof.
3. That the Initial Decision of Kandace F. Melillo is adopted.
4. That the stipulation of PPL Electric Utilities Corporation to remove \$139.41 in late payment charges from Mr. Kuntz's account and to accept \$15 per month on Mr. Kuntz's remaining unbilled balance is hereby approved.
5. That within thirty days of the effective date of this Order, PPL Electric Utilities, Inc. shall remove \$139.41 in late payment charges from Mr. Kuntz's account and shall commence recovering the unbilled amount at the rate of \$15 additional per month until the unbilled balance is extinguished.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 26, 2007

ORDER ENTERED:

JAN 29 2007