

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John F. Carmody	:	
	:	
v.	:	C-2016-2559799
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint filed against an electric distribution company by a customer who seeks to have transferred back to his tenants' account an amount he was charged for usage incurred by his tenant that was transferred to his account after foreign load was found at the service address. The customer argued that there was no foreign load present. Substantial record evidence, however, demonstrates that there was foreign load and that the company properly transferred the disputed amount to the customer's account. As a result, the customer has failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff in anyway.

HISTORY OF THE PROCEEDING

On July 5, 2016, John F. Carmody filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2016-2559799. In his complaint, Mr. Carmody averred that there are incorrect charges on his bill. More specifically, Mr. Carmody provided a detailed explanation noting that

his tenants called him about their electric bill being high and he recommended they contact PPL. Mr. Carmody added that PPL then visited the property and determined that there was foreign load present as a result of wires running to a detached shed and charged Mr. Carmody \$944.75 for his tenants' usage. Mr. Carmody provided additional explanation regarding why he believes that what PPL identified as foreign load is not, in his opinion, foreign load. Mr. Carmody attached various documents to his complaint in support of his position and requested that the amount of usage accrued by his tenants that has been charged to his account be again charged to his tenants' account.

The formal complaint was served on PPL electronically by the Commission's Secretary.¹

On August 23, 2016, PPL filed an answer in response to Mr. Carmody's complaint. In its answer, PPL generally admitted or denied the various averments made by Mr. Carmody in his complaint. More specifically, PPL denied that there are incorrect charges on his account but that the company properly transferred the tenants' balance to Mr. Carmody's account once foreign load was discovered. PPL concluded that the Commission should deny Mr. Carmody's complaint.

On September 7, 2016, a telephonic hearing notice was issued setting an initial telephonic hearing for this matter for Tuesday, November 1, 2016 and assigning me as the presiding officer. A prehearing order dated September 12, 2016 was issued setting forth various procedural rules that would govern the hearing.

The hearing convened on November 1, 2016, as scheduled. Mr. Carmody appeared pro se and presented oral testimony and one exhibit that was admitted into the record. Graig Schultz, Esquire appeared on behalf of PPL and presented one witness who sponsored six exhibits that were admitted into the record. A transcript of 32 pages was created.

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 3, 2016.

The record in this matter closed on November 30, 2016 when the transcript was submitted to the Commission. Mr. Carmody's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is John F. Carmody.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 306 Golden Road, Honesdale, PA.
4. Mr. Carmody's tenants complained to him that their electric bill was high and Mr. Carmody suggested that they call PPL. Tr. 7-8.
5. PPL visited the property and determined there was foreign load in the form of a 110 kilovolt (kv) motion light and a 220 kv outside light at a detached shed. Tr. 8-9.
6. The tenants have shared use of the detached shed. Tr. 9.
7. Mr. Carmody paid an electrician to correct the two wires identified by PPL as foreign load. Tr. 10.
8. Carmody Exhibit Number 1 is a four page exhibit comprising an invoice from Metz Electrical Service for \$85 to disconnect the foreign load and three pages showing that Mr. Carmody depreciates half of the cost of the detached shed because the tenants have shared use of the shed. Tr. 10-12; Carmody Exh. No. 1.
9. Joyce Clement is a customer contact representative for PPL and investigates foreign load and other issues in the field. Tr. 17.

10. Ms. Clement is stationed in Honesdale and has worked for PPL for 29 years.
Tr. 17.

11. Ms. Clement investigated Mr. Carmody's property to determine if foreign load is present at the service address. Tr. 17-18.

12. Ms. Clement confirmed that the presence of a 110 kv and 220 kv line running from the circuit breaker to the detached shed. Tr. 19.

13. Ms. Clement informed Mr. Carmody that there was foreign load present on the tenants' meter. Tr. 19-20.

14. PPL Exhibit Number 3 is the Foreign Wiring Order Ms. Clement wrote as part of her investigation at the service address. Tr. 20; PPL Exh. No. 3.

15. Following the determination of foreign load made by Ms. Clement, the tenants' account was transferred to the landlord until the foreign load was corrected. Tr. 20-21.

16. PPL Exhibit Number 4 is a letter dated April 15, 2016 PPL sent to Mr. Carmody's tenants explaining the results of the foreign wiring investigation. Tr. 21; PPL Exh. No. 4.

17. PPL Exhibit Number 5 is a letter dated April 15, 2016 PPL sent to Mr. Carmody explaining the results of the foreign wiring investigation. Tr. 21-22; PPL Exh. No. 5.

18. PPL informed Mr. Carmody in the April 15, 2016 letter that the tenants' account balance of \$944.75 will be transferred to his account. Tr. 22; PPL Exh. No. 5.

19. PPL Exhibit Number 1 is the Account Activity Statement for Mr. Carmody's account after the balance transfer was performed on April 15, 2016. Tr. 22-23; PPL Exh. No. 1.

20. PPL Exhibit Number 6 is a two-page form that Mr. Carmody completed informing PPL that the foreign load situation has been corrected. Tr. 23-24; PPL Exh. No. 6.

21. The form completed by Mr. Carmody was also signed by Mr. Carmody's tenants indicating that they understand the foreign load has been removed and that they accept responsibility for their account effective April 26, 2016. Tr. 24; PPL Exh. No. 6.

22. The foreign load was corrected on April 25, 2016. Tr. 24; PPL Exh. No. 6.

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, 364 Pa. 54, 70 A.2d 854 (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. Carmody seeks an order directing PPL to transfer an amount owed by his tenants, which was transferred to his account after foreign load was identified, back to his tenants' account. Mr. Carmody, 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).

The 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, 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).

In this case, Mr. Carmody argued that PPL made an incorrect determination that foreign load was present at the service address therefore resulting in an incorrect transfer of the balance of his tenants' account to his account. Mr. Carmody contended that there is no foreign load and requested that PPL be directed to transfer the amount owed back to his tenants' account. In response to Mr. Carmody, PPL presented the testimony of Joyce Clement, a field investigator for the company. Ms. Clement testified that she discovered foreign load present when she visited the service address. Ms. Clement further testified, among other things, that the foreign load has subsequently been corrected. Both parties presented various documents in support of their respective positions.

Mr. Carmody's complaint will be dismissed because he has failed to carry his burden to demonstrate by a preponderance of the evidence that PPL in anyway violated the Public Utility Code, any Commission order or regulation or any Commission approved tariff of the company.

To begin, the term "foreign load" refers to utility service which is not related to serving a tenant but for which the tenant is being billed. Santos v. Metropolitan Edison Co.,

Docket No. C-00967757, Order (entered August 7, 1997). Foreign load occurs when a tenant's meter registers usage for utility service provided to a dwelling unit or units other than the tenant's or to a common area of a building such as hallway lighting or to communal laundry room appliances. George W. Kopf, Jr. v. PECO Energy Co., Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) (Kopf) at n. 1. Foreign load exists where tenants have a meter and are direct utility customers and where utility service for other tenants or for the landlord is being billed through their meter. David P. Boyce v. Duquesne Light Company, Docket Number Z-00223698, Opinion and Order (entered September 1, 1994) (Boyce); *see also*, 1-A Realty v. Pa. Pub. Util. Comm'n., 63 A.2d 480 (Pa. Cmwlth 2013) (communal street lights in a mobile home park were connected to the electric boxes of the homes of the nearest tenant), Gnana Chinniah v. PPL Electric Utilities Corp., Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013) (Chinniah) (foreign load was created by a detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties), and Kopf, supra (the foreign wiring condition related to electric service to common areas in a second floor hallway, basement and outside light of a rental property).

In addition, Section 1529.1 of the Public Utility Code governs the payment of utility services in rental properties. This Section reads as follows:

§ 1529.1. Duty of owners of rental property

(a) Notice to public utility. - It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of account. - Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for

the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) Failure to give notice. - Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1. The Commission has established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1. Boyce, supra.

It is further noted as a preliminary matter that Pennsylvania law is clear that the Commission has no jurisdiction over cases involving disputes between landlords and tenants. The Commission addressed Section 1529.1 in Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensible Parties, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (Ace). In Ace, the Commission reversed its then-existing policy in foreign load cases articulated in Afshari v. PPL Electric Utilities Corporation, Docket No. C-20055547 (Order entered April 9, 2008) that allowed a hearing to determine the amount of electric usage attributable to the foreign load. In reversing this policy, the Commission stated:

While the Commission has jurisdiction over the regulation of utility companies and utility service, the Commission does not have jurisdiction to adjudicate every dispute that involves a utility, e.g., personal injury case, discrimination case, etc., and does not have the authority to settle disputes on every contract to which a public utility is a party. Accordingly, the Commission does not have subject matter jurisdiction over a dispute between a property owner and a tenant – two non-utility parties. While such a dispute, arguably, may involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be decided is financial responsibility for the charges. That matter should be handled by the courts.

Ace at 4-5. The Commission added: “The ultimate dispute here is financial responsibility for an established amount of charges for past utility service between a landlord and a tenant. The dispute does not concern the utility or the utility’s service and, therefore, its resolution does not

require the Commission's regulatory expertise." *Id.* at 6; *see also*, Edmund V. Corazzini v. UGI Penn Natural Gas, Inc., Docket No. F-2009-2101282 (Opinion and Order entered July 16, 2010) (the landlord may seek damages from his tenant through the courts but that is a private matter that is outside the Commission's jurisdiction).

The issue in this case is whether or not foreign load is present. As noted above, if there is foreign load present, Section 1529 requires the company to transfer the disputed amount to the landlord and resolve any issues of apportionment of the outstanding amount in a court of common pleas. Record evidence in this case demonstrates that Mr. Carmody has not carried his burden to demonstrate that there is no foreign load present.

In particular, PPL Exhibit Number 6 is entitled "Property Owner's Notification Foreign Load/Wiring Fixed." PP Exh. No. 6. In this document, Mr. Carmody signed the form indicating that the foreign wiring was fixed on April 25, 2016 by Metz Electrical Service, Inc. PPL Exhibit Number 6 also describes the foreign wiring and provides a statement signed by Mr. Carmody that states, in part: "I certify that as a result of the above wiring changes, the meter for this account services only the rental unit located at the service address given in this notification." In the document, Mr. Carmody also agreed that "it is my responsibility to ensure that a tenant's meter in my rental property serves exclusively that tenant's apartment, and to ensure that there are no further 'foreign, or mixed, or common use' wiring connected to a tenant's apartment." The document is also signed by Mr. Carmody's tenant who, by signing the document, agreed that the internal wiring had been fixed and assumes responsibility as a ratepayer effective April 26, 2016.

Although there is a handwritten notation on PPL Exhibit Number 6 that appears in part to say "no foreign load," this notation is unclear, it is unclear who wrote the notation and the notation is also subsequently clarified by a second similarly unclear notation. Regardless, the unclear, corrected notation is heavily outweighed by the remainder of the document where Mr. Carmody acknowledges the presence of foreign load, as well as other record evidence that supports a finding of foreign load at the service address. In particular, such additional record evidence includes the testimony of Ms. Clement who made the initial determination on behalf of

the company that foreign load was present at the service address, such as confirming that there was a 110 kv and 220 kv line running from the circuit breaker to the detached shed. Tr. 19.

As a result, substantial record evidence demonstrates that foreign load is present at the service address. Furthermore, substantial record evidence also demonstrates that PPL acted properly in transferring the account balance from the tenants to Mr. Carmody until the foreign load was corrected. Mr. Carmody has failed to rebut PPL's evidence by a preponderance of the evidence and, therefore, has failed to satisfy his burden. *See, Milkie, supra.* The \$944.25 at issue in this proceeding is a matter that is between Mr. Carmody and his tenants and not appropriate for this Commission to resolve. *See, Ace, supra.* As in *Kopf*, the lighting to the detached shed is for a common area, especially the outside light.

The argument that Mr. Carmody depreciates half of the value of the detached shed in support of his position that the tenants have permission to use the shed does not impact on whether foreign load is present. As noted above, foreign load has been found in a detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties. *See, Chinniah, supra.* Regardless of whether Mr. Carmody depreciates half the detached shed because the tenants have permission to use the area, the two wires that run from the tenants' circuit breaker to the detached shed create foreign load.

Furthermore, it is noted that amount of electric usage that constitutes the foreign load is irrelevant. The Commission added in *Ace* that there is "no *de minimus* exception," noting that the reason for the change in policy was to incent the landlord to correct the foreign load situation. *Ace* at 8. Therefore, Mr. Carmody's argument that the foreign load constituting only a small amount of the outstanding balance should not make him responsible for the entire \$944.25 is irrelevant. Commission precedent requires that the entire balance, including arrearages, be transferred to the landlord. The specific amount of the \$944.25 owed by Mr. Carmody and the specific amount owed by his tenants is a matter for a court of common pleas. *Ace, supra.*

In conclusion, Mr. Carmody has failed to carry his burden to demonstrate that PPL in any way violated the Public Utility Code, a Commission order or regulation or a

Commission-approved tariff of the Company. Record evidence demonstrates that foreign load was present at the service address. As a result, PPL acted properly in transferring the account balance from the tenants to Mr. Carmody until the foreign load was corrected. Once the foreign load was corrected, the tenants again assumed responsibility for their usage. Mr. Carmody's complaint will, therefore, be dismissed.

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).

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. "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).

5. 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.

6. 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).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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.Cmwlth 23, 480 A.2d 382 (1984).

9. "Foreign load" refers to utility service which is not related to serving a tenant but for which the tenant is being billed. Santos v. Metropolitan Edison Co., Docket No. C-00967757 (Order entered August 7, 1997).

10. Foreign load occurs when a tenant's meter registers usage for utility service provided to a dwelling unit or units other than the tenant's or to a common area of a building such as hallway lighting or to communal laundry room appliances. George W. Kopf, Jr. v. PECO Energy Co., Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) at n. 1.

11. Foreign load exists where tenants have a meter and are direct utility customers and where utility service for other tenants or for the landlord is being billed through their meter. David P. Boyce v. Duquesne Light Company, Docket Number Z-00223698 (Opinion and Order entered September 1, 1994); *see also*, 1-A Realty v. Pa. Pub. Util. Comm'n, 63 A.2d 480 (Pa. Cmwlth 2013), Gnana Chinniah v. PPL Electric Utilities Corp., Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013).

12. The presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1 of the Public Utility Code. David P. Boyce v. Duquesne Light Company, Docket Number Z-00223698 (Opinion and Order entered September 1, 1994).

13. Pennsylvania law is clear that the Commission has no jurisdiction over cases involving disputes between a landlord and a tenant. Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensible Parties, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

14. Mr. Carmody has failed to satisfy his burden of proof in this proceeding by a preponderance of the evidence 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by John F. Carmody against PPL Electric Utilities Corporation at Docket Number C-2016-2559799 dated July 5, 2016 is hereby dismissed.

2. That this matter be marked closed.

Date: January 10, 2017

/s/
Joel H. Cheskis
Administrative Law Judge