

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael J. Zulkowski	:	
	:	
v.	:	F-2017-2609837
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies Michael J. Zulkowski’s complaint that PPL Electric Utilities Corporation was incorrect to transfer an unpaid balance due to the presence of a foreign load.

HISTORY OF THE PROCEEDING

On June 7, 2017, Michael J. Zulkowski (Complainant or Mr. Zulkowski) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) alleging PPL was incorrect to transfer the unpaid balance from the tenant to Mr. Zulkowski because the account includes unpaid charges from the tenant’s account and because the tenant agreed to a lesser rental fee in exchange for the foreign load.

PPL filed an answer in response to the complaint on July 6, 2017. In its responsive pleading, PPL denies generally that it transferred the balance in error and asserted it

correctly determined the existence of a foreign load. Accordingly, PPL contended Complainant, as the landlord, is responsible for the charges due to the presence of a foreign load.

By Call-In Telephone Hearing Notice dated July 12, 2017, the Office of Administrative Law Judge notified the parties an initial hearing in this case was scheduled for Tuesday, September 12, 2017 at 10:00 a.m. On July 13, 2017, the presiding officer issued a Prehearing Order setting forth the date and time of the scheduled hearing and providing procedural guidelines.

On September 12, 2017, the presiding officer convened the parties and conducted a hearing at which time Complainant appeared *pro se*. Mr. Zulkowski testified on his own behalf and provided one witness, John Tym. Complainant did not offer any exhibits. Kimberly G. Krupka, Esquire represented PPL. At the hearing, Ms. Krupka presented the testimony of one witness, Ronald Hoffman, and offered four exhibits, marked PPL Exhibits 1A, 1B, 2A and 2B. PPL moved to admit its exhibits into evidence at the hearing and the presiding officer included the exhibits in the hearing record. Complainant and Respondent issued final statements on the record at the hearing.

The presiding officer received the transcript of the initial hearing, which contains 101 pages, and on October 11, 2017, the presiding officer closed the hearing record by issuing the Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, Michael J. Zulkowski, resides in Shenandoah, Pennsylvania, and in 2013 purchased a structure (service address) containing two rental units located at 156 North Second Street, Frackville, Pennsylvania 17931. (Tr. 10-11, 29).
2. Respondent provides distribution electric service to Apartment 2F located at the service address. (Tr. 11, 37).

3. In July 2015, Complainant began renting Apartment 2F to John Tym (Tenant) on an oral, month-to-month lease in which Tenant was responsible to pay for the electric service. (Tr. 10, 11, 29, 37, 41).

4. When Tenant first leased Apartment 2F, Tenant knew that the electric bill would include electric service to a hallway light located in a common area. (Tr. 12).

5. Until September 2016, both Tenant and the occupant of the other apartment could operate the light fixture using a switch in the hallway. (Tr. 16, 25, 29).

6. Tenant complained to Complainant in 2016 about other tenants who would not turn off the hallway light which was connected to Tenant's electric bill. (Tr. 12, 38, 39).

7. With Tenant's help, Complainant installed a motion detector light fixture in 2016 so that the other tenants could have light when needed but the light fixture would turn off after a few minutes. (Tr. 12, 13, 39).

8. On August 26, 2016, Tenant contacted PPL because the consumption listed on PPL's bills was too high and he thought there might be a foreign wiring problem at the service address in addition to the hallway light fixture that would explain his high bills. (Tr. 41-45; PPL Exhibit 2B).

9. On September 2, 2016, PPL visited the service address and determined the light fixture in the hallway was connected to Tenant's electric service. (Tr. 41-45, 54, 55; PPL Exhibit 2B).

10. The only foreign load revealed by PPL's investigation was the light fixture in the hallway. (Tr. 41-46, 54-69).

11. PPL transferred \$1,258.42, which was the unpaid balance on Tenant's account, into an account in Complainant's name, effective September 19, 2016. (Tr. 42, 56; PPL Exhibit 1B).

12. From August 2016 until the foreign load was corrected in November 2016, electric service charges totaled \$413.25 for service provided in September, October and November of 2016. (Tr. 61-66; PPL Exhibit 1A).

13. In September 2016, PPL notified Complainant there was a foreign load at the service address, and required Complainant to correct the problem. (Tr. 13-25, 55).

14. Complainant corrected the problem in September 2016 and sent the fixed wiring form to PPL on November 11, 2016. (Tr. 31, 56).

15. PPL inspected the service address on November 3, 2016, approved Complainant's repairs, and determined a foreign load no longer existed. (Tr. 16, 25, 57).

16. PPL referred Complainant's unpaid balance to a collection agency for payment of \$1,671.67, which is comprised of the transferred balance and the electric service charges from September 19, 2016 to November 3, 2016. (Tr. 27, 28, 32).

DISCUSSION

Complainant alleges Respondent incorrectly charged him for electric service used by Tenant. Complainant contends he should not be responsible to pay for the unpaid balance owed by Tenant because Tenant knew about the foreign load and agreed to pay for it. Further, Complainant presented the testimony of Tenant who indicated he knew about the hallway light and wants to pay for the unpaid balance. Complainant admits he should pay for the current charges from September 2016 to November 2016 but argues Respondent is wrong to require him to pay off the unpaid balance.

Complainant provided the testimony of Tenant who testified he did not realize the unpaid balance would be transferred into Complainant's name. Tenant testified he called PPL because he wanted PPL to investigate whether there were any other instances of foreign load in the building because the service address was an older house which could have wiring issues. Tenant insisted he wanted to pay the unpaid balance instead of Complainant. Complainant requests the Commission require PPL to transfer the unpaid balance as of August 2016 back to Tenant, and require Complainant only to pay for the electricity used from when the foreign load was discovered in September 2016 until the repairs were verified as completed in November 2016.

Respondent countered that the Commission's laws and regulations are clear. Respondent, as a public utility, must "furnish and maintain adequate, efficient, safe, and reasonable service and facilities,"¹ Once a foreign load is detected, the utility must transfer responsibility for the service account into the landlord's name and that responsibility includes any unpaid balance on a tenant's account. The utility argues that Tenant's preexisting knowledge that the foreign load existed or his insistence that he thought he should have to pay for the unpaid balance are immaterial to what the law requires a utility to do once a foreign load is detected. PPL contends it responded promptly and appropriately when PPL determined there was a foreign wiring condition in Apartment 2F. PPL argues it appropriately transferred the unpaid balance from Apartment 2F into Complainant's name until after Complainant fixed the foreign load wiring problem.

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving the necessary elements of the complaint by substantial evidence.² Substantial evidence is defined as such evidence that a reasonable mind might accept as adequate to support a conclusion, but Complainant is required to present more than a mere trace of

¹ 66 Pa.C.S.A. § 1501.

² 66 Pa.C.S.A. § 332(a).

evidence or a suspicion of the existence of a fact sought to be established.³ Pursuant to 66 Pa.C.S.A. § 1529.1, the burden of dealing with a foreign load problem belongs squarely with a property owner, not a tenant, because an owner is in a better position to know that the foreign load exists than do the tenants.⁴

Foreign Load

This Commission’s interpretation or construction of Section 1529.1, applicable to this case, is derived from Bryce v. Duquesne Light Co.,⁵ Santos v. Metropolitan Edison Company,⁶ and Stewart v. Equitable Gas Co.⁷ These cases hold that a “foreign load” exists when a ratepayer-tenant’s meter in a multi-tenant dwelling registers utility service usage from which the tenant derives no benefit or only a shared benefit. Even though the ratepayer-tenants in a multi-tenant dwelling have meters that register their individual utility service usage, a ratepayer-tenant whose meter also registers usage from which the tenant derives no benefit or only a shared benefit is not “individually metered” for the purpose of applying Section 1529.1.

In Franckowiak v. PPL Electric Utilities Corporation,⁸ the Commission ruled the public utility failed to comply with 66 Pa.C.S.A. § 1529.1 when it failed to place a tenant’s account in the landlord’s name after the utility suspected foreign wiring. The Commission found that asking the public utility to substantiate the existence of foreign wiring before it places the account in the landlord’s name would permit landlords to thwart the legislative intent by failing to promptly and fully cooperate with a public utility’s foreign wiring investigation.

³ See Norfolk & Western Ry. Company v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Board of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); Murphy v. Department of Public Welfare, 480 A.2d 382 (Pa.Cmwth. 1984).

⁴ See Jill and Joel Haimes v. PPL Electric Utilities Corporation, F-02201447 (Initial Decision dated January 23, 2008).

⁵ Docket No. Z-00223698 (Order entered September 1, 1994).

⁶ Docket No. C-00967757 (Order entered August 7, 1997).

⁷ Docket No. C-00014708 (Order entered October 31, 2001).

⁸ Docket No. C-20054687 (Order entered July 3, 2006).

Likewise, in DelVecchio v. PPL Electric Utilities Corporation,⁹ the utility failed to change the account ratepayer back to the landlord after uncovering a foreign wiring. The Commission found the amounts paid by the tenant after the utility discovered the foreign wiring were the responsibility of the landlord. The Commission concluded the money the tenant paid to the utility for the time after the public utility discovered the foreign wiring was invalid pursuant to 66 Pa.C.S.A. § 1529.1, and the utility was ordered to refund back to the tenant the amount paid during that time period.

In Ace Check Cashing, Inc. v. Philadelphia Gas Works, etc.,¹⁰ the Commission overruled a previous decision in Afshari v. PPL Electric Utilities Corporation¹¹ when it determined landlords are responsible for both current bills and arrearages until such time as the landlord corrects the foreign load situation.

Prior to Afshari, the Commission's foreign load policy was clear and consistent with a plain reading of the statute. Upon the finding of foreign load, the utility would list the account, including any arrearages, in the name of the landlord. The landlord had the responsibility to pay the utility bills until the foreign load was corrected. Once the foreign load was corrected by the landlord and verified by the utility, the utility would place the account back in the name of the tenant. However, the arrearage, if any, was to remain with the landlord. There was no *de minimus* exception, and any dispute regarding the financial responsibilities of the parties was a matter to be resolved in the Court of Common Pleas and outside this Commission's jurisdiction.

The key determination in Afshari is that, when foreign load is found, per operation of Subsection (c), the landlord shall be responsible only for the portion of the tenant's arrearage that is related to foreign load. However, Commission precedent, such as Elizabeth Santos v. Met Ed, Docket No. C-00967757 (Order entered August 7, 1997), holds that Subsection (c) operates to place both current bills and all arrearages in the landlord's name if the landlord failed to provide the notice required by Subsection (a). In interpreting Subsection (c), the decision in Afshari sought to avoid an unreasonably harsh result for the landlord in that it does not require the owner to be responsible for the tenant's potentially large

⁹ Docket No. Z-01464793, (Order entered September 13, 2005).

¹⁰ Docket No. C-2008-2056428 (Order entered May 21, 2010).

¹¹ Docket No. C-20055547 (Order entered April 9, 2008).

arrearages, especially where the foreign load is *de minimus*. However, the approach in Afshari lessens the incentive for the landlord to correct the foreign load situation that is due to a wiring, plumbing or piping problem for which the landlord is responsible. While the language in Subsection (c) can be viewed as ambiguous enough to allow some latitude for Commission interpretation, a determination that the landlord's financial responsibility for arrearages is strictly limited to the foreign load portion of the arrearage is problematic. This is because the statutory remedy for failure to provide notice provided in Subsection (c) refers back to Subsection (b) which clearly mandates that the landlord "shall thereafter be responsible for the payment for the utility services rendered [to the rental property]."

Analysis

Complainant requests the Commission find PPL was in error to transfer Tenant's unpaid balance over to him due to the presence of a foreign load when the foreign load was an agreed-upon term of Tenant's lease with Complainant. Respondent argues it provided adequate customer service when it placed the electricity in Complainant's name after discovering a foreign load because compliance with the Commission's statutes and regulations requires a public utility to make landlords the responsible party when two or more tenants are present but utility service is not completely separated.

Complainant, as the owner of the property, became immediately responsible for Tenant's account once the foreign load was discovered, and Tenant's account must be placed in Complainant's name. The evidence clearly shows PPL was correct to require Mr. Zulkowski to pay for all current charges and the arrearages on the account for the service address, effective September 19, 2016, due to the presence of a foreign load. Having corrected the foreign load problem, Complainant remains responsible for the transferred balance plus the charges incurred from the foreign load's discovery until its correction. Complainant did not present sufficient evidence to prove PPL failed to provide reasonable and adequate customer service when it required him to be responsible to pay all current and unpaid past charges incurred by Tenant due to the presence of a foreign load.

Respondent showed that it provided reasonable and adequate customer service when it notified Complainant there was a foreign load problem with the service address, when it

explained to Complainant what steps he had to take to correct the problem, when it returned to the service address in a timely manner to verify Complainant's efforts to separate the electric service and when it determined Complainant was responsible to pay the arrearages due on the account.

CONCLUSIONS OF LAW

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

2. Complainant, as a property owner, is financially responsible for the tenant's entire account, once the foreign load is verified on the tenant's utility service, including all arrearages. Ace Check Cashing Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428, (Order entered May 21, 2010); 66 Pa.C.S.A. § 1529.1.

3. Once foreign load is verified on a tenant's utility service, any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. Ace Check Cashing Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428, (Order entered May 21, 2010).

4. Complainant failed to meet his burden of proving that he is entitled to the relief he seeks from this Commission. 66 Pa.C.S.A. § 332(a).

