

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nathan Delgado	:	
	:	
v.	:	C-2017-2633999
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

This Initial Decision dismisses a formal complaint because the customer failed to meet his burden of proving that an electric distribution company violated the Public Utility Code or a Commission’s Regulation by not accepting a negotiable instrument as payment for electric service.

HISTORY OF THE PROCEEDING

On November 9, 2017, Nathan Delgado (Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) alleging that PPL had placed incorrect charges on his bill. (Complaint). This is an untimely appeal of a Bureau of Consumer Services (BCS) Decision at Case No. 3536402, dated September 16, 2017.

On December 6, 2017, PPL filed an Answer admitting Mr. Delgado is a customer, but denying any incorrect charges on his account.

On January 8, 2018, a Call-In Telephone Hearing Notice was issued setting forth the date for a hearing and the matter was assigned to me. On January 18, 2018, a Prehearing

Order was issued setting forth the procedural rules for the hearing. The hearing was held on February 20, 2018 as scheduled.

Graig Schultz, Esquire appeared for PPL. Nathan Delgado appeared *pro se*. PPL presented two exhibits and Complainant presented two exhibits for admission into the record. These four exhibits were admitted into the record. Complainant indicated an intent to provide some post-hearing exhibits showing payments tendered on May 4, 2017 and July 16, 2017, so I held the record open for the filing of post-hearing exhibits. A transcript was filed on February 27, 2018. On February 28, 2018, I received two exhibits through regular mail, which I marked as Complainant's Exhibits 3 and 4. Complainant's Exhibit 3 is a copy of a PPL invoice stub and a negotiable instrument endorsed by Complainant in the amount of \$3,810.78. Complainant's Exhibit 4 is a copy of an IRS 1040-V Payment Voucher for year 2016 in the amount of \$3,419.12 and a PPL bill stub in the same amount. There being no objection to Complainant's post-hearing exhibits, on March 2, 2018, the post-hearing exhibits were admitted, and the record closed. This matter is ripe for a decision.

FINDINGS OF FACT

1. The Complainant is Nathan Delgado a/k/a Delgado, Nathan, who has received electric service at 632 South Ann Street, Lancaster, PA 17602, since June 3, 2016. N.T. 7-8, 22-23, 26-27, PPL Exhibits 1 and 2, Complainant's Exhibit 2.
2. The Respondent is PPL Electric Utilities Corporation, an electric distribution company operating in Pennsylvania.
3. Sherry Shaffer is a PPL Customer Service Representative. N.T. 24-25.
4. Complainant has made three payments on his account since June 3, 2016. N.T. 29.
5. Complainant paid \$200.32 online on August 12, 2016. N.T. 29-30, PPL Exhibits 1 and 2.

6. Complainant paid \$209 at a walk-in payment center on November 28, 2016. N.T. 30-31, PPL Exhibit 2.

7. On May 4, 2017, Complainant mailed PPL the utility's bill stub with an IRS 1040-V Payment Voucher for 2016. Complainant's Exhibit 4.

8. On May 17, 2017, Complainant attempted to make an online or an automated phone system (IVR) payment in the amount of \$3,629.10 that PPL initially posted to the account then removed and rejected because the checking account attempted to be used had been closed. N.T. 14, 29-33, PPL Exhibit 2, Complainant's Exhibit 4.

9. PPL did not collect \$3,629.10 in funds from Complainant in May 2017. N.T. 14, 29-30, Complainant's Exhibit 4.

10. Complainant attempted to render payment on July 16, 2017 by a negotiable instrument stating that the United States Treasury would pay his balance in the amount of \$3,810.78; however, this payment attempt was rejected. N.T. 14, 35, Complainant's Exhibit 3.

11. On June 16, 2017, a PPL representative explained to Complainant that PPL would accept cash, check, certified check or debit or credit card payment as a method of payment for his balance. N.T. 34.

12. There is no creditor/lender relationship between the parties because PPL did not loan Complainant monies. N.T. 43-46.

13. As of the date of hearing, the account balance on Complainant's account totaled \$7,148.67. N.T. 33.

14. PPL accepts cash, check, certified check, or debit or credit card payment as payment methods from its customers. N.T. 34.

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.² The Commission must act within and cannot exceed its jurisdiction.³ Jurisdiction may not be conferred by the parties where none exists.⁴

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that he has the duty to establish relevant facts which support his claim by a preponderance of the evidence and must show that the Company has violated the Public Utility Code or Commission regulations.⁵ Here, he must establish that PPL's policy of only accepting certain enumerated methods of payment is unreasonable within the meaning of the Public Utility Code and its regulations. As explained more fully below, the Complainant failed to sustain this burden and his complaint will be dismissed.

PPL, like all Commission-regulated public utilities, is mandated to provide reasonable customer service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

³ *Behrend v. Bell Telephone Co.* 363 A. 2d 1152 (Pa. Super 1976).

⁴ *Roberts v. Martorano*, 427 PA 581, 235 A.2d 602 (1967).

⁵ *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.⁶

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.⁷ The Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.⁸

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.⁹ This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.¹⁰

The Commission's regulations do not specifically address the forms of payment which a utility is required to accept from a customer as payment for services rendered. However, the regulations relating to termination note that a customer may avoid termination if "payment in full is tendered in *any reasonable manner...*" The regulation also notes that payment "in any reasonable manner includes payment by personal check . . ." ¹¹

Complainant's Position

The Complainant contends that PPL has placed incorrect charges on his account and has committed fraud because PPL's rates changed without Complainant's agreement to any rate changes, and because PPL rejected the bill remittances he sent to PPL on May 4, 2017 and

⁶ 66 Pa.C.S. § 1501.

⁷ *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984).

⁸ *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

⁹ *Scherich v. Verizon Pennsylvania Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

¹⁰ *Id.*

¹¹ 52 Pa.Code § 56.94 (emphasis added).

July 16, 2017, which were never returned to Complainant. N.T. 9, 23, 35. Complainant's Exhibits 1, 3 and 4. Specifically, Complainant testified:

On May 4, 2017, I sent a bottom remittance of that PP&L bill in the amount of \$3,419.12. That was to be restricted and forward to the United States Treasury. PP&L did not send back that remittance, nor did they contact me and let me know that it was a conspicuous statement according to the Uniform Commercial Code laws that they have to abide by; so, in my eyes, that was a form of acceptance on their behalf to this amount that I was attempting to pay in good faith.

N.T. 9.

Complainant argues PPL's attempt to defraud his account is in violation of Pennsylvania law as well as The Collections Act and Federal law. N.T. 49. He claims PPL has failed to prove there is any amount owed on his account and requests the Commission discharge or credit his account balance the full amount. N.T. 49-50.

Respondent's Position

Conversely, PPL contends that on May 4, 2017, Complainant attempted to make a payment through an IVR System, PPL's automated phone system; however, the account Complainant attempted to use was closed. N.T. 32-33. Therefore, PPL received no funds. Additionally, PPL does not dispute that it rejected Complainant's attempt to make payment by offering PPL an Internal Revenue Service (IRS) stub or document that Complainant claims is a statement that the United States Treasury would pay his balance. N.T. 9, 35. PPL argues that no acceptable payment has been received since May 4, 2017. N.T. 33. PPL contends that it did not violate any law by rejecting the IRS stub as payment and not discharging the debt owed on the account.

Disposition

I infer Complainant is asserting that the remittance of the bottom portion of a PPL bill with an IRS 1040-V voucher, is an acceptable negotiable instrument as defined by the

Uniform Commercial Code (UCC). Complainant avers that PPL is unlawfully demanding a specific form of payment in dollars and cents and violating State and Federal law. N.T. 9, Complainant's Exhibit 1, Answer.

The Commission does not have jurisdiction to interpret the Uniform Commercial Code to determine the negotiability of instruments. The Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa. Super 1976). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

The Commonwealth Court has affirmed prior Commission decisions to dismiss similar complaints for lack of jurisdiction and for failure to state a claim upon which relief can be granted. *See Ellsworth Pendleton and Patty Tucker v. Pa. Pub. Util. Comm'n*, No. 519 CD 2006, Memorandum Opinion filed August 29, 2006 affirming *Ellsworth and Patty Pendleton v. PPL Electric Utilities Corporation*, Docket No. C-20044164 (Opinion and Order entered January 17, 2006). The Commonwealth Court held that although the reasonableness of a method of payment is within the Commission's jurisdictional authority and may be examined under 66 Pa. C.S. §1501 and 52 Pa. Code §56.94, whether an instrument is negotiable is not under the Commission's jurisdiction as it is a legal issue involving interpretation of the Uniform Commercial Code at 13 Pa. C.S. §3104. *Id.* at 6 citing *Triffin v. Dillabough*, 552 Pa. 550, 716 A.2d 605 (1998).

The Commission has consistently held that it does not have jurisdiction to interpret the Uniform Commercial Code to determine the negotiability of instruments. *See also, Alkhatib v. PECO Energy Company*, Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2012); *Coppedge v. PECO Energy Company*, Docket No. F-2009-2135893 (Opinion and Order entered August 3, 2010); *Coppedge v. PECO Energy Company*, Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015); *Scott v. Pennsylvania American Water*, Docket No. C-2015-2489453 (Final Order entered December 22, 2015); *Kennedy v. PECO Energy Company*, Docket No. C-2015-2471718 (Opinion and Order entered October 22, 2015).

The Commission lacks the authority to determine whether the documents offered by the Complainant are negotiable instruments. However, even if the remittances as depicted in Complainant's Exhibits 3 and 4 and described by Complainant at the hearing were properly negotiable debt instruments¹² as claimed by the Complainant, there is no language in the regulations which mandates PPL to accept *all* forms of payment. The Complainant did not demonstrate that PPL's policy of only accepting cash, certified checks, money orders, checks or payment by debit or credit card and no other allegedly negotiable instruments was unreasonable or in violation of the Public Utility Code or any regulation of the Commission.

In the instant case, PPL advised Mr. Delgado that it will not accept an IRS stub or his proposed methods of obtaining payment from the United States Treasury. PPL further advised Mr. Delgado that it will only accept cash, certified checks, checks, money orders, credit cards, and debit cards, and this is not unreasonable within the meaning of 52 Pa. Code §56.94 or 66 Pa. C.S. §1501. The Complainant failed to demonstrate by a preponderance of the evidence that PPL violated the Public Utility Code or Commission regulations by requiring the Complainant to pay his bills using only certain forms of payment.

Mr. Delgado did not offer evidence to show that he had tendered a personal or certified check on either May 4, 2017 or July 16, 2017. Complainant offered no evidence to show that he had successfully paid other debts in a manner similar to the Complainant's Exhibits 3 and 4. Complainant has failed to show that his proposed method of payment is customary in any other commercial context or any other indicia that PPL's policy is not reasonable.

In addition, the Complainant failed to demonstrate that there are incorrect charges or improper billing on the account. The Complainant only asserts that his rate changed periodically. Although Complainant contends changes to rates, which he did not agree to occurred, there is no evidence he was switched to any electric generation supplier without his consent since he opened an account on June 2, 2016. There is no dispute that service began on June 2, 2016 per Mr. Delgado's request. PPL Exhibit 2 shows that this was a residential service

¹² Several courts in other jurisdictions have found "bills of exchange purporting to be drawn against a trust account at the U.S. Treasury to be 'nothing more than a string of words that sound as though they belong in a legal document, but which, in reality, are incomprehensible, signifying nothing.'" *In re: Denise Fachini*, 2012 Bankr. LEXIS 448 at 5 (Bankr. M.D. Ga. 2012) (and the cases cited therein).

property; therefore, PPL's tariffed residential service rates applied. Quarterly changes in residential service rates are not uncommon and as long as the company is billing in accordance with the applicable rate schedule denoted in a Commission-approved and officially filed tariff of the utility and explained on the bill and utility's web site, there is no violation of any Commission Order, regulation or the Public Utility Code. See 52 Pa. Code §§ 56.15(12) and (13).

I find credible the testimony of Ms. Shaffer that Complainant did not switch electric generation suppliers since June 2, 2016, and that PPL does not discuss rates at the time a customer opens an account unless they opted into a standard offer rate which PPL offers. N.T. 42-43. The Complainant failed to establish by a preponderance of the evidence that there are incorrect charges on his bill or that PPL violated any statute or regulation by periodically adjusting his rate.

In conclusion, Complainant's claim that PPL violated federal law or the Uniform Commercial Code by rejecting a negotiable instrument fails for the Commission's lack of authority to make a determination regarding the negotiability of such bill remittances and instruments as depicted in Complainant's Exhibits 3 and 4. The Complainant's claim that there are incorrect charges on his account because PPL changed its rates without his agreement must also fail. Therefore, Complainant has failed to prove by a preponderance of evidence that PPL violated a statute, regulation or Commission Order and his complaint will be denied and dismissed.

CONCLUSIONS OF LAW

1. Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute. *Western Pennsylvania Water Company v. Pa. Pub. Util. Comm'n*, 471 Pa. 347, 352-353, 370 A. 2d 337, 339 (1977).

2. The Commission does not have jurisdiction to interpret the Uniform Commercial Code. *Pendleton v. Pennsylvania American Water Company*, Docket No. Z-01789808 (Order entered July 21, 2006), *Jennette v. Pennsylvania American Water Company*,

Docket No. C-20054560 (Order entered July 21, 2006), *Alkhatib v. PECO Energy Company*, Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2012); *Coppedge v. PECO Energy Company*, Docket No. F-2009-2135893 (Opinion and Order entered August 3, 2010).

3. The Complainant failed to prove that PPL's policy of only accepting certain types of payment for electricity service was unreasonable or in violation of the Public Utility Code or the Commission's regulations. 66 Pa. C.S. § 1501; 52 Pa. Code § 56.94.

4. PPL Utilities Corporation's rejection of an IRS document as payment for Complainant's bill does not violate the Public Utility Code or Commission regulations. 66 Pa. C.S. § 1501; 52 Pa. Code §56.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's post-hearing Exhibits 3 and 4 are admitted into the record at Docket No. C-2017-2633999.

2. That the Complaint of Nathan Delgado against PPL Electric Utilities Corporation at Docket No. C-2017-2633999 is denied and dismissed.

3. That the case at Docket No. C-2017-2633999 be marked closed.

Date: March 2, 2018

/s/
Elizabeth H. Barnes
Administrative Law Judge