

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Loretta P. Warren	:	
	:	
v.	:	F-2017-2626176
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision dismisses the Formal Complaint for Complainant’s failure to establish her burden of proof that there are incorrect charges on her bill.

HISTORY OF THE PROCEEDING

On September 20, 2017, Loretta P. Warren (Complainant) filed a Complaint seeking review of the Commission’s Bureau of Consumer Services’ (BCS) August 1, 2017 decision denying her informal complaint against Duquesne Light Company (Respondent or Duquesne Light). The Complaint alleges Complainant was working on a house at 8610 Pershing Street, Pittsburgh, Pennsylvania (Pershing Street) to get it ready for a tenant. Although Complainant does not recall the date, she asserts she told “Duquesne Light to cut the lights off.” The Complaint suggests that Duquesne Light failed to shut off service in a timely manner. Complainant asserts she does not owe Duquesne Light for the balance at Pershing Street because she has had service at 54 Overbrook Road for 4 to 6 years. Complainant also asserts that she has asked Duquesne Light to cut the lights off at 9914 Grandview Avenue, but the lights are still on. According to Complainant, the lights were on at the Pershing Street until a bill collector called her, and she questioned why Duquesne

Light allowed the bill to get so high. The Complaint is silent as to the relief the Complainant is seeking from the Commission.

On October 16, 2017, Duquesne Light filed and served an Answer and New Matter. Duquesne Light denied the material allegations of the Complaint and averred Ms. Warren was the ratepayer of record at Pershing Street while electric service was consumed. Therefore, she is responsible for the account balance. In New Matter, Duquesne Light asserted affirmative defenses: the statute of limitations, laches, waiver and estoppel. For relief, Duquesne Light requested dismissal of the Complaint with prejudice.

Complainant did not file a response to Respondent's New Matter within 20 days after service of the New Matter as prescribed by Section 5.63(a) of the Commission's regulations. 52 Pa.Code § 5.63(a).

By Notice dated November 17, 2017, the Parties were informed that this matter was scheduled before me for a hearing on January 16, 2018, at 10:00 a.m. On November 22, 2017, I issued a Prehearing Order informing the Parties about the applicable procedural rules.

The hearing convened as scheduled. Complainant was self-represented and testified on her own behalf, but she did not sponsor any exhibits. Respondent was represented by Jeremy Farrell, Esquire. Attorney Farrell presented the testimony of Regulatory Consumer Relations Specialist Lisa Davenport, who sponsored pre-marked Exhibits A through E, H, L and M, all of which were admitted into the record. The hearing generated a transcript consisting of 56 pages. The record was closed by an interim order entered on February 20, 2018. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Loretta P. Warren resides at 54 Overbrook Road, Pittsburgh, Pennsylvania 15235. Tr. 7.

2. Respondent Duquesne Light Company is a jurisdictional electric utility company providing electric service to Pennsylvania customers.

3. Complainant receives electric service from Respondent at her Overbrook Road residence. Tr. 16.

4. Complainant owns and manages about 44 houses. Tr. 14.

5. When Complainant is readying her rental properties for occupancy, she keeps the electric service in her name. Tr. 16.

6. Complainant is the owner and landlord of the service address located at 8610 Pershing Street, Pittsburgh, Pennsylvania (Pershing Street). Tr. 14-16.

7. On May 6, 2014, Complainant contacted Respondent to establish electric service in her name at the Pershing Street service address. Tr. 16, 29-30.

8. On May 6, 2014, Respondent established electric service in Complainant's name at Pershing Street with a Pershing Street billing address. Tr. 30; Exhibit A.

9. Between May and November 2014, Complainant's tenant, Deborah Faulkner, occupied the Pershing Street service address. Tr. 21.

10. Between May 6, 2014 and October 3, 2014, Complainant's account for Pershing Street was credited by Respondent with a \$60.00 payment, resulting in an account balance of \$369.61. Tr. 30; Exhibits A, B and H.

11. Complainant did not make any payments on her account for Pershing Street. Tr. 19.

12. Complainant does not recall the date she contacted Respondent to discontinue service in her name at Pershing Street after her tenant Deborah Faulkner moved in. Tr. 22, 51, 54.

13. On September 29, 2014, Respondent received a request from Complainant to discontinue electric service in her name at Pershing Street as of October 3, 2014. Tr. 34-35; Exhibit C at 5.

14. On October 8, 2014, Complainant's tenant, Ms. Faulkner, applied for electric service in her name at Pershing Street. Tr. 47; Exhibit at 2-3.

15. Complainant's tenant's application for electric service at Pershing Street was denied on October 8, 2014. Tr. 47-48; Exhibit B at 2.

16. Sometime in October 2014, Complainant went to the local magistrate to evict her tenant, Ms. Faulkner, from Pershing Street. Tr. 21, 24.

17. After Complainant's tenant, Ms. Faulkner, was evicted from the service address, Complainant's son moved into Pershing Street sometime in November 2014. Tr. 25.

18. On November 14, 2014, Respondent mailed to Pershing Street Complainant's final bill in the amount of \$369.61 for the period May 6, 2014 through October 3, 2014. Tr. 28, 41; Exhibit D.

19. On December 11, 2014, Respondent mailed Complainant an invoice for \$369.61 for her outstanding balance at Pershing Street and informed Complainant that failure to pay the invoice would result in referring her account to a collection agency. Tr. 46; Exhibit E.

20. Respondent mailed the December 11, 2014 invoice to Complainant at the Pershing Street address. Tr. 47; Exhibit E.

21. The November 14, 2014 final bill, Exhibit D, and the December 11, 2014 invoice, Exhibit E, that were mailed to Complainant at the Pershing Street address were not returned to Respondent by the U.S. Postal Service. Tr. 43.

22. Respondent first received a telephone call from Complainant inquiring about the outstanding \$369.61 account balance sometime in 2016. Tr. 18, 45.

DISCUSSION

Legal Standards

Burden of Proof

In this proceeding, Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, Complainant must demonstrate that Respondent is responsible for the problem alleged in her Complaint through a violation of the Code or a regulation or outstanding order of the Commission. 66 Pa.C.S. § 701. This must be established by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of Complainant, shifts to Respondent. If the evidence presented by Respondent is of co-equal

weight, Complainant has not satisfied her burden of proof. Complainant now must provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n.*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n.*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Customer's Duty to Request Service Termination

The Commission's regulations impose an affirmative duty upon a utility customer to request service discontinuance. Section 56.16 of the regulations, in relevant part, provides as follows:

§ 56.16. Transfer of accounts

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days' notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. After a reasonable attempt to obtain meter access, if the public utility is not able to access the meter for discontinuance, service shall be discontinued with an estimated meter reading upon which the final bill will be based. The resulting final bill is subject to adjustment once the public utility has obtained an actual meter reading.

52 Pa.Code § 56.16.

Analysis

In her Complaint, Ms. Warren claims she asked Duquesne Light to terminate service at two service addresses: 8610 Pershing Street and 9914 Grandview Avenue. The Complainant intimates that Duquesne Light failed to terminate service in her name at Pershing Street in a timely manner after her tenant Deborah Faulkner moved in, and electric

service is still active in her name at Grandview Avenue. At the outset of her testimony, Ms. Warren, who owns 44 rental properties, admitted she was confused about which service address was at issue. Tr. 13-14. She clarified that the Pershing Street service address was the subject of her Complaint. *Id.* Ms. Warren's clarification, effectively abandoned her Grandview Avenue allegations. Importantly, Ms. Warren did not present any evidence concerning electric service at Grandview Avenue. Therefore, Ms. Warren's allegations concerning Grandview Avenue are dismissed without further discussion.

Now I will discuss Ms. Warren's allegations that despite her request, Duquesne Light failed to terminate electric service in a timely manner at her Pershing Street rental property after tenant Deborah Faulkner moved in. Therefore, according to Ms. Warren, she is not responsible for the \$369.61 account balance that accrued between May 6, 2014 through October 3, 2014. Tr. 28, 41; Exhibit D. Ms. Warren admits that she requested electric service in her name at Pershing Street to get the property ready for rental. Tr. 16. On May 6, 2014, Duquesne Light established electric service in Complainant's name at Pershing Street with a Pershing Street billing address. Tr. 30; Exhibit A. While a \$60 payment was made on the account, Ms. Warren maintains she never made any payments on the account at Pershing Street. Tr. 19, 30; Exhibits A, B and H.

After a utility service is established in a customer's name, the Commission's regulations require the customer to take affirmative steps to request service termination. 52 Pa.Code. § 56.16. A customer must "give at least 7 days' notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued." *Id.* If a customer fails to notify the utility and request service discontinuance, the customer remains responsible for service rendered until the notification is given or service is placed in the name of another customer. *Id.*

In the present case, Ms. Warren could not recall the date when she called Duquesne Light to terminate service out of her name at the Pershing Street service address. In support of her Complaint, Ms. Warren testified as follows:

I lived there [54 Overbrook Road] in February. Before there, I lived at 109 Lavern Street. So, you know, I have a lot of properties going on. But I usually call to cut the lights out within 30 days. Maybe I didn't call on time. Maybe that's why I called back and checked to see if the lights were off. But the tenant that was in there, she might have used my name, and he knows that. I know her. She is a very, very wicked person.

Tr. 16.

Ms. Warren relied upon her past practice of calling to request service termination within 30 days of renting her properties. Tr. 19-23, 51. Ms. Warren's past practice is speculative and does not rise to the substantial evidence standard needed to establish her burden of proof. *See, Norfolk and Western Railway*, cited above. The counter argument is easily made that in managing 44 properties, Ms. Warren simply forgot to request service termination at Pershing Street, particularly, in considering Ms. Warren's testimony that she had "so much going on," Tr. 15, and her tenant, Ms. Faulkner, at Pershing Street "tore the house up," Tr. 21, resulting in Ms. Warren evicting the tenant. Tr. 24-25.

Puzzling is the fact that Ms. Warren waited until 2016 to challenge the \$369.61 final bill for Pershing Street that accrued in 2014. Tr. 18, 45. Ms. Warren contends she never received a bill for Pershing Street. Tr. 20-21. Duquesne Light countered that the November 14, 2014 final bill, Exhibit D, and the December 11, 2014 invoice, Exhibit E, that were mailed to Complainant at the Pershing Street address were not returned to Duquesne Light by the U.S. Postal Service. Tr. 43. There is a presumption in the law that mail sent in the ordinary course of business that is not returned is presumed to have been received by the addressee. *See Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa.Super. 1982). Here, Ms. Warren admits she evicted her tenant in October 2014, and her son moved into Pershing Street sometime in November 2014. Under these circumstances, I am compelled to find credibility with Duquesne Light, *i.e.*, Duquesne Light sent a final bill to Ms. Warren at Pershing Street, she received the final bill in 2014.

Lastly, in her closing argument, Ms. Warren conceded that she did not have sufficient evidence to establish her burden of proof. Her closing argument states as follows:

The only thing I want to say is that usually when I have bills in my name for the other tenants, I shut them off.

My point is I usually ask Duquesne Light, if there is a final bill - - If I keep it on longer than 30 days, I ask them to send it to my 54 Overbrook address.

I don't know what happened, but three out of four times, I always cut the lights off within 30 days. I think I did, but I don't have a lot of evidence. I wish I had more evidence.

Tr. 54.

Without substantial evidence that Ms. Warren called in a timely manner to cancel electric service at Pershing Street, she remains responsible for the \$369.61 final bill that accrued while tenant Deborah Faulkner resided there. Without substantial evidence, there cannot be a finding that Duquesne Light violated a Commission statute, regulation or order. Therefore, Ms. Warren's Complaint will be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
3. Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*,

72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

4. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982).

5. A utility customer who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 52 Pa.Code § 56.16.

6. Complainant Loretta P. Warren failed to carry her burden of proof required under Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Loretta P. Warren against Duquesne Light Company at Docket No. F-2017-2626176 is dismissed.

2. That the Secretary shall mark Docket No. F-2017-2626176 closed.

Date: March 28, 2018

_____/s/
Conrad A. Johnson
Administrative Law Judge