

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rocco Prescia	:	
	:	
v.	:	F-2017-2629477
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Rocco Prescia’s Complaint against PPL Electric Utilities Corporation concluding that Rocco Prescia failed to carry his burden of proving by a preponderance of the evidence that there are incorrect charges on his utility bills.

HISTORY OF THE PROCEEDING

On October 5, 2017, Rocco Prescia (Mr. Prescia or Complainant) filed a formal Complaint (Complaint) against PPL Electric Utilities Corporation (Respondent or PPL) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on his electricity bills from PPL. In particular, Mr. Prescia averred that PPL was improperly assessing him electric generation charges despite him having selected a separate energy supplier. As relief, Mr. Prescia requested that PPL issue him a refund for the overbilled amount.

The Complaint was filed as a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, at BCS Case # 3539063.

On November 6, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated November 7, 2017, notified the parties that an initial telephonic hearing was scheduled in this matter for Tuesday, February 6, 2018, at 10:00 a.m.

A Prehearing Order was issued on January 16, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on February 6, 2018. Rocco Prescia appeared *pro se* and testified in support of his Complaint. He sponsored one exhibit, which was admitted into the record. Kimberly G. Krupka, Esq., represented the Respondent, and presented the testimony of Sherry Shaffer, who is a customer service representative for PPL. The Respondent sponsored two exhibits, which were admitted into the record.

The record was closed upon receipt of my copy of the transcript on March 5, 2018.

FINDINGS OF FACT

1. The Complainant is Rocco Prescia, who resides at 2268 Barness Drive, Allentown, PA 18109 (Service Address). Tr. 7.

2. The Respondent is PPL Electric Utilities Corporation, which serves as the electric distribution company (EDC) providing electricity service to the Complainant at the Service Address. Tr. 7.

3. Mr. Prescia has selected TriEagle Energy LP (TriEagle) to be his electric generation supplier (EGS). Tr. 9-10.

4. Mr. Prescia has never been billed directly by TriEagle nor has he ever paid TriEagle directly for the transmission and generation charges. Tr. 20.

5. Mr. Prescia has only made payments to PPL concerning his gas service. Tr. 20-21.

6. Mr. Prescia's monthly electricity bills from PPL reflect PPL's distribution charges as well as the generation and transmission charges that PPL collects on behalf of the energy supplier selected by Mr. Prescia. Tr. 12-21, Complainant Exhibit 1.

7. PPL's distribution charge consists of a flat customer charge and an additional charge based on kilowatt hours of electricity used by the customer. Tr. 34-36, PPL Exhibit 4.

DISCUSSION

In the present formal Complaint, Mr. Prescia alleged that there are incorrect charges on his electricity bills from PPL. In particular, Mr. Prescia averred that PPL was improperly assessing him electric generation charges despite him having selected a separate energy supplier. As relief, Mr. Prescia requested that PPL issue him a refund for the overbilled amount.

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.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility

presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). 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 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision 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 Co. 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 the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the 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).

At the February 6, 2018 hearing, Mr. Prescia testified that he selected TriEagle Energy LP to be his electric generation supplier, yet PPL is charging him both distribution and generation charges. Tr. 9-10. Mr. Prescia believes that PPL is billing TriEagle for his generation and transmission charges and that TriEagle is paying those charges to PPL on Mr. Prescia's behalf. Tr. 14. However, Mr. Prescia admitted that he was never billed directly by TriEagle nor had he ever paid TriEagle directly for the transmission and generation charges. Tr. 20. He

understood that the TriEagle's charges were "paid by PP&L" and testified that he "mailed his check to PPL only." Tr. 20-21.

During cross-examination by PPL's attorney, Ms. Krupka, Mr. Prescia also admitted that his monthly electricity bills from PPL reflect PPL's distribution charges as well as the generation and transmission charges that PPL collects on behalf of the energy supplier selected by Mr. Prescia. Tr. 12-21, Complainant Exhibit 1. In accordance with the provisions of 52 Pa.Code § 54.4 (Electric generation customer choice – Bill format for residential and small business customers), PPL's bills to Mr. Prescia clearly distinguish the distribution charges from the generation charges and state that the former is being assessed "for PPL Electric Utilities" and the latter is assessed "for TriEagle Energy LP." Tr. 19, Complainant Exhibit 1.

Next, Mr. Prescia disagreed with PPL calculating its distribution charges based on kilowatt hours (kWh). Tr. 24-28. Despite disagreeing with the use of kWh as a measuring unit for distribution service, Mr. Prescia was unable to suggest any alternatives for assessing distribution charges. *Id.*

In response to Mr. Prescia's testimony, PPL presented the testimony of Sherry Shaffer. Tr. 30. Ms. Shaffer testified that pursuant to PPL's Commission-approved tariff, the Respondent's distribution charge consists of a flat customer charge and an additional charge based on kWh of electricity used by the customer. Tr. 34-36, PPL Exhibit 4¹. She explained that Mr. Prescia's electricity bills from PPL consistently reflect these charges. Tr. 35-36, Complainant Exhibit 1.

Tariffs filed with state regulatory agencies such as the Commission are not mere contracts but have the force of law and are binding on the consumer and the utility. *Stiteler v. Bell Telephone Company*, 379 A.2d 339 (Pa. Cmwlth. 1977); *Brockway Glass Company v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pennsylvania Electric Company v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995). Upon reviewing the PPL bills that were admitted into the record in this matter, I find that the bills comply with the provisions of

¹ Supplement No. 244 to PPL Tariff Electric Pa. P.U.C. No. 201, Sixty-Ninth Revised Page 20.

52 Pa.Code § 54.4 and PPL's Commission-approved tariff at Supplement No. 244 to PPL Tariff Electric Pa. P.U.C. No. 201, Sixty-Ninth Revised Page 20. Therefore, Mr. Prescia has failed to carry his burden of proving that his bills from PPL are incorrect or improper. His present Complainant against the Respondent is dismissed in its entirety with prejudice.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a).

3. "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).

4. Complainant failed to carry his burden of proving that there are incorrect charges on his bills from PPL. See 52 Pa.Code § 54.4.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Rocco Prescia against PPL Electric Utilities Corporation, at Docket No. F-2017-2629477 is dismissed in its entirety with prejudice.

