

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bill Reviello	:	
	:	
v.	:	F-2017-2636807
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

A property owner filed a Complaint against an electric utility alleging that the utility transferred the account of a rental property from the tenant to the property owner after the utility discovered foreign wiring. The property owner requested that the Commission direct the utility to remove the charges he claimed were attributable to the tenant. This decision dismisses the Complaint because the utility complied with relevant Commission statutes, regulations and orders when it transferred the entire account of the rental property to the property owner.

HISTORY OF THE PROCEEDING

On November 30, 2017, Bill Reviello (Mr. Reviello or Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, dated November 1, 2017, at BCS

No. 3548733, dismissing the Complainant's informal Complaint. The Complaint was served on the Respondent by the Commission's Secretary's Bureau on December 5, 2017.¹

On December 26, 2017, the Respondent filed an Answer to the Complaint. In the Answer, the Respondent asserts that it acted in compliance with the law at all times. The Respondent concludes its Answer by requesting that the Complaint be dismissed.

By Telephonic Hearing Notice dated January 24, 2018, an Initial Telephonic Hearing was scheduled for this matter on Monday, March 12, 2018 at 10:00 a.m. and I was assigned as the Presiding Officer.

The hearing convened on March 12, 2018 as scheduled. Mr. Reviello appeared *pro se*. Kimberly Krupka, Esquire, appeared on behalf of PPL. Mr. Reviello provided testimony on his behalf and did not sponsor any exhibits for the record. Ms. Krupka presented two PPL witnesses who sponsored seven exhibits that were admitted into the record. A 65-page transcript of the hearing was filed with the Commission on April 18, 2018 and the record in this proceeding was closed on that date.

Mr. Reviello'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 Bill Reviello.
2. The Respondent in this case is PPL Electric Utilities Corporation.

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.

3. On September 1, 2016, PPL established electric service in the name of Mr. Reviello's tenant, Jessica Ferguson, at her apartment address of 502 Oak St., Apt. 3, 2 FL R, Old Forge PA 18518. Tr. 40; PPL Exhibit 2.

4. Ms. Ferguson's electric service was terminated by PPL on June 20, 2017 due to nonpayment. Tr. 44; PPL Exhibit 4.

5. Ms. Ferguson contacted PPL when the service was terminated to advise PPL that the hallway lights in the building also went out when her service was terminated. Tr. 44; PPL Exhibit 4.

6. PPL then conducted an investigation for foreign wiring on July 5, 2017. Tr. 45; PPL Exhibit 4.

7. PPL discovered that the meter serving Ms. Ferguson's apartment was also serving several hall lights for a common entryway for three apartments. Tr. 26, 27; PPL Exhibit 9.

8. Upon discovering the foreign wiring, PPL put Ms. Ferguson's account into Mr. Reviello's name effective July 5, 2017. Tr. 26-29; PPL Exhibits 1, 2, 3, 4, 9.

9. Ms. Ferguson's account was formally transferred to Mr. Reviello on July 12, 2017. PPL Exhibits 3, 4.

10. A final bill for Ms. Ferguson's account was generated at the time the account was put into Mr. Reviello's name on July 12, 2017. Tr. 45, 46; PPL Exhibit 1.

11. The final bill amount for Ms. Ferguson was \$1,052.97 as of July 5, 2017, and this amount was transferred to Mr. Reviello's account on July 13, 2017. Tr. 45, 46; PPL Exhibit 1.

12. On July 13, 2017, PPL sent a letter to Mr. Reviello indicating the actions it had taken to transfer Ms. Ferguson's account, and advising Mr. Reviello how to correct the issue. PPL Exhibit 7.

13. On July 20, 2017, Mr. Reviello faxed the foreign wiring fix form to PPL, signed by Ms. Ferguson, showing that the foreign wiring had been corrected on July 6, 2017. PPL Exhibit 7.

14. Upon receipt of the foreign wiring fix form, PPL took the account out of Mr. Reviello's name on July 20, 2017, effective July 6, 2017. PPL Exhibit 3.

15. Ms. Ferguson's electric had been shut off due to nonpayment from June 20, 2017 until Mr. Reviello sent the foreign wiring fix form back to PPL on July 20, 2017. Tr. 44; PPL Exhibits 3, 7.

16. When PPL received the foreign wiring fix form from Mr. Reviello, it added to his final transferred bill (from Ms. Ferguson) the amount of \$1.53 which was incurred on July 5, 2017 when PPL representatives went to check the foreign wiring situation at Mr. Reviello's premises. Tr. 45, 46; PPL Exhibits 3, 4.

17. The \$1.53 charge for the PPL testing at Mr. Reviello's premises was added to the originally transferred amount of \$1,052.97 from Ms. Ferguson, raising Mr. Reviello's total PPL account balance to \$1,054.50. Tr. 45, 46.

DISCUSSION

1) Burden of proof generally

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 case, Mr. Reviello is seeking relief from the Commission in the form of a reduction of the charges transferred by PPL to his account following PPL’s discovery of the foreign wiring at Mr. Reviello’s premises. Mr. Reviello therefore has the burden of proof in this case.

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).

Any 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, 194 Pa. Super. 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).

2) Complainant's foreign load Complaint

This Complaint involves foreign wiring. Foreign wiring refers to a situation where a ratepayer's meter (in this case, Ms. Ferguson's meter) registers usage for utility service provided to a person or persons other than the ratepayer.

In 1993, the General Assembly amended the Public Utility Code to include 66 Pa.C.S. § 1529.1 in order to address foreign wiring issues. Prior to 1993, the Commission resolved foreign wiring high bill Complaints by directing the utility company to remove the charges attributable to the foreign wiring from the customer's bill and to issue a bill for the foreign wiring in the property owner's name. The statute at 66 Pa.C.S. § 1529.1 places the burden of dealing with a foreign wiring problem onto the property owner and not on the tenant. The policy behind the change is that the owner is in a better position to know about the existence of the foreign wiring than a tenant. This section states (emphasis added):

§ 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 (emphasis added).

The phrase “not individually metered” as used in the statute means that the meter for the unit is registering foreign wiring. Shank v. PPL Electric Utilities Corporation, Docket No. C-2009-2087300, (Order entered August 31, 2009). The Commission has held that the presence of foreign wiring prevents a dwelling unit from being deemed “individually metered” as that term is used in 66 Pa.C.S. § 1529.1. David P. Boyce v. Duquesne Light Company, Docket No. Z-00223698 (Order entered September 1, 1994) (Boyce); Elizabeth Santos v. Metropolitan Edison Company, Docket No. C-00967757 (Order entered August 7, 1997) (Santos). Foreign wiring exists where a tenant has a meter, is a utility customer and utility service for another tenant or for the landlord is being billed through the tenant’s meter. Boyce. In other words, foreign wiring is utility service which is not related to serving a tenant, but for which the tenant is being billed. Santos. The Public Utility Code at 66 Pa.C.S. § 1529.1, requires that a public utility “shall forthwith list the account for the premises in question in the name of the owner” when a residential building contains one or more dwelling units not individually metered. 66 Pa.C.S. § 1529.1(b); Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010) (Ace Check); 1-A Realty v. Pa. Pub. Util. Comm’n, 63 A.3d 480 (Pa. Cmwlth. 2013).

Here, the Complaint alleges that the Respondent improperly transferred Ms. Ferguson’s entire account balance to the Complainant. The Complainant contends that the Commission should remove most of the electric charges, because he was unaware of the foreign wiring situation and because his tenant refused to pay her own electric bills in the first place. *See*, Complaint at ¶¶ 4, 5; Tr. 9-12. The Complainant further contends that foreign wiring cases should be decided on a case-by-case basis, giving due consideration to the fairness and equity of each case where a person is being billed for foreign wiring. Complaint at ¶ 5; Tr. 9-12.

Although Mr. Reviello's arguments are compelling in terms of logic and common sense, the laws governing foreign wiring are strict liability in nature. In other words, there is no judicial latitude afforded to the Commission to provide relief to a Complainant who is billed for foreign wiring once such wiring is discovered.

The Public Utility Code does not authorize the Respondent to collect foreign wiring charges from a tenant. In Santos the Commission held that "[t]he utility must . . . place the account in the landlord's name upon discovery of the foreign load and **collect unpaid bills only from the landlord.**" (emphasis added) Santos at 14. The Commission also stated, "[c]learly, the utility must pursue collection of any unpaid amounts **from the landlord and not from the tenant.**" (emphasis added) Santos at 16; Allen L. Jones v. Pennsylvania Power & Light Company, Docket Number C-00971013 (Order entered February 25, 1999).

After the landlord corrects the foreign wiring and the correction work is verified by the utility, the utility must transfer the account back to the name of the tenant. However, the landlord remains responsible for any arrearage on the tenant's account. Kopf v. PECO Energy Company, Docket No. C-2012-2332993 (Order entered June 13, 2013) (Kopf); Ace Check. The rule applies even if the amount of usage attributable to foreign wiring is minimal. Kopf; Ace Check. The Complainant is, therefore, responsible for the tenant's account balance, including arrearages, as of the date of discovery of the foreign wiring plus usage until the Complainant removes the foreign wiring and the Respondent verifies the removal.

As a result of the above legal authority, I cannot apportion the foreign wiring bill or consider the relative equities of Mr. Reviello's situation. I am judicially constrained to allocate the entire tenant bill to Mr. Reviello until July 6, 2017, the date that the foreign wiring was corrected. Mr. Reviello may seek relief in a court of general jurisdiction such as a Magisterial District Court or a Court of Common Pleas, but the Commission lacks the legal jurisdiction to grant the relief that Mr. Reviello is seeking. Accordingly, Mr. Reviello's argument in this regard is dismissed.

In addition to the arguments of fairness and equity, Mr. Reviello objected to the amount of time that it took PPL to verify that he had corrected the foreign wiring situation. Mr. Reviello contends that he should not be billed for any periods of delay on the part of PPL in verifying the wiring correction and transferring the account back to the tenant. This argument must be dismissed as well, for the reasons stated below.

As noted above, Ms. Ferguson's electric service was terminated on June 20, 2017 due to nonpayment (Tr. 44; PPL Exhibit 4). Ms. Ferguson then contacted PPL to state that the hall lights also went out when her electric service was terminated (Tr. 44; PPL Exhibit 4). PPL then investigated and verified the foreign wiring situation on July 5, 2017 (Tr. 45; PPL Exhibit 4). PPL then transferred Ms. Ferguson's account into Mr. Reviello's name effective July 5, 2017 and then transferred the account back into Ms. Ferguson's name effective July 6, 2017 once it received the foreign wiring fix papers from Mr. Reviello on July 20, 2017 (Tr. 26-29; PPL Exhibits 1, 2, 3, 4, 9).

Given these facts, I conclude that there was no delay on the part of PPL in moving the account back into Ms. Ferguson's name. Although the switch back to Ms. Ferguson did not take place until July 20, 2017, PPL backdated the effective date to July 6, 2017, the date attested to by Ms. Ferguson as the foreign wiring fix date (PPL Exhibit 9). Therefore, the account was only in Mr. Reviello's name for one day, July 5, 2017. As such, there can be no finding of an unreasonable delay in PPL's actions of changing the account from Mr. Reviello's name back into Ms. Ferguson's name.

I also note that there was no electric usage being registered by Ms. Ferguson after the account was transferred into Mr. Reviello's name on July 5, 2017, as her electric had already been shut off as of June 20, 2017 (Tr. 44; PPL Exhibit 4). The only usage on or after that date was the \$1.53 of usage when PPL employees came out to Mr. Reviello's premises to conduct the foreign wiring testing; after the tests, the electric was shut off again (Tr. 45, 46; PPL Exhibits 3, 4). Therefore, even if PPL had unnecessarily delayed switching the account from Mr. Reviello back to Ms. Ferguson (which was not the case) there would have been no refund to give back to Mr. Reviello as there was no electricity being consumed by Ms. Ferguson during that timeframe.

Since the Complainant's Complaint does not set forth any violation of the Public Utility Code, a Commission Order or Regulation, or a Commission-approved tariff, the Complaint will be dismissed, and an appropriate Order will be entered below.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. "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).

4. The Commission has held that the presence of foreign wiring prevents a dwelling unit from being deemed "individually metered" as that term is used in 66 Pa.C.S. § 1529.1; Elizabeth Santos v. Metropolitan Edison Company, Docket No. C-00967757 (Order entered August 7, 1997).

5. The Public Utility Code requires that a public utility "shall forthwith list the account for the premises in question in the name of the owner" when a residential building contains one or more dwelling units not individually metered. 66 Pa.C.S. § 1529.1(b); Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010).

6. The Complainant has failed to meet his burden of proof to show that the Respondent has improperly placed the tenant's utility charges on his utility account.

