

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chalmers A. Simpson, Jr.	:	
	:	
v.	:	C-2017-2605855
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a Complaint filed by Chalmers A. Simpson (Complainant) against PPL Electric Utilities Corporation (PPL or Company) alleging that he has been incorrectly billed by PPL. Complainant did not meet his burden of proof, and his Complaint must be dismissed.

**HISTORY OF THE PROCEEDING**

On May 24, 2017, Complainant filed a formal Complaint against PPL alleging that PPL had billed him incorrectly. Specifically, Complainant contended that one Angeline Daniels, with whom he had resided at a prior service address, should be held jointly responsible for paying the electric bills sent to Complainant. Complainant asked for a payment arrangement for his outstanding balance. Complainant attached copies of a number of bills to his Complaint.

On June 13, 2017, PPL filed an Answer to the Complaint disputing the factual averments therein and asking that the Complaint be dismissed.

On June 19, 2017, a hearing Notice was issued setting August 9, 2017, as the date for an initial hearing in this matter.

On July 7, 2017, a Notice rescheduling the August 9, 2017 hearing until August 24, 2017, was issued.

On August 1, 2017, I issued a standard form prehearing Order.

On August 16, 2017, Complainant presented copies of requests for the production of documents on PPL, the City of Philadelphia Department of Licensure and Inspections, and the Commonwealth's Office of Open Records. The request was for PPL billing records for various accounts. The request was not made in conformity with the Commission's procedural rules, but was submitted based on the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. § 67.101 *et seq.* I note that the RTKL encompasses governmental public records only, not private billing records.

On August 16, 2017, Complainant also sent a letter to my office requesting that the telephonic hearing be changed to an in-person hearing. By letter received August 18, 2017, Counsel for PPL did not oppose Complainant's request.

On August 24, 2017, I convened an in-person hearing in this matter, but Complainant was not present in the hearing room. Counsel for PPL was available, with a witness, by telephone. Counsel had previously sent to Complainant and myself copies of his proposed exhibits. When I reached Complainant by telephone, he stated that he was not prepared to go forward with the hearing as his RTKL requests had not been responded to. PPL's position was that Complainant's request had been responded to with the documents pre-filed by PPL as proposed hearing exhibits.

As Complainant was neither present nor prepared to go forward, I continued the hearing. PPL did not object to the continuance. The continuance was formalized in an Order issued August 28, 2017.

On November 22, 2017, a hearing Notice for a rescheduled hearing was issued, setting the date for that hearing on January 5, 2018.

On December 15, 2017, I received an email from counsel for PPL requesting a continuance of the January 5, 2018 hearing. The request for a continuance was unopposed and was granted.

On December 21, 2017, I received correspondence from Complainant titled, "Petition for Mediation Case View." However, that document did not request mediation. It was a discovery request for additional documentation from PPL.

On December 27, 2017, a Third Prehearing Order was issued.

On January 7, 2018, Complainant made an Application for Issuance of Subpoenas on PPL, Mr. Elias Harbilas, and an entity known as the Capital Region Water Company.<sup>1</sup>

On January 9, 2018, a hearing Notice was issued, setting a telephonic hearing for February 15, 2018.

On January 12, 2018, a Corrected Hearing Notice was issued, setting an in-person hearing for February 15, 2018.

On January 19, 2018, an Order was issued granting Complainant's Application for Issuance of a Subpoena on Elias Harbilas. A subpoena was issued on January 22, 2018.

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<sup>1</sup> It was averred that Mr. Harbilas was a landlord at one of the residences occupied by Complainant.

On January 23, 2018, an Order was issued quashing the subpoena of Mr. Harbilas after it was made known to me by counsel for Mr. Harbilas that he had not been served with the Application for Subpoena, a Certificate of Service attached to that earlier Application notwithstanding. Further, it became clear that the subpoena of Mr. Harbilas was related to collateral litigation by the Complainant in the Dauphin County Court of Common Pleas. Finally, the Order of January 23, 2018 also denied the January 7, 2018 Application for Issuance of Subpoenas on PPL and Capital Region Water Company due to the defective service of that Application.

On February 14, 2018, PPL requested a continuance to allow settlement discussions to conclude. The requested continuance was unopposed and was granted.

On February 15, 2018, Complainant again made an Application for the Issuance of Subpoenas on Elias Harbilas as well as PPL.

On February 20, 2018, a hearing rescheduling Notice was issued setting March 21, 2018 as the date for a hearing in this matter.

On February 22, 2018, counsel for PPL filed an Objection to the February 15, 2018 Application for Issuance of Subpoenas arguing that the sole issue in this proceeding is whether PPL acted improperly by transferring what PPL maintains is an unpaid balance for an account servicing a previous address to Complainant's current account. PPL also objected to the Application on the basis that data sought by the Complainant had already been provided, that portions of the request were irrelevant to the issue at hand, that complying with the request would be unduly burdensome, and that the subpoena, if issued, might put PPL in the position of potentially violating the privacy rights of other ratepayers.

On February 23, 2018, I issued an Order denying Complainant's February 15, 2018 Application for the Issuance of Subpoenas. As part of that Order, I identified the sole issue to be considered in this proceeding as: whether PPL acted improperly by transferring what PPL

maintains is an unpaid balance for an account in Complainant's name at a previous address to Complainant's current account.

On March 22, 2018, a hearing Notice was issued setting the date for an in-person hearing to April 23, 2018.

On April 23, 2018, an in-person hearing convened at the Commission's Harrisburg office.

Complainant was present and represented himself, presenting testimony and twenty-two exhibits which were marked and received into the record: Exhibit C-1, a letter dated February 1, 2018, from PPL to Complainant; Exhibit C-2, a letter dated February 14, 2018, from PPL to Complainant; Exhibit C-3, a letter dated March 26, 2018 constituting a ten day shut-off notice, from PPL to Complainant; Exhibit C-4, a letter dated April 4, 2018 from PPL to Complainant; Exhibit C-5, a payment agreement dated July 18, 2016; Exhibit C-6, a statement dated June 17, 2016; Exhibit C-7, a statement dated July 19, 2016; Exhibit C-8, a statement dated September 16, 2018; Exhibit C-9, a statement dated June 18, 2014; Exhibit C-10, a billing summary dated September 17, 2014; Exhibit C-11, record of a payment on November 18, 2014; Exhibit C-12, a bill summary dated November 18, 2014; Exhibit C-13, a billing summary dated December 17, 2014; Exhibit C-14, a billing summary dated January 20, 2015; Exhibit C-15, a billing summary dated February 18, 2015; Exhibit C-16, a billing summary dated March 19, 2015; Exhibit C-17, a billing summary dated April 17, 2015; Exhibit C-18, a billing summary dated May 19, 2015; Exhibit C-19, a billing summary dated June 18, 2015; Exhibit C-20, a billing summary dated September 17, 2015; Exhibit C-21, a billing summary dated April 20, 2016; and Exhibit C-22, a billing summary dated September 16, 2016.

PPL presented the testimony of Janet Brett, a Senior Lead Customer Service Representative for PPL, and six exhibits that were received into the record: PPL Exhibit 4, an account activity statement for 2224 Walnut Street, Harrisburg, Pennsylvania; PPL Exhibit 5, an Account Contact History relative to service at 2224 Walnut Street, Harrisburg, Pennsylvania;

PPL Exhibit 11, an account activity statement; PPL Exhibit 12, an Account Contact History relative to service at the 317 Peffer Street, Harrisburg, Pennsylvania service address; PPL Exhibit 13, a payment agreement; and, PPL Exhibit 15, a “thank you” letter from PPL with enclosed statements.

The record closed on May 18, 2018 with the filing of a 127-page transcript, Complainant’s twenty-two exhibits and PPL’s six exhibits. This case is now ready for adjudication.

### FINDINGS OF FACT

1. Complainant is Chalmers A. Simpson, Jr.
2. Respondent is PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution company that provided electric services for the residences identified in the Complaint.
3. On April 25, 2014, Complainant moved into the 317 Peffer Street residence along with his fiancé, Angeline Daniels. Tr. at 12, 51.
4. The account number for service at 317 Peffer Street is 58790-78079. PPL Exhibit 11.
5. The first bill issued for service at 317 Peffer Street was issued on May 28, 2014. Tr. at 58.
6. Complainant, who called PPL to request electric service at Peffer Street, was identified by PPL as the primary ratepayer, and Angeline Davis was identified by PPL as an additional ratepayer for service at 317 Peffer Street. Tr. at 76, 82.

7. The customer who calls to initiate service is listed by PPL as the primary ratepayer, while any other ratepayer for the account is listed as an additional ratepayer. Tr. at 81, 91.

8. The “primary ratepayer” is primarily responsible for the bill. Tr. at 95.

9. Complainant had electric service from PPL at 317 Peffer Street, Harrisburg, Pennsylvania from April 25, 2014, to October 13, 2016. Tr. at 12, 51; Exhibit C-2, PPL Exhibit 11.

10. On September 27, 2016, Complainant moved from the 317 Peffer Street address to 2224 Walnut Street, Harrisburg, Pennsylvania. Tr. at 13, 19.

11. Complainant had electric service from PPL at 2224 Walnut Street, Harrisburg, Pennsylvania, from September 27, 2016 to October 27, 2017. Exhibit C-2; PPL Exhibits 4-5.

12. The account number for service at 2224 Walnut Street is 97226-06045. PPL Exhibit 4.

13. A connection order was issued for the Walnut Street address on September 26, 2016. Tr. at 70; PPL Exhibit 5.

14. When a PPL customer moves from one service address to another, any overdue balance is transferred. Tr. at 71.

15. Angeline Davis never resided at the Walnut Street address. Tr. at 52.

16. A final bill in the amount of \$580.59 was issued for the Peffer Street account on October 13, 2016, and that amount was subsequently transferred to the Walnut Street account. Tr. at 58, 68-70, 74; PPL Exhibits 5, 11, 16.

17. Complainant is the primary ratepayer for the 2224 Walnut Street account.  
Tr. at 71.
18. The mailing address for a bill can be different from the service address for a bill. Tr. at 57.
19. When an account is final, PPL obtains an address to send the final bill to.  
Tr. at 57.
20. PPL does not divide balances between adults residing in a prior residence.  
Tr. at 71.
21. At the Walnut Street address, the water pipes leaked, and the hot water heater kept emptying and refilling. Tr. at 22-23; 26-27.
22. Complainant has a current, active service account with PPL for service at 636 Curtin Street, Harrisburg, Pennsylvania. Tr. at 55; Exhibit C-2.
23. Complainant, at the time of hearing, had been approved to participate in PPL's OnTrack program. Tr. at 77, 120; Exhibit C-4.
24. The OnTrack program provides forgiveness for a portion of a past-due balance every month that a ratepayer makes a regular monthly payment. Tr. at 78.
25. The OnTrack program provides for a reduced payment amount that is less than what the customer would pay for his actual usage. Tr. at 78.

26. Complainant was offered an opportunity to transfer the balance of the Walnut Street account to the Curtin Street account so that the balance would be part of the balance paid through OnTrack. Tr. at 79.

27. Account balances for service at the Peffer Street and Walnut Street addresses were not transferred to the Curtin Street account. Tr. at 56, 74.

28. The Walnut Street account closed with a balance due of \$2,113.07. Tr. at 75-76; Exhibit C-2.

29. On July 18, 2016, PPL entered into a payment arrangement (PAR) with Complainant whereby he would pay \$59 by July 25, 2016, and thereafter his current bill plus \$19 to be applied against his arrearage every month. Tr. at 43, 61; PPL Exhibit 12; PPL Exhibit 13.

30. The PAR amount established on July 18, 2016 was for \$516.29. Tr. at 66.

31. Complainant defaulted on the July 18, 2016 PAR. PPL Exhibit 13.

32. Complainant defaulted on three previous PARs with PPL. PPL Exhibit 13.

### DISCUSSION

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). "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). As the party seeking relief from the Commission, Mr. Simpson bears the burden of proof.

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. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*).

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.*

In September 2014, Complainant moved into a residence at 317 Peffer Street, Harrisburg, Pennsylvania along with his then fiancé, Angeline Daniels. Complainant, who called PPL to request electric service at Peffer Street, was identified by PPL as the primary ratepayer, and Angeline Davis was identified by PPL as an additional ratepayer. On September 27, 2016, Complainant moved from the 317 Peffer Street address to 2224 Walnut Street, Harrisburg, Pennsylvania. Ms. Daniels has never resided at the Walnut Street residence. An unpaid balance of \$580.59 was transferred from the 317 Peffer Street account to the 2224 Walnut Street account. At the Walnut Street address, the water pipes leaked, and the hot water heater kept emptying and refilling which resulted in a higher electric bill than would have been the case if the heating system did not leak.

The \$580.59 balance owed on the Peffer Street account was transferred to the Walnut Street account. It is that balance which is one of the issues in this case. However, the \$580.59 transferred balance is part of a larger, combined past due balance of \$2,093.07 accrued at the Peffer Street and Walnut Street addresses. Complainant argues that because Angeline Daniels was a resident at the Peffer Street address and was listed as an additional ratepayer by

PPL, she is jointly responsible for the outstanding \$580.59 balance on that account and should be pursued for payment by PPL. Complainant argues that because the Peffer Street bills were in Ms. Daniels' name as well as his, she is jointly liable for that \$580.59 outstanding balance. Complainant also claims that a portion of the combined past due balance of \$2,093.07 is PPL's responsibility because the pipes and water heater at the Walnut Street address were leaking.

PPL responds that as the person who transferred service to Walnut Street and whose name was on the Peffer Street account, Complainant is the primary ratepayer for both the Peffer Street and Walnut Street accounts, and so PPL is looking to him as the ratepayer responsible for the \$2,093.07 outstanding balance. PPL stated that it does not apportion charges between the primary ratepayer and other residents.

In its regulations, the Commission defines a "customer" as:

A natural person at least 18 years of age in whose name a residential service account is listed and who is *primarily responsible* for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested. A natural person remains a customer after discontinuance or termination until the final bill for service is past due.

52 Pa. Code § 5.62 (emphasis added).

Similarly, Chapter 14 of the Public Utility Code defines a "customer," as, "a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested." 66 Pa. C.S. § 1403.

PPL, in its tariff, defines a "customer," as:

A customer is an individual, firm, organization or other electric utility which purchases electric service at one location under one rate classification, contract or schedule. Note 1 – If service is provided to a

customer at one location through more than one meter and under several rate classifications or schedules but only for one class of service (for example, separate meters for residential regular and water heating service), such multiple rate services shall be counted as only one customer at the one location. Note 2 – Where service is used for only part of a month the bill will be prorated. Note 3 – Those customers purchasing electricity for their own use and not for resale.

I also note that in its tariff at Rules for Electric Service, Rule 9 - Billing and Payment for Service, PPL refers to “customer,” in the singular.

While the bills for Peffer Street were in the names of both Complainant and Ms. Daniels, when Complainant transferred service to Walnut Street, he placed service in his name, only. Consequently, he became the sole account holder and continued to be primarily responsible for the transferred balance. The arrearage owed from the Peffer Street account “followed” him to the Walnut Street account. I see nothing in the Commission’s regulations or PPL’s tariff that requires PPL to apportion charges and pursue Ms. Daniels for payment, and the Commission has no authority to make such an apportionment.

Complainant offered no legal theory under which PPL could be held responsible for plumbing system leakage and the consequently higher electric bills at the Walnut Street service address. The condition of the plumbing and electric hot water heater at that residence and the fact that they contributed to higher electric bills was not the responsibility of PPL.

Complainant has failed to show that either Ms. Daniels or PPL have any responsibility for his electric bills under the Code, the regulations of the Commission, or PPL’s tariff. Any private agreement between Complainant and Ms. Daniels for the payment of expenses at the Peffer Street residence would not be properly before the Commission.

Finally, although Complainant asked for a payment arrangement in his original Complaint, he did not contest the amount of his bills, nor did he put on a case arguing for a payment arrangement, focusing instead on apportioning responsibility for charges. By not presenting any evidence or argument on his PAR issue, Complainant effectively abandoned this

claim, and therefore it will not be addressed. See *Howard v. People Natural Gas Co.*, Docket No. C-2017-2613080 (Final Order entered January 18, 2018).

Complainant has failed to show that PPL has violated any provision of the Public Utility Code or the regulations of the Commission, and his Complaint must be dismissed.

### CONCLUSIONS OF LAW

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

2. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S. § 332(a). This must be shown by a preponderance of the evidence. *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).

3. A customer is defined as a natural person at least 18 years of age in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or an adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested. A natural person remains a customer after discontinuance or termination until the final bill for service is past due. 52 Pa.Code § 56.2.

4. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth. 1981).



