

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Kropp	:	
	:	
v.	:	F-2017-2610813
	:	
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 June 8, 2017, Richard Kropp (Mr. Kropp 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 at BCS No. 3504749, which dismissed the

Complainant's informal Complaint. The Complaint was served on the Respondent by the Commission's Secretary's Bureau on June 22, 2017.<sup>1</sup>

On July 11, 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 July 21, 2017, an Initial Telephonic Hearing was scheduled for this matter on Thursday, September 14, 2017, at 10:00 a.m. and I was assigned as the Presiding Officer. I issued a Prehearing Order on September 5, 2017, advising the parties of various procedural rules that would govern the hearing.

The hearing convened on September 14, 2017 as scheduled. Mr. Kropp indicated that the building in question was owned by his corporation, Kropp, Inc. I advised Mr. Kropp that he would need to proceed with an attorney due to the fact that the subject property where the utility dispute arose was owned by a corporation. Mr. Kropp requested a continuance to secure legal counsel and I granted the request. The Respondent's counsel did not object to the continuance request.

By Telephonic Hearing Notice dated October 12, 2017, a Telephonic Hearing was scheduled for this matter on Thursday, November 30, 2017. By letter dated October 31, 2017, counsel for the Respondent made a continuance request. The request was not opposed and I granted the request.

By Telephonic Hearing Notice dated January 23, 2018, a Telephonic Hearing was scheduled for this matter on Thursday, March 15, 2018. By letter dated February 13, 2018, counsel for the Complainant made a continuance request. The request was not opposed and I granted the request.

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<sup>1</sup> 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.

By Telephonic Hearing Notice dated March 9, 2018, a Telephonic Hearing was scheduled for this matter on Thursday, May 10, 2018.

The hearing convened on May 10, 2018 as scheduled. Mr. Kropp appeared with his attorney, David Allebach, Jr., Esquire. Mr. Kropp also presented a witness to testify on his behalf. Kimberly Krupka, Esquire, appeared on behalf of PPL. Mr. Kropp and his witness testified and Mr. Kropp sponsored two exhibits that were admitted into the record. Ms. Krupka presented two PPL witnesses who sponsored seven exhibits that were admitted into the record. A transcript of the hearing totaling 74 pages was filed with the Commission on June 4, 2018 and the record in this proceeding was closed on that date.

Mr. Kropp'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 Richard Kropp.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. Mr. Kropp and his wife own the corporation called Kropp, Inc. Tr. 11.
4. Kropp, Inc. owns the building at issue in this case – 4483 and 4485 Horseshoe Pike, Honey Brook, PA 19344 (service address). Tr. 11; Kropp Exhibits 1 and 2.
5. The service address is a three unit apartment complex. Tr. 11 – 12.
6. The first floor apartment at 4485 Horseshoe Pike is a two bedroom apartment that has access to the basement of the service address. Tr. 12 – 14.

7. The other two apartments do not have access to the basement of the service address. Tr. 14.

8. Mr. Kropp had access to the basement through an outside Bilco door. Tr. 12 – 13.

9. The basement of the service address contains three separate furnaces and three separate hot water heaters, serving the three separate apartments located at the service address. Tr. 15 – 16.

10. The basement of the service address contained lights and a smoke detector. Tr. 16.

11. When Mr. Kropp's service technicians needed to perform maintenance work on the furnaces or hot water heaters, he would provide them with access to the basement to do the work. Tr. 17, 18, 23, 24.

12. Mr. Kropp's second and third floor tenants contacted PPL to complain about their bills because they thought there might be foreign wiring feeding into their meters. Tr. 38.

13. PPL sent out an investigator on December 22, 2016 in response to the tenants' complaints. Tr. 38.

14. PPL's investigator did not find any foreign wiring attributable to the second or third floor tenants' meters. Tr. 40.

15. PPL's investigator did find foreign wiring attributable to the first floor tenant's unit. Tr. 40 – 41.

16. The foreign wiring consisted of the common use of the basement lights and the common use of the smoke detector in the basement. Tr. 34, 41.

17. Mr. Kropp was present during the foreign wiring investigation. Tr. 45.

18. PPL's investigator advised Mr. Kropp that the tenant's name would be taken off the meter and that his name would be placed on that meter. Tr. 45.

19. PPL's investigator also advised Mr. Kropp that he would be responsible for the electric usage until the situation was corrected. Tr. 45.

20. PPL's investigator also advised Mr. Kropp that he would receive a fix form, which was to be signed by himself and the tenant; if the tenant refused to sign, PPL would come out to verify that the situation was corrected. Tr. 45 – 46.

21. PPL's investigator also advised Mr. Kropp that the electric meter would go back in the tenant's name when the situation was corrected. Tr. 46.

22. PPL then transferred the account of the first floor tenant (Ms. Pearce) into Mr. Kropp's name. Tr. 46, 54 – 56.

23. Ms. Pearce's account was transferred into Mr. Kropp's name on December 22, 2016, with a balance at the time of \$627.02. Tr. 54; PPL Exhibits 3 and 7.

24. Ms. Pearce incurred electric usages charges for 22 more days after the account was transferred into Mr. Kropp's name. Tr. 55 – 56.

25. Ms. Pearce's additional electric usage charges for the 22 days amounted to \$199.30. Tr. 55 – 56; PPL Exhibit 3.

26. Mr. Kropp was no longer responsible for usage incurred by Ms. Pearce after January 16, 2017, because the foreign wiring situation had been resolved. Tr. 56; Kropp Exhibit 2.

27. The total foreign wiring amount billed to Mr. Kropp was \$826.32, consisting of Ms. Pearce's transferred balance of \$627.02 and Ms. Pearce's additional usage of \$199.30. Tr. 56.

## 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. Kropp is seeking relief from the Commission in the form of the elimination of the charges transferred by PPL to his account following PPL's discovery of the foreign wiring at Mr. Kropp's premises. Mr. Kropp 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. Pearce'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 Complainant alleges that the Respondent improperly transferred Ms. Pearce's entire account balance to the Complainant. The Complainant contends that the Commission should remove these electric charges, because they do not fall under the legal definition of foreign wiring. Tr. 69 – 70. The Complainant contends that the basement lights and smoke detector were the responsibility of Ms. Pearce under her lease, and that she had exclusive use of the basement. Id. Moreover, the Complainant contends that all landlords have the right to go in to maintain utilities that are in the apartment. Id.

Although Mr. Kropp'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. Moreover, regarding Mr. Kropp's assertion that the landlord's use of the basement lights and smoke detector do not constitute foreign wiring, as noted above "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 (emphasis added). 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.

In this case, the evidence is undisputed that when Mr. Kropp's service technicians needed to perform maintenance work on the furnaces or hot water heaters, he would provide them with access to the basement to do the work. Tr. 17, 18, 23, 24. Therefore, these technicians, acting on behalf of Mr. Kropp, would be using the lights and the smoke detector for which the tenant Ms. Pearce was being billed. Ms. Pearce was therefore paying for electric usage that benefitted only the landlord or the other tenants, during those times when the technicians were in the basement doing work on the other tenant's furnaces or hot water heaters. Accordingly, this situation fits within the legal definition of foreign wiring.

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, having concluded that there was foreign wiring, I cannot apportion the foreign wiring bill or consider the relative equities of Mr. Kropp’s situation. I am judicially constrained to allocate the entire tenant bill to Mr. Kropp until the foreign wiring situation was fixed. Mr. Kropp 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. Kropp is seeking. Accordingly, to the extent that Mr. Kropp raised this issue, Mr. Kropp’s argument in this regard is dismissed.

I also note that Mr. Kropp did not contend that PPL delayed taking the account out of his name once the foreign wiring situation was fixed. Therefore, that particular issue was not before me. I do note, however, that had that issue been raised, the case file materials indicate that there was only a three-day time lag from January 13, 2017 when the fix occurred through January 16, 2017 when the account was removed from Mr. Kropp’s name.

Finally, I note that there was considerable disagreement between the parties regarding whether foreign wiring existed because another tenant's furnace was connected to Ms. Pearce's meter. However, since the record evidence demonstrates that foreign wiring existed based upon the basement lights and smoke detector, it is unnecessary for me to resolve the disputed issue of possible foreign wiring related to the other tenant's furnace. Therefore, I will not make any ruling in that regard in this Initial Decision.

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

