

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carol Eberhard	:	
	:	
v.	:	C-2018-3004848
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint filed by Carol Eberhard (Complainant) alleging billing errors by PPL Electric Utilities Corporation (PPL or Company). Complainant failed to carry her burden of showing that she was harassed by PPL or that PPL engaged in billing practices contrary to its lawfully filed tariff.

HISTORY OF THE PROCEEDING

On September 4, 2018, the Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL at Docket No. C-2018-3004848. Complainant averred that she has received inconsistent bills for her electric service and has been harassed by phone calls from PPL. Complainant requested that damages be paid to her in the amount of \$2,500 per call from PPL.

On October 9, 2018, PPL filed an Answer to the Complaint. In that Answer, PPL admitted that Complainant's July 2018 bill was issued late but that an extension of time for

payment was provided. PPL denied all other accusations and asked that the Complaint be dismissed.

On November 2, 2018, a hearing Notice was issued setting December 7, 2018 as the date for a telephonic hearing in this case.

On December 7, 2018, a telephonic hearing was held, pursuant to notice, with the hearing originating from the Commission's Harrisburg office. Complainant was present and offered testimony. PPL was represented by Graig M. Schultz, Esquire, who presented the testimony of PPL witness Jan Brett. Two exhibits, PPL Exhibit 1 (an Account Activity Statement) and PPL Exhibit 2 (an Account Contact History) were received into evidence.

At the conclusion of the hearing, but prior to the close of the record, Complainant asked to be allowed to late-file exhibits in the form of bills. Counsel for PPL did not object to the record being held open for this purpose. On December 10, 2018, I received Complainant's proposed exhibits along with an explanatory letter from Complainant. Copies of these documents were provided to counsel for PPL.

On January 10, 2019, counsel for PPL requested that the hearing in this matter reconvene for the purpose of cross-examination and rebuttal prior to a ruling on the admissibility of Complainant's proposed exhibits. That request was granted, and a further hearing was scheduled for February 20, 2019, but that hearing was continued due to inclement weather. The hearing was rescheduled for March 19, 2019.

On March 19, 2019, a telephonic hearing reconvened originating from the Commission's Harrisburg office. Complainant provided additional testimony relative to her proposed exhibit and was cross-examined by counsel for PPL. Complainant's Exhibit No. 1, a screen shot from her computer of calls on her Xfinity account, was admitted to the record.

The record in this case consists of the hearing transcripts from December 7, 2018 and March 19, 2019, a total of forty-seven pages, along with the PPL Exhibits 1 and 2 and

Complainant's Exhibit No. 1. The record closed on March 28, 2019 with the filing of the transcript of the March 19, 2019 hearing.

This matter is now ready for decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Carol Eberhard.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. The service address is 218 Burke Street, Jersey Shore, Pennsylvania.
4. Complainant pays her bills regularly, and at the time of the hearings in this case, there was no balance owing on the account. Tr. at 11.
5. PPL customer bills are generated monthly, typically at some point between 24 to 36 days of each billing cycle. Tr. at 12.
6. Complainant's bill is normally issued the first week of each month. Tr. at 12.
7. Complainant's payment due date is twenty days after her bill is generated. Tr. at 12.
8. Complainant's July 2018 bill was generated on July 23, 2018 in the amount of \$144.38. Tr. at 13, 23.
9. Although Complainant paid her July bill in full on August 6, 2018, her August bill had been generated on August 2, 2018, which combined the amounts due for both July and August. Tr. at 14-15, 23.

10. Two late fee payments were assessed against Complainant's account: \$1.06 and \$1.74. Tr. at 15.

11. On August 29, 2018, August 31, 2018, and September 5, 2018, PPL made autodialed reminder calls to Complainant as a result of a past due payment date. Tr. at 16; PPL Exhibit 2.

12. Complainant called PPL about her bill on August 31, 2018, but she did not request an extension of time or waiver of the late charges. Tr. at 17-18; PPL Exhibit 2.

13. PPL does not report an overdue balance to any credit agency. Tr. at 18.

DISCUSSION

As a matter of law, to establish a legally sufficient claim, 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 Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). The offense must be a violation of the Public Utility Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

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. Eberhard bears the burden of proof.

In this case, Complainant argues that she was harassed by PPL on the basis of repeated autodialed calls (Complainant asserts that there were seven of these calls) and asks that she be compensated at the rate of \$2,500 per call. That request for damages must be denied. It is well established that the Commission does not have the authority to order a public utility to pay

monetary damages. See *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977) (holding that the Commission does not have the authority to award damages); *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). While a Commission Administrative Law Judge may impose a civil penalty on a utility if warranted, those funds will go to the state General Fund, not to Complainant.

The claim for damages having been denied, it is now necessary to determine whether PPL violated any provision of the Public Utility Code (Code) or the rules and regulations of the Commission in this case. As Complainant is not an attorney, she did not frame her Complaint or her argument in this respect, but it may be inferred that in accusing PPL of “harassment,” she was contending that PPL was not providing reasonable service, and that would constitute a violation of the Code at 66 Pa. C.S. § 1501, which states in pertinent part:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

The statute at 66 Pa. C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977), *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v.*

Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 Pa. PUC 662 (1993).

“Harassment,” is defined as:

Words, conduct or action (usually repeated and persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.

Black’s Law Dictionary 733 (8th ed. 2004).

Undoubtedly, a succession or automated calls over a period of a few days about an overdue bill when one has a history of timely payments is annoying. These calls, however, were not directed at Complainant to cause any sort of emotional distress, and they arguably serve a legitimate purpose in the context of PPL’s overall billing practices. A reminder, or even a series of reminders, to pay what is reasonably thought to be an overdue bill is not harassment.

Of more concern is how the billing in this case took place. It is understandable why Complainant would consider the billing in the July-September, 2018 time period as, “inconsistent,” but it has not been shown that PPL violated its lawfully filed tariff in this respect.

Complainant has not demonstrated that PPL has violated the provisions of the Public Utility Code or the rules and regulations of the Commission. The Complaint must be dismissed, and Complainant’s request for the award of damages is denied as beyond the authority of the Commission.

CONCLUSIONS OF LAW

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

2. 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).

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. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa. C.S. § 1501.

5. Complainant failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Carol Eberhard at Docket Number C-2018-3004848 against PPL Electric Utilities Corporation is dismissed.

2. That this matter be marked closed.

Date: June 19, 2019

/s/
Dennis J. Buckley
Administrative Law Judge