BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Steve Langhurst	:	
	:	
v.	:	F-2019-3008260
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

Where a leased premise included a storage unit solely for the use of the tenant, responsibility for the outlet and light in the storage unit is assigned to the tenant and does not constitute a foreign load. The complaint of a property owner who challenged the transfer of the tenant's balance to his name is sustained.

HISTORY OF THE PROCEEDINGS

Steve Langhurst (Complainant) filed a formal complaint on February 25, 2019 against Duquesne Light Company. He alleged that Duquesne Light had erroneously identified a foreign load on his tenant's service, resulting in the transfer of the tenant's substantial unpaid balance into the Complainant's name. Duquesne Light filed an answer on March 25, 2019, denying the material allegations of the complaint.

By notice dated April 2, 2019, the complaint was scheduled for a telephonic hearing on May 7, 2019, and assigned to Administrative Law Judge Conrad A. Johnson. Judge

Johnson issued a prehearing order on April 11, 2019, which set forth instructions for the conduct of the hearing. The complaint was later transferred to me for hearing and disposition.

The hearing convened as scheduled. The Complainant was represented by John Corcoran, Esquire. The Complainant testified on his own behalf and presented one exhibit which was admitted into the record. Duquesne Light was represented by Emily Farah, Esquire, and presented the testimony of two witnesses, Roxanne Morris and Andrew Germeyer. Duquesne Light presented seven exhibits which were admitted into the record. The hearing generated a transcript of 98 pages. Following the receipt of the transcript, the record was closed by interim order dated June 13, 2019.

FINDINGS OF FACT

1. The Complainant is Steve Langhurst.

2. The Complainant owns a rental property at 506 California Avenue, Pittsburgh, Pennsylvania. (N.T. 11)

3. There are five meters that serve the property: one for each of four apartments and one for common areas. (N.T. 64-65, see also N.T. 19)

4. The Apartment A tenant's leased premise includes an apartment and a storage space in the basement. (N.T. 15-16; Complainant Ex. A)

5. The storage space is only for the use of the tenant of Apartment A. (N.T 33)

6. The Apartment A tenant was provided with a key to the storage space when she moved into the rental unit. (N.T. 16)

7. The Apartment A tenant stores personal possessions in the storage space. (N.T. 16)

8. On June 18, 2018, Andrew Germeyer, a meter technician inspected the premise for a foreign load. (N.T. 65)

9. The investigation was initiated in response to a high bill complaint by the Apartment A tenant. (N.T. 49-50)

10. Mr. Germeyer inspected both the Apartment A tenant's apartment and the basement area of the building. (N.T. 68)

11. Following his initial investigation, Mr. Germeyer determined that there was no foreign load on the meter for Apartment A. (N.T. 70)

12. The tenant contacted Mr. Germeyer later on June 18, 2018, and asked him to return because she reported that when she turned on a light in the basement and turned off the breaker, she lost power. (N.T. 70-71)

13. Mr. Germeyer again inspected the basement and inspected the storage unit. (N.T. 71)

14. At the time of his investigation on June 18, 2018, the door to the storage unit was open and an extension cord was plugged into an outlet. (N.T. 73, 74)

15. Mr. Germeyer determined that there was a light with a pull-chain and two outlets. (N.T. 72)

16. Mr. Germeyer did not notice the second outlet or the pull-chain on the light the first time he inspected the basement. (N.T. 71)

17. The light and one of the outlets in the storage unit was connected to the meter for Apartment A. (N.T. 72)

18. The outlet with the extension cord was located above the outlet associated with the storage unit. (N.T. 74)

19. Mr. Germeyer concluded that there was a foreign load because the extension cord was plugged into an outlet and did not belong to the Apartment A tenant. (N.T. 73)

20. The outlet with the extension cord was not connected to the meter for Apartment A. (N.T. 84-85)

21. By letter dated June 25, 2018, Duquesne Light informed the Complainant that it had conducted an investigation on June 18, 2018, and determined that there was foreign wiring on the meter for Apartment A. (N.T. 21; 51; Duquesne Light Ex. G)

22. On June 26, 2018, Mr. Germeyer returned to the property and met with Complainant. (N.T. 77)

23. Mr. Germeyer inspected the basement and determined that the foreign load was resolved because the extension cord was removed and the door to the storage unit was closed and locked. (N.T. 78)

24. By letter dated June 27, 2018, Duquesne Light informed the Complainant that the foreign wiring had been resolved and the account for Apartment A had been returned to the tenant's name. (N.T. 27-28; 52; Duquesne Light Ex. I)

25. No wiring was changed in the building between Mr. Germeyer's initial visit on June 18, 2018 and June 26, 2018. (N.T. 26, 30)

26. The door to the storage unit can be closed and locked even if the extension cord is plugged into the outlet that is not associated with the meter for Apartment A. (N.T. 89)

27. The Complainant did not change any wiring in the building after the inspection by Duquesne Light. (N.T. 26, 30)

28. Duquesne Light transferred the tenant's balance in the amount of $3,470.04 to the Complainant's account on June 28, 2018. (N.T. 42: Duquesne Light Ex. A)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.[1] A person seeking affirmative relief from the Commission has the burden of proof.[2]

In this matter, the Complainant is the party asking for relief from the Commission; therefore, he has the burden of proof. In a Commission proceeding, meeting the burden of proof means that the Complainant must establish a fact by a preponderance of the evidence.[3] The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.[4] Relief can only be granted if the Complainant proves facts by a preponderance of the evidence, which show that Duquesne Light violated the Public Utility Code or Commission regulations.

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1 66 Pa.C.S. § 701.

2 66 Pa.C.S. § 332(a).

3 *Popowsky v. Pa. Pub. Util. Comm'n,* 937 A.2d 1040, 1055-56 (Pa. 2007); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4 *Popowsky*.

The Complainant contends that Duquesne Light improperly transferred his tenant's account to his name when it incorrectly concluded that there was a foreign load on the tenant's meter. According to the Complainant, the basement storage unit where Duquesne Light identified the foreign load was space that was for the tenant's use and not a common area. Duquesne Light contends that when the technician investigated the basement, the door to the storage unit was open, therefore the storage unit was a common area and not exclusive to the tenant.

The law regarding the regulation of foreign load by the Commission has been oft-repeated. "Foreign load" has been defined in case law as a condition where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants.[5] Section 1529.1 of the Public Utility Code requires utilities to transfer a tenant's balance to the property owner when the property is not "individually metered." The requirement is mandatory. Neither the utility nor the Commission may exercise any discretion in requiring the transfer of the account to the property owner where there is a foreign load.[6] This is true even if the foreign load is simply an outlet or other so-called *de minimis* load on a rental unit's meter that is not part of the rental unit. A balance must also be transferred even if a tenant carries a substantial arrearage which far exceeds any excess consumption that may have been caused by the foreign load itself.[7]

When applying facts to the legal definitions and requirements, it is useful to keep in mind the purpose of Section 1529.1. Section 1529.1 is included in a subchapter of the Public Utility Code which deals with the obligations of landlords in regard to the utility service of tenants. The bulk of the subchapter addresses a situation where a utility service to a landlord ratepayer is terminated. Detailed notice requirements and procedures are in place to protect the rights of tenants who may lose utility service due to no fault of their own. For example,

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[5] *E.g., 1-A Realty v. Pa. Pub. Util. Comm'n*, 63 A.3d 480 (Pa.Cmwlth. 2013), appeal denied 621 Pa. 675, 74 A.3d 1033 (2013).

[6] *E.g. Riviello v. PPL Electric Utilities Corporation,* Docket F-2017-2636807 (Opinion and Order entered January 17, 2019).

[7] Often, the tenant is not only failing to pay his or her utility bill, but is also failing to pay the rent as well. *See Maguire v. Pennsylvania Electric Company*, F-2015-2504132 (cons.)(Opinion and Order dated May 4, 2017).

provisions require a landlord to provide notice to tenants regarding a pending termination of service.[8] A landlord ratepayer must provide a public utility with a list of potentially affected tenants.[9] Tenants must be provided with an opportunity to continue service by making payments on behalf of the landlord ratepayer in order to avoid termination. [10]

Along a similar vein, the purpose of Section 1529.1 addressing properties that are not "individually metered," is to protect one tenant from losing utility service because another customer has service terminated by the utility.[11] The requirement that the account of a tenant experiencing a foreign load must be transferred to the property owner provides an incentive for the landlord to be aware of potential foreign loads and to correct the wiring, plumbing or piping promptly.[12]

The pivotal question in this case is whether the storage closet in the basement was exclusive to the tenant or whether it was a common area. If the storage unit was exclusively for the tenant, then the load identified by the Duquesne Light technician is not a foreign load. If, on the other hand, the storage unit was a common area and benefitted other tenants, then the load does constitute a foreign load on the tenant's meter.

The facts are as follows. The space leased to the tenant includes not only the apartment, but also the storage unit in the basement, directly below her apartment; the storage unit is included in the lease as a part of the leased premise; when the tenant signed the lease, the Complainant provided her with a key to the door of the storage unit; the tenant stores her personal belongings in the storage unit. These facts are sufficient to establish *prima facie*, that the storage unit was for the exclusive use of the tenant.

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8 66 Pa.C.S. § 1523.

9 66 Pa.C.S. § 1524.

10 66 Pa.C.S. § 1527.

11 *Binelli v. Metropolitan Edison Company,* Docket C-2017-2597097 (Opinion and Order entered July 12, 2018).

12 *Id.*

Former ALJ Susan Colwell addressed a similar fact pattern in *Maleszewski v. Metropolitan Edison Company*.[13] In *Maleszewski*, the utility transferred the tenant's balance to the landlord following the tenant's high bill inquiry. The utility inspection revealed that the light in the hall outside the second floor apartment was attached to the tenant's electric meter. The landlord argued that the hallway was only accessible to the tenant and not to the other apartment in the building. ALJ Colwell recognized that the law precludes a landlord and a tenant from agreeing to a foreign load in a lease in order to avoid application of Section 1529.1.[14] However, a landlord and a tenant can agree to what constitutes the leased premise. In addition to the language in the lease which shows that the landlord and the tenant intended to include the lighting in the hallway as the tenant's responsibility, ALJ Colwell also considered the physical configuration of the building. The building only included two apartments. Each apartment had a separate entrance on opposite sides of the building. The hallway was not a common area because only the tenant had access to it. Therefore, it was exclusively for the use of the tenant and when the light in the hallway was included with the tenant's meter, there was no foreign load.

Here, the Complainant explained that the lease included a specific provision which included the storage unit in the basement as part of the leased premise. Although other tenants had access to other areas of the basement, the storage unit had a door with a lock. A key to the lock was provided to the tenant when she signed the lease.

Duquesne Light's witness, Mr. Germeyer, testified that when he inspected the basement as part of his foreign load investigation, the door to the storage unit was opened. He observed an extension cord which was plugged into an outlet. He initially determined that there was no foreign load. The outlet with the extension cord was not connected to the tenant's meter. He returned and discovered the second empty outlet below the extension cord. He concluded that the extension cord "blocked" the door, therefore the storage unit was a common area.

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[13] Docket No. C-2013-2360862 (Final Order entered December 17, 2013).

[14] See also 1-A Realty, cited above.

Mr. Germeyer testified that the tenant told him that she did not have a key. The Complainant testified that the tenant was provided with a key when she signed her lease. In rebuttal, the Complainant also testified that it was possible to close and lock the door by running the extension cord underneath it.

The Complainant's testimony that he provided the tenant with a key at the time the premise was rented and that the storage unit was for the exclusive use of the tenant is credible and carries more weight than the hearsay testimony adduced by Duquesne Light's witness that the tenant told him that she did not have a key at the time he made his first inspection. The Complainant's testimony is not a "bald assertion."[15] Instead, it is competent testimony of fact of which he has personal knowledge.[16] As the landlord and property owner, he is clearly competent to testify from his personal knowledge regarding the rental provisions of his property. The lease, which was entered into evidence, includes the storage unit. It is therefore logical that he would have provided her with a key to the storage unit at the same time he provided her with the key to her apartment when the lease was signed.

In contrast, the testimony of Mr. Germeyer, that the tenant told him that she did not have a key, is classic hearsay testimony. That is, "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."[17] While hearsay, when not objected to, can be admitted into evidence in an administrative proceeding, it cannot support a finding of fact without other corroborating evidence.[18] There is no competent evidence to corroborate the hearsay offered by Mr. Germeyer to support a finding that the tenant did not have a key to the storage room.

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[15] The "bald assertion" characterization of testimony is quoted from a court case where individuals offered testimony concerning the effect of a proposed facility on crime or real estate values. The court held that the evidence was not sufficient to support a conclusion that the facility would in fact increase crime and cause a decline in real estate values because the declarants did not have expertise or first-hand knowledge to support the claim made in the testimony. Thus, the testimony was held to be merely a "bald assertion." *See Pennsylvania Bureau of Corrections v. City of Pittsburgh,* 532 A.2d 12 (Pa. 1987).

[16] P.R.E. 602 ("Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.")

[17] P.R.E. 802.

[18] *Sanchez v. PPL Elec*, C-2015-2472600 (Opinion and Order entered July 21, 2016)(*citing Walker v. Unemployment Compensation Bd. of Rev.,* 367 A.2d 355 (Pa.Cmwlth. 1976).

Further, the presence of the extension cord alone does not establish that the Complainant and the tenant did not intend the storage unit to be for the tenant's exclusive use. As the tenant had a key for the storage unit, logically, she had control of whether the door was opened or closed and whether she granted access to the person who put the extension cord into the outlet. There is no evidence in the record that she did not have control of the space. Notably, the outlet that was used for the extension cord was not attached to the tenant's meter.

Having accepted the Complainant's testimony that the tenant had a key and could lock the storage unit, then the light and the empty outlet that were attached to the tenant's meter were for her exclusive use and did not constitute a foreign load. The presence of the extension cord, while possibly an incursion into her rental space, did not put the tenant in danger of losing electric service due to the conduct of another utility customer. There was no usage on the tenant's meter registering utility usage not exclusive to the tenant's dwelling unit or its occupants.[19] The outlet that the extension cord was connected to was not connected to the tenant's meter. Nor was another customer in danger of losing electric service due to the conduct of the tenant. There was no wiring, piping or plumbing on the property which required correction.

In sum, Duquesne Light erred in concluding that a foreign load existed at the Complainant's property. The tenant's balance should not have been put into the Complainant's name. The complaint is sustained.

However, I do not find that it is appropriate to assess a civil penalty in this case. Utilities are held to a strict standard regarding the presence of foreign loads.[20] The error here was not malicious or negligent. The facts presented here are unique, and the public interest will not be served by penalizing Duquesne Light.[21]

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[19] *See* definition of foreign load, above. *Binelli v. Metropolitan Edison Company*, Docket No. C-2017-2597097 (Opinion and Order entered July 12, 2018).

[20] *See Franckowiak v. PPL Electric Utilities Corp.,* C-20054687 (Opinion and Order entered July 3, 2006).

[21] *Maleszewski*.

CONCLUSIONS OF LAW

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

2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.

3. The term "foreign load" refers to the situation where a customer's meter registers utility usage not exclusive to the customer's dwelling unit or its occupants. *Binelli v. Metropolitan Edison Company*, Docket C-2017-2597097 (Opinion and Order entered July 12, 2018).

4. Where the leased premise included a storage unit solely for the use of the tenant, responsibility for the outlet and light in the storage unit may be assigned to the tenant and does not constitute a foreign load. 66 Pa.C.S. § 1529.1.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Steve Langhurst at Docket No. F-2019-3008260 is sustained.

2. That Duquesne Light Company is directed to remove charges associated with the usage from 506 California Avenue, Apartment A, Pittsburgh, PA, from the account of Steve Langhurst.

3. That the Secretary shall mark Docket No. F-2019-3008260 closed.

Date: July 25, 2019

/s/
Mary D. Long
Administrative Law Judge