

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Silver Valley Apartments	:	
c/o Mike Vianello	:	
	:	
v.	:	F-2019-3008686
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility regarding the transfer of a tenant’s account balance to his account after the discovery of foreign load. This decision denies the complaint as the customer has failed to demonstrate that the electric utility has violated the Public Utility Code, a Commission order, regulation or Commission-approved tariff.

HISTORY OF THE PROCEEDING

On March 14, 2019 Mike Vianello, the owner of Silver Valley Apartments (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent) at Docket Number F-2019-3008686. In this complaint, Complainant alleged that Respondent had improperly transferred a tenant’s account balance to the account of the Complainant’s business and was improperly attempting to collect said balance after more than four years had passed.

Complainant requested that the Commission direct the Respondent to stop attempts to collect this balance and to fine the Respondent the maximum penalty allowed under the Public Utility Code.

On April 10, 2019 Respondent filed an answer to the complaint. In its answer, Respondent either admitted or denied the various averments of the complaint. Respondent did specifically deny that an improper balance was transferred to the Complainant's account or that said transfer was in excess of four or more years ago.

On April 12, 2019 the Commission issued a telephonic hearing notice scheduling this matter for hearing on May 17, 2019. A prehearing order was issued on April 15, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On April 17, 2019 a second telephonic hearing notice was issued rescheduling the hearing to May 23, 2019. On April 29, 2019 Respondent submitted a request asking that the May 23, 2019 hearing be continued and indicated the Complainant did not object to such a continuance. On April 30, 2019 a telephonic hearing notice was issued rescheduling the hearing for June 18, 2019.

The hearing was conducted as scheduled on June 18, 2019. The Complainant appeared *pro se*. The Complainant testified but did not sponsor any exhibits at the time of hearing. Attorney Graig Schultz represented the Respondent which presented one witness who sponsored three exhibits that were admitted into the record. The initial hearing resulted in a transcript of 60 pages.

The record closed on June 18, 2019, at the conclusion of the initial hearing. For the reasons set forth below, the complaint will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant is Mike Vianello, owner of Silver Valley Apartments.
2. The Respondent is PPL Electric Utilities Corporation.
3. In 2011 the Complainant purchased Silver Valley Apartments. N.T. 10.
4. The property consists of a house, a garage apartment and four duplex apartments. N.T. 10.
5. After purchasing the property, the Complainant rented the house with the service address of 254 Silver Valley Road, Saylorsburg, Pennsylvania, to two tenants. N.T. 11.
6. All of the units within the complex are served by a single well as the water source. N.T. 13.
7. This well was connected to the meter located at the rental house within the complex. N.T. 13.
8. On February 14, 2012 it was discovered that the meter at the rental house was associated with the well that provided water to all of the rental units in the complex. N.T. 33.
9. On February 17, 2012 the Respondent transferred the balance of the account for the tenants in the rental house to the Complainant. N.T. 33.
10. The tenants' account xxxxxx1078 with a balance of \$1,192.83 was transferred to Complainant's Silver Valley Apartments account xxxxxx1087. N.T. 32.

11. The well was removed from the meter for the rental house but the Complainant did not pay this account balance. N.T. 14, 34.

12. The Complainant's account xxxxxx1087 was finalized and a new account was established for the Complainant and Silver Valley Apartments at account xxxxxx1070. N.T. 35.

13. When this new account was established, the \$1,192.83 balance as well as another balance the Complainant had accumulated in the amount of \$1,577.59 were transferred to the Complainant's new account xxxxxx1070. N.T. 35.

14. While the Complainant's account xxxxxx1070 was open it accumulated additional charges. N.T. 38.

15. The Complainant's account xxxxxx1070 was finalized and closed and a new account was established for the Complainant at xxxxxx1114. N.T. 39.

16. An outstanding balance of \$1,577.59 was transferred from Complainant's account at xxxxxx1070 to the Complainant's new account at 3865131114. N.T. 39.

17. The Complainant's account xxxxxx1114 continued to accrue charges while it was open or active. N.T. 40-41.

18. At the time the Complainant's account 3865131114 was closed and finalized, it had an outstanding balance of \$1,624.10. N.T. 41.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia

Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

The 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, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

At issue in this matter is the transfer of the tenants' outstanding account balance to the account of the Complainant on February 17, 2012 after it was discovered that a well providing service to all of the tenants at Silver Valley Apartments was associated with the meter of the tenants residing in the rental house. When such a condition is discovered, it is referred to as "foreign wiring" or "foreign load".

"Foreign load" is, by law, defined as a condition where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants. See, 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). As foreign load, once the condition was brought to the attention of the utility, Respondent was bound to follow the provisions of Section 1529.1 of the Code, 66 Pa. C.S. § 1529.1, and its tariff regulations.

The applicable provisions of the Code require, *inter alia*, that on confirmation of the existence of a foreign load condition, the account must be placed in the name of the property

owner. Section 1529.1 of the Public Utility Code requires public utilities to place a utility account in a property owner's name if a foreign load is discovered:

§ 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.

The Commission has long held that Section 1529.1 requires a property owner to be responsible not only for the current charges, but for any arrearages on the account as well. 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.

In interpreting this provision, the Commission has determined that well-established precedent "holds the property owner financially responsible for a tenant's entire

account, once foreign load is verified on the tenant's service." Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010) at 6; see also, Santos v. Metropolitan Edison Co., Docket No. C 00967757 (Order entered August 7, 1997). The Commission's foreign load policy was explained in detail in Ace Check Cashing, supra. Upon finding foreign load, the utility must list the account, including any arrearages, in the landlord's name. The landlord is responsible for paying the utility bills until the foreign load is corrected. After the foreign load is corrected by the landlord and verified by the utility, the utility is to place the account back into the tenant's name. Id. at 7. However, **the landlord remains responsible for any arrearages on the tenant's account.**¹ Id. at 7-8. (Emphasis added.)

The application of Section 1529.1 by the utility is mandatory. The utility does not have discretion when a foreign load is discovered. The Commission has fined a utility where it failed to transfer a tenant's balance to a landlord upon the discovery of a foreign load.

In this case, there is no dispute between the parties that foreign load was discovered on the meter of tenants located at the rental house within the complex. Upon this discovery, Respondent was required to put the tenants' electricity account in the Complainant's/Silver Valley Apartments' name until the foreign load was resolved. This is required by Section 1529.1 of the Public Utility Code. The Complainant remains responsible for any outstanding balance thereafter.

It should also be noted that in addition to not disputing that foreign load was discovered, the Complainant also does not dispute the amount of the outstanding balance which has continued to be transferred to his new accounts with the Respondent. The Complainant's argument is simply that he should not be responsible for the former tenants' outstanding balance and the Respondent should be prohibited from continuing to attempt to collect this balance by transferring it to each new account more than four years after it was initially transferred to the

¹ While the landlord may remain responsible for a tenant's arrearages, the landlord is not without recourse. However, that recourse is to pursue the recovery of these arrearages from the tenant through a magisterial district court or court of common pleas in the county in which the rental property is located.

Complainant. As explained above, this balance was required to be transferred to the Complainant once the foreign load was discovered - and the Complainant remains responsible for this outstanding balance under Section 1529.1 of the Public Utility Code.

The complainant filed by the Complainant is denied and dismissed.

CONCLUSIONS OF LAW

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

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

3. The burden of proof requires the Complainant to show that the Respondent has violated the Public Utility Code, a Commission order, regulation or Commission-approved tariff. 66 Pa.C.S. § 701.

4. “Foreign load” is defined as a condition where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants. See, 1-A Realty v. Pa. PUC, 63 A.3d 480 (Pa. Cmwlth. 2013), appeal denied, 621 Pa. 675, 74 A.3d 1033 (2013).

5. Upon confirmation of the existence of a foreign load condition, the account must be placed in the name of the property owner. 66 Pa. C.S. § 1529.1(b).

6. After the foreign load is corrected by the landlord and verified by the utility, the utility is to place the account back into the tenant’s name however, the landlord remains responsible for any arrearages on the tenant’s account. Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010); see also, Santos v. Metropolitan Edison Co., Docket No. C 00967757 (Order entered August 7, 1997).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. The Complainant has not met his burden of proof that the Respondent violated the Public Utility Code, a Commission order or regulation or Commission-approved tariff. 66 Pa.C.S. § 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Silver Valley Apartments c/o Mike Vianello against PPL Electric Utilities Corporation at Docket No. F-2019-3008686 is hereby denied and dismissed.

2. That the docket at Docket No. F-2019-3008686 is marked closed.

Date: August 21, 2019

/s/
Benjamin J. Myers
Administrative Law Judge