

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Kindsvater	:	
	:	
v.	:	C-2019-3012351
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint, finding that the Complainant is responsible for his residential tenant’s entire account balance for service that accrued at the property prior to the correction of a foreign load.

**HISTORY OF THE PROCEEDING**

On August 19, 2019, Kenneth Kindsvater (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent) averring that he should not be responsible for his tenant’s total electric usage account balance for the period from December 1, 2017 through November 30, 2018, because a foreign load was discovered on July 13, 2018. Mr. Kindsvater averred that his new house service bills averaged \$22 per month and this amount should be used to determine what he is responsible for paying for the 12-month period in which the tenant resided there. Mr. Kindsvater averred that he should be responsible to pay Duquesne Light \$264 and not the tenant’s entire account balance of \$1,942.36.

On September 9, 2019, Duquesne Light filed an answer and new matter. Duquesne Light averred that Mr. Kindsvater is responsible for his residential tenant's account balance that accrued at the property prior to the correction of the foreign load.

Mr. Kindsvater filed a reply to the new matter on September 26, 2019. Mr. Kindsvater averred that he accepts responsibility for the foreign load, but only once the foreign load was discovered and brought to his attention. He further averred that only those charges that accrued after the discovery date of the foreign load are his responsibility.

On October 2, 2019, a corrected hearing notice was mailed to the parties scheduling an initial call-in telephone hearing for Thursday, November 21, 2019. On October 9, 2019, a prehearing order was issued setting forth, among other things, certain procedural rules to be followed by the parties. The initial telephone hearing was held on November 21, 2019, as scheduled.

Mr. Kindsvater represented himself at the hearing and testified on his own behalf. Emily M. Farrah, Esquire, represented Duquesne Light. Duquesne Light presented the testimony of one witness, Diana Kiesel. Duquesne Light offered Exhibits H, P, and Q that were admitted into evidence. The parties stipulated to 15 facts during the hearing. Transcript (Tr.) 6-10. The record consists of the transcript of the hearing and Duquesne Light's three exhibits. The record was closed by interim order on December 23, 2019.

#### FINDINGS OF FACT

1. Complainant, Kenneth Kindsvater, resides at 325 Squire Circle, Pittsburgh, Pennsylvania 15212 (Tr. 13).
2. Respondent, Duquesne Light, is an electric distribution company regulated by the Commission (Tr. 6).
3. Mr. Kindsvater owns the property located at 615-617 Woodward Avenue, McKees Rocks, Pennsylvania 15136 (Tr. 7, 13).

4. The property at 615-617 Woodward Avenue is a singular, multi-unit, residential building (Tr. 7).
5. 615 Woodward Avenue consists of two residential units, Units A and B. Unit A is on the first floor and Unit B is on the second floor (Tr. 7).
6. 617 Woodward Avenue consists of two residential Units, Unit A and Unit B. Unit A is on the first floor and Unit B is on the second floor (Tr. 7).
7. The unit which is the subject of this formal complaint is 617 Woodward Avenue, Unit A (Tr. 8).
8. Common areas of the building consist of a hallway and a basement (Tr. 8).
9. On July 13, 2018, Duquesne Light verified that electrical wiring for the common areas of the building was connected to the meter for 617 Woodward Avenue, Unit A (Tr. 8-9).
10. When Mr. Kindsvater purchased the property in February 1999, he knew the common area hall lights, basement lights and sockets for the washer and dryer were connected to a meter for one of the units but he did not know which unit it was until Duquesne Light verified the electrical wiring was connected to 617 Woodward Avenue, Unit A (Tr. 8-9, 13-14).
11. On July 27, 2018, Duquesne Light transferred the tenant's entire account balance in the amount of \$4,046.48, which included a balance accrued at a different address to Mr. Kindsvater's account (Tr. 9).
12. On September 21, 2018, Duquesne Light corrected the balance transfer by removing \$2,911.57 from the amount initially transferred to Mr. Kindsvater's account (Tr. 9).

13. Duquesne Light billed Mr. Kindsvater for the tenant's account balance accrued from the date the tenant established service at 617 Woodward Avenue, Unit A until January 9, 2019, the date the foreign wiring was verified by Duquesne Light to have been corrected (Tr. 10).

### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would

be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Section 1529.1(a) of the Public Utility Code (the Code), 66 Pa.C.S. § 1529.1(a), provides that it is the duty of every owner of a residential building 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. Section 1529.1(b) of the Code, 66 Pa.C.S. § 1529.1(b), provides in pertinent part that, “if the mobile home 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.” (Emphasis added.) *See also, Del Vecchio v. PPL Electric Utilities Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005); *Afshari v. PPL Electric Utilities Corporation*, Docket No. C-20055547 (Order entered August 15, 2007). In *Del Vecchio*, the Commission found the utility violated 66 Pa.C.S. § 1529.1, because it failed to transfer complainant’s electric account to the landlord when it found foreign load on complainant’s meter.

A plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant’s entire account, once foreign load is verified on the tenant’s utility service. *Santos v. Metropolitan Edison*, Docket No. C-00967757 (Order entered August 7, 1997) (*Santos*). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility may place the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket

No. C-2008-2056428 (Order entered May 21, 2010) (*Ace*). There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. *Id.*

The facts in the instant case are not in dispute. Mr. Kindsvater and Duquesne Light stipulated to several key facts at the outset of the hearing regarding the existence of the foreign load: when Duquesne Light discovered it, when Duquesne Light verified that the foreign load had been corrected and the bill amount that Duquesne Light is seeking to recover from Mr. Kindsvater.

Mr. Kindsvater filed the instant complaint because he believes he should not be responsible for his tenant's entire account balance accrued at 617 Woodward Avenue, Unit A just because a foreign load was discovered. He argues that the usage for the common areas that were connected to the tenant's meter was minimal. He testified that after he corrected the foreign wiring and a meter was installed for the electric service for the common areas, his bills for the past year totaled only \$200.22. Tr. 15.

The law is clear regarding a landlord's responsibility once a foreign load is discovered. A property owner is financially responsible for a tenant's entire account, once foreign load is verified on the tenant's utility service. *See Santos*. There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. *See Ace*. Consequently, Mr. Kindsvater's testimony regarding the minimal nature of the usage for the common areas is not relevant in this complaint proceeding before the Commission interpreting Section 1529.1(a) of the Public Utility Code, 66 Pa.C.S. § 1529.1.

As the party seeking affirmative relief from the Commission, Mr. Kindsvater bears the burden of proof. 66 Pa.C.S. § 332(a). Mr. Kindsvater failed to prove Duquesne Light violated the Code, Commission regulations or any Commission order when it billed him for his

residential tenant's account balance that accrued at the property prior to the correction of the foreign load.

Accordingly, the complaint is denied in the ordering paragraphs to follow.

### CONCLUSIONS OF LAW

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

2. A property owner is financially responsible for a tenant's entire account, once foreign load is verified on the tenant's utility service, including all arrearages. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010); 66 Pa.C.S. § 1529.1.

3. Once foreign load is verified on a tenant's utility service, any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010).

4. Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

