

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Craig Jones	:	
	:	
v.	:	C-2019-3014159
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility alleging that he terminated his service with the utility on January 5, 2015 and was improperly billed for service thereafter. At the time of hearing, this issue was abandoned and the customer indicated that his sole complaint was the improper referral of his account to a collection agency. This decision dismisses the complaint as the customer has failed to show that the utility has violated any provision of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

HISTORY OF THE PROCEEDING

On November 5, 2019, Craig Jones (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) alleging that he had cancelled his electric service at 816 Chew St., Apt. 1, Allentown, Pennsylvania on January 5, 2015 but that he had been charged for service after that date by PPL.

By way of relief, the Complainant requested that all charges after January 5, 2015 be removed from his bill.¹

On November 27, 2019, PPL filed an answer to the complaint. The answer admitted or denied the various averments of the complaint. PPL, however, denied that the Complainant had been billed incorrectly and outlined the history of his service with PPL as well as the carry-over balances he had accrued for service at several other addresses.

On December 4, 2019, a hearing notice was issued scheduling this matter for an initial call-in telephonic hearing on January 8, 2020. On December 5, 2019, a prehearing order was issued addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing commenced as scheduled on January 8, 2020. At that time, the Complainant requested a continuance of the hearing. PPL did not object and this matter was continued at that time.²

On January 8, 2020, a hearing notice was issued rescheduling this matter for a hearing on January 23, 2020. Counsel for PPL later contacted the Office of Administrative Law Judge (OALJ) to indicate that the rescheduled date conflicted with a matter scheduled in another jurisdiction and that counsel was unable to obtain another attorney to attend the January 23, 2020 hearing on the behalf of PPL. On January 16, 2020, a hearing notice was issued rescheduling this matter for a telephonic hearing on March 10, 2020.

The hearing was conducted as scheduled on March 10, 2020 at which time both parties appeared and participated in the hearing. The Complainant appeared *pro se* and did not sponsor any exhibits. Attorney Kimberly Krupka appeared on the behalf of PPL, which

¹ This complaint is an untimely appeal from a decision issued by the Commission's Bureau of Consumer Services (BCS) on August 14, 2019 in BCS Case No. 3676319.

² The January 8, 2020 hearing resulted in a transcript of nine pages which will be referred to as Transcript 1.

presented one witness who sponsored three exhibits that were admitted into the record. The record closed on March 10, 2020 at the conclusion of the hearing. The hearing resulted in a transcript of 41 pages.³

For the reasons discussed below, the complaint in this matter will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant in this proceeding is Craig Jones.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. The Complainant's last service address was 2122 West Walnut Street, Apt. D, Allentown, Pennsylvania. TR. 2 at 22.
4. The last date a charge for service was placed on the Complainant's account was May 31, 2019 in the amount of \$17.01. TR. 2 at 22.
5. As of May 31, 2019, the Complainant's total account balance was \$1,345.07. TR. 2 at 22.
6. The Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) regarding this outstanding balance of \$1,345.07 at BCS No. 3676319. TR. 2 at 24; PPL Ex. No 3.
7. On August 14, 2019, BCS issued a decision dismissing the informal complaint at BCS No. 3676319. TR. 2 at 24; PPL Ex. No 3.

³ The transcript from the March 10, 2020 hearing will be referred to as Transcript 2 (TR. 2).

8. On October 9, 2019, PPL charged off the Complainant's delinquent outstanding account balance. TR. 2 at 25.

9. On October 10, 2019, PPL referred the Complainant's account to a collection agency. TR. 2 at 25.

10. On November 5, 2019, the Complainant filed the formal complaint in this matter.

11. Subsequent to PPL's receipt of the formal complaint on November 7, 2019, PPL did not engage in any further collection efforts. TR. 2 at 25.

12. On February 10, 2020, the Complainant looked at his Credit Karma profile and learned that his past due account had been sent to collection. TR. 2 at 18-19.

DISCUSSION

Section 701 of the Public Utility Code provides that "any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

The Commission has exclusive jurisdiction to adjudicate "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted). Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . .

66 Pa. C.S. § 1501.

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

Here, the Complainant alleged in his formal complaint that he had terminated his electric service with PPL on January 5, 2015 and was improperly billed for service after that date. The last date PPL placed a charge for service on the Complainant's account was May 31, 2019. However, at the hearing, the Complainant did not offer any testimony or evidence whatsoever regarding this billing complaint including when he ended his service with PPL, that he was charged for service after his cancellation date or that his outstanding account balance was incorrect. Although the Complainant did not pursue this billing issue at the hearing, Complainant raised a different issue, which will be discussed below. Therefore, since Complainant abandoned this billing issue, the merits of this billing complaint will not be addressed.

Rather, at the hearing, Complainant was specifically asked and stated that his sole complaint was that PPL had erroneously referred his delinquent account balance to a collection agency. TR. 2 at 17-18. The Complainant argued that PPL had inappropriately done so while his complaint was pending before the Commission and therefore the total of his outstanding balance was in dispute and could not be charged off and sent to collection. As noted above, the only testimony provided by the Complainant at the hearing addressed PPL's referral of his outstanding debt to a collection agency issue, which was not raised in his formal complaint. However, since PPL addressed this issue at the hearing, in the interests of judicial economy and fairness, the merits of this issue will be addressed.

The evidence of record does not support the Complainant's position. As of May 31, 2019, the Complainant's total account balance was \$1,345.07. TR. 2 at 22. The Complainant filed an informal complaint with BCS regarding this outstanding balance. TR. 2 at 24; PPL Ex. No 3. On August 14, 2019, BCS issued a decision dismissing the complaint. TR. 2 at 24; PPL Ex. No 3. On October 9, 2019, PPL charged off the Complainant's outstanding account balance and on October 10, 2019, referred the Complainant's account to a collection agency. TR. 2 at 25. Complainant's instant formal complaint, filed on November 5, 2019, is an untimely appeal from the BCS decision.⁴ Since Complainant did not timely appeal from the

⁴ The BCS issued its decision on August 4, 2019. The complaint form provided to the Complainant by the Secretary's Bureau indicated at the top of the form that the complaint must be returned to the Commission by October 7, 2019. Hence, the Complainant's complaint form is untimely since it was not received by the Secretary's Bureau until November 5, 2019. *See*, 52 Pa. Code § 56.172 for the process of timely reviews of BCS decisions.

BCS decision, the BCS decision became final.⁵

Therefore, at the time Complainant filed his formal Complaint, the BCS decision was final. The Complainant's outstanding balance was charged off by PPL and referred to a collection agency after the BCS decision became final and before Complainant untimely filed the instant Complaint. PPL's witness credibly testified that after receiving a copy of the Complainant's complaint on November 7, 2019, PPL did not engage in any further collection efforts. TR. 2 at 25.

The Complainant testified that he learned of the referral of his account to collection on February 10, 2020, while looking at his Credit Karma profile. TR. 2 at 18-19. The Complainant argued that PPL had therefore inappropriately acted against him in an attempt to collect his disputed account balance while his complaint was pending before the Commission. This argument fails.

While there are several sections contained within the Pennsylvania Public Utility Code, 52 Pa. Code § 56.81 *et seq.*, which prohibit a utility from terminating a customer's service pending the resolution of a complaint, the Complainant does not argue that PPL improperly terminated his service. Further, the Code does not prohibit a utility from referring a final outstanding debt to a collection agency. Even if the Complainant's argument that PPL was actively engaged in collection attempts against him while his complaint was pending before the Commission is correct, the Complainant has failed to identify any portion of the Public Utility Code, Commission order or regulation which would prohibit the charge off and referral of a final delinquent account balance to a collection agency. The Complainant's assertion that PPL was prohibited from referring his account for collection is therefore not supported.

The Complainant has also failed to show that PPL was in fact actively engaged in collection attempts against him while his complaint, informal or formal, was pending before the Commission. While the Complainant may have found out about the referral of his delinquent

⁵ See *Horinka v. Pa. Power Co.*, Docket No. C-2017-2582842, p. 3 (Opinion and Order entered August 4, 2017) (explaining that when a BCS decision is not timely appealed, then the BCS decision becomes final).

account for collection in February 2020 when he was checking his credit profile, that referral had been done by PPL on October 10, 2019 – after the BCS decision became final since Complainant did not timely appeal the August 14, 2019 BCS decision – and before the filing of his complaint in this matter on November 5, 2019. PPL’s actions relating to the charge off and referral of the Complainant’s delinquent account balance were therefore not undertaken during the pendency of any complaints or matters before the Commission since there was no matter pending before the Commission on October 10, 2019. The Complainant’s argument clearly fails.

Based upon the totality of the testimony and evidence presented, the Complainant has failed to provide the substantial evidence necessary to establish a *prima facie* case or otherwise meet his burden to show that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. The complaint in this matter will therefore be denied and dismissed.

CONCLUSIONS OF LAW

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

2. The Complainant, as the proponent of a rule or order, has the burden of proof. 66 Pa. C.S. § 332(a).

3. The burden is on the Complainant to demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order. 66 Pa. C.S. § 701.

4. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

