

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Harris	:	
	:	
v.	:	F-2020-3019049
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint filed against an electric distribution company by a customer who seeks to have transferred back to his tenants’ account an amount transferred to his account after foreign load was found at the service address. Substantial record evidence demonstrates that there was foreign load present and that the company properly transferred the disputed amount to the customer’s account. As a result, the customer has failed to demonstrate that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff in anyway.

HISTORY OF THE PROCEEDING

On February 19, 2020, John Harris filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number F-2020-3019049. In his complaint, Mr. Harris averred that there is a “landlord/tenant issue.” Mr. Harris noted that “we are the landlords of this property and we have a tenant that rents this downstairs unit. There was an issue with the wiring which we had

resolved in a week and we have not received an explanation as to why we are being charged this amount of money.”

On March 24, 2020, PPL filed an answer to Mr. Harris’ complaint. In its answer, PPL admitted or denied the various averments made by Mr. Harris. In particular, PPL noted that it commenced a foreign wiring investigation in January, 2019 based on a conversation the company had with the tenant. PPL added that it confirmed the presence of foreign wiring and transferred the tenant’s account balance into Mr. Harris’ name as the landlord. PPL requested that Mr. Harris’ complaint be denied.

On May 4, 2020, a telephonic hearing notice was issued setting an initial telephonic hearing for this case for July 16, 2020 and assigning me as the presiding officer. A prehearing order dated May 6, 2020 was issued setting forth various procedural rules that would govern the hearing.

The hearing convened on July 16, 2020, as scheduled. Mr. Harris and his wife appeared pro se and presented oral testimony. Kimberly Krupka, Esquire, appeared on behalf of PPL and presented two witnesses who sponsored three exhibits that were admitted into the record. A transcript of 50 pages was created.

The record in this matter closed on August 7, 2020 when the transcript was submitted to the Commission. Mr. Harris’ complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is John Harris.
2. The Respondent is PPL Electric Utilities Corporation.
3. The service address is 238 North Main Street, Picture Rocks, PA.

4. Mr. Harris owns both properties at 236 North Main Street and 238 North Main Street in Picture Rocks, PA.

5. On January 28, 2019, PPL contacted Mrs. Harris to explain that the rental property had foreign wiring that would have to be corrected. Tr. 14.

6. On February 5, 2019, Mrs. Harris contacted PPL to state that an electrician had corrected the foreign wiring. Tr. 15.

7. Mrs. Harris received a bill from PPL for \$677.60 which included \$523.22 transferred from their tenant. Tr. 15-16.

8. Byron Barrows is a customer contact representative for PPL and has worked for PPL for 35 years. Tr. 20.

9. Mr. Barrows visited the Harris property in January, 2019 and confirmed that foreign wiring existed. Tr. 21.

10. PPL Exhibit Number 10 is the foreign wiring investigation checklist dated January 28, 2019 that was completed by Mr. Barrows. PPL Exh. No. 10; Tr. 21.

11. The property at the service address has a meter for each apartment and there is a well pump that services both apartments at 236 North Main Street and 238 North Main Street. Tr. 21-22.

12. After confirming the presence of foreign wiring, Mr. Barrows informed the owner and placed the account in Mr. Harris' name. Tr. 22.

13. Donna Brower is a customer service representative for PPL and has been with the company for 12 years. Tr. 29.

14. PPL Exhibit Number 3 is the account activity statement for the service address. PPL Exh. No. 3; Tr. 30.

15. PPL Exhibit Number 4 is the customer contact report for the account for the meter installed at the service address. PPL Exh. No. 4; Tr. 30.

16. When Ms. Brower receives notification of foreign load, she establishes an account and transfers any unpaid balance from the tenant's account that was accrued on that meter to the owner's account. Tr. 30.

17. On February 21, 2019, \$532.22 was transferred from the tenant's account to Mr. Harris' account. PPL Exh. No. 3; Tr. 31.

18. A second bill was issued on Mr. Harris' account for an additional 11 days of service in the amount of \$50.57 bringing the total final bill to \$728.17. PPL Exh. No. 3; Tr. 31.

19. Mr. Harris' tenant accepted responsibility for service again on March 11, 2019. Tr. 32.

20. PPL sent a letter to Mr. Harris explaining foreign load on February 21, 2019. PPL Exh. No. 4; Tr. 32.

21. Mrs. Harris spoke with multiple representatives of PPL about foreign wiring on March 6, 2019, March 7, 2019 and March 8, 2019. PPL Exh. No. 4; Tr. 33-34.

22. Mrs. Harris was advised that \$532.22 was transferred from the tenant's balance on March 6, 2019. PPL Exh. No. 4; Tr. 34.

23. A new meter was installed at the service address on March 8, 2019. Tr. 35-36.

24. PPL transferred the account back into the tenant's name on March 11, 2019.
Tr. 36.

DISCUSSION

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). As a matter of law, 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 Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "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). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Harris seeks to have a charge for electricity usage on his bill that was incurred by his tenant removed from his bill. Mr. Harris, therefore, has the burden of proof.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

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., Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt.1984).

In this case, Mr. and Mrs. Harris testified that they believe they should not be responsible for the electric usage accrued by their tenant after foreign load was found. Mrs. Harris testified that they did everything they were required to do after foreign load was found, including informing PPL and having the foreign wiring corrected, but is unsure why they are still being held responsible for the \$523.22 that was accrued by their tenant. In response, PPL witnesses Barrows and Brower testified that the company's policy when foreign load is found at a service address is to create a separate account and any unpaid balance from the tenant's account that was accrued on that meter is transferred to the owner's account. Ms. Brower testified that was what occurred in this case.

Mr. Harris' complaint will be dismissed because he has failed to carry his burden to demonstrate by a preponderance of the evidence that PPL in any way violated the Public Utility Code, any Commission order or regulation or any Commission approved tariff of the company.

To begin, the term "foreign load" refers to utility service which is not related to serving a tenant but for which the tenant is being billed. Santos v. Metro. Edison Co., Docket No. C-00967757 (Order entered August 7, 1997). Foreign load occurs when a tenant's meter registers usage for utility service provided to a dwelling unit or units other than the tenant's or to a common area of a building such as hallway lighting or to communal laundry room appliances. Kopfv v. PECO Energy Co., Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) (Kopf) at n.1. Foreign load exists where tenants have a meter and are direct utility customers and where utility service for other tenants or for the landlord is being billed through their meter. Boyce v. Duquesne Light Co., Docket Number Z-00223698 (Opinion and Order entered September 1, 1994) (Boyce); *see also*, 1-A Realty v. Pa. Pub. Util. Comm'n, 63 A.2d 480 (Pa. Cmwlt. 2013) (communal street lights in a mobile home park were connected to the electric boxes of the homes of the nearest tenant), Chinniah v. PPL Elec. Utils. Corp., Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013) (foreign load was created by a

detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties), and Kopf, *supra* (the foreign wiring condition related to electric service to common areas in a second floor hallway, basement and outside light of a rental property).

In addition, Section 1529.1 of the Public Utility Code governs the payment of utility services in rental properties. This section reads as follows:

§ 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 established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1. Boyce, *supra*.

It is further noted as a preliminary matter that Pennsylvania law is clear that the Commission has no jurisdiction over cases involving disputes between landlords and tenants. The Commission addressed Section 1529.1 in Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensable Parties, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (Ace). In Ace, the Commission reversed its then-existing policy in foreign load cases articulated in Afshari v. PPL Elec. Utils. Corp., Docket No. C-20055547 (Order entered April 9, 2008) that allowed a hearing to determine the amount of electric usage attributable to the foreign load. In reversing this policy, the Commission stated:

While the Commission has jurisdiction over the regulation of utility companies and utility service, the Commission does not have jurisdiction to adjudicate every dispute that involves a utility, e.g., personal injury case, discrimination case, etc., and does not have the authority to settle disputes on every contract to which a public utility is a party. Accordingly, the Commission does not have subject matter jurisdiction over a dispute between a property owner and a tenant – two non-utility parties. While such a dispute, arguably, may involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be decided is financial responsibility for the charges. That matter should be handled by the courts.

Ace at 4-5. The Commission added: “The ultimate dispute here is financial responsibility for an established amount of charges for past utility service between a landlord and a tenant. The dispute does not concern the utility or the utility’s service and, therefore, its resolution does not require the Commission’s regulatory expertise.” Id. at 6; *see also*, Corazzini v. UGI Penn Natural Gas, Inc., Docket No. F-2009-2101282 (Opinion and Order entered July 16, 2010) (the landlord may seek damages from his tenant through the courts but that is a private matter that is outside the Commission’s jurisdiction).

As a result, substantial record evidence also demonstrates that PPL acted properly in transferring the account balance from the tenant to Mr. Harris after the foreign load was found and by not returning the balance to the tenant after the foreign load was corrected. Mr. Harris failed to rebut this evidence by a preponderance of the evidence and, therefore, has failed to satisfy his burden. *See, Milkie, supra*. The \$532.22 at issue in this proceeding is a matter that is

between Mr. and Mrs. Harris and their tenant and is not appropriate for this Commission to resolve. *See, Ace, supra.*

As PPL witness Barrows testified: “[O]nce we discovery foreign wiring, we are required to transfer – put the account in the owner’s name, even if it is fixed the same day. If you would have fixed that while I was there, I would still have had to put the account in your name....”. Tr. 26. In addition, Ms. Brower testified:

Q. Ms. Brower, can you tell us the process by which what happens on your end when you are notified from a customer contact rep that foreign wiring has been discovered at a location?

A. Once I receive notification of the foreign load in my work, then what I do is I do have to establish an account. Once I verify ownership of the property, I establish the account in the owner’s name, and then I transfer any unpaid balance from the tenant’s account that was accrued on that meter to the owner’s account.

Tr. 30. The actions taken by Mr. Barrows and Ms. Brower are consistent with Commission precedent regarding foreign load: when foreign load is discovered, the disputed amount is transferred from the tenant’s account to the landlord’s account.

Here, Mr. and Mrs. Harris expected that the disputed amount would be returned to the tenant’s account after the foreign wiring is corrected. As noted above, however, that is not the practice established by the Commission. To the extent that the landlord seeks to have the tenant pay the disputed amount, the proper recourse is through the court of common pleas, not through the Commission. The Commission does not have jurisdiction over all disputes involving utility service. Rather: “The ultimate dispute here is financial responsibility for an established amount of charges for past utility service between a landlord and a tenant. The dispute does not concern the utility or the utility’s service and, therefore, its resolution does not require the Commission’s regulatory expertise.” *Ace.* PPL acted properly by transferring the disputed amount to Mr. and Mrs. Harris when foreign load was discovered and by not removing the disputed when the foreign load was corrected. Mr. Harris’ argument to the contrary is without merit and is rejected. Nor has Mr. Harris raised any other argument or presented any other

evidence that demonstrates a violation of the Public Utility Code or a Commission order or regulation that warrants sustaining the complaint.

As a result, Mr. Harris has failed to satisfy his burden to demonstrate that PPL in any way violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company. Record evidence demonstrates that PPL acted properly in transferring the disputed amount from the tenant to Mr. Harris' account when foreign load was found and PPL was correct in not transferring the disputed amount back to the tenant after the foreign load was corrected. Mr. and Mrs. Harris are free to pursue any claims for the disputed amount against the tenant in the court of common pleas. The complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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. 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 Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "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).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

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

8. "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, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Pub. Welfare, White Haven Ctr., 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

9. "Foreign load" refers to utility service which is not related to serving a tenant but for which the tenant is being billed. Santos v. Metro. Edison Co., Docket No. C-00967757 (Order entered August 7, 1997).

10. Foreign load occurs when a tenant's meter registers usage for utility service provided to a dwelling unit or units other than the tenant's or to a common area of a building such as hallway lighting or to communal laundry room appliances. Kopfv v. PECO Energy Co., Docket No. C-2012-2332993, n.1 (Opinion and Order entered June 13, 2013).

11. Foreign load exists where tenants have a meter and are direct utility customers and where utility service for other tenants or for the landlord is being billed through their meter. Boyce v. Duquesne Light Co., Docket Number Z-00223698 (Opinion and Order entered September 1, 1994); *see also*, 1-A Realty v. Pa. Pub. Util. Comm'n, 63 A.2d 480 (Pa.

Cmwlth. 2013), Chinniah v. PPL Elec. Utils. Corp., Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013).

12. The presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1 of the Public Utility Code. Boyce v. Duquesne Light Co., Docket Number Z-00223698 (Opinion and Order entered September 1, 1994).

13. Pennsylvania law is clear that the Commission has no jurisdiction over cases involving disputes between a landlord and a tenant. Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensable Parties, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

14. Mr. Harris has failed to satisfy his burden of proof in this proceeding by a preponderance of the evidence to demonstrate that PPL in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by John Harris against PPL Electric Utilities Corporation at Docket Number F-2020-3019049 on February 24, 2020 is hereby dismissed.

2. That this matter be marked closed.

Date: November 3, 2020

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge