

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dorca Mejia	:	
	:	
v.	:	F-2020-3019000
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On February 19, 2020, the Complainant, Dorca Mejia, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). In her complaint, Ms. Mejia argues that she should not be responsible for her tenant’s total electric usage account balance for the period from approximately October 15, 2016 through approximately October 17, 2018. Ms. Mejia avers that PPL is improperly holding her responsible for a balance of \$8,237.87, which is the amount of charges that accrued on the account prior to October 4, 2018, when foreign load was discovered at the location. Ms. Mejia’s complaint is an appeal of a decision of the Commission’s Bureau of Consumer Services issued on January 17, 2020, in response to her informal complaint at BCS No. 3703651.

On March 23, 2020, PPL filed an answer to Ms. Mejia's complaint. In its answer, PPL admitted that, upon discovery of the foreign load condition, it transferred the entire balance on the tenant's account into the name of landlord. PPL averred that, under Pennsylvania law, it is required, upon discovery of a foreign load condition, to transfer the tenant's balance to the landlord, who will then be responsible for payment of utility bills, including the past balance, until the foreign load condition is corrected. PPL requests that Ms. Mejia's complaint be denied.

On May 4, 2020, a Call-In Telephone Hearing Notice was issued to the parties by which a telephonic hearing was scheduled for June 23, 2020, at 10:00 a.m. The telephonic hearing was held as scheduled on June 23, 2020.

Ms. Mejia appeared at the hearing and represented herself. Kimberly Krupka, Esquire, represented PPL. Ms. Mejia presented the testimony of herself and two witnesses, Gelson Colon and Pierre Honore, and offered nine exhibits, all of which were admitted into the record. PPL presented the testimony of two witnesses, Anthony Harris and Donna Brower, and offered two exhibits, both of which were admitted into the record.

A briefing order was issued on June 24, 2020, which directed that main briefs, if any, be filed by August 21, 2020, and reply briefs, if any, be filed by September 11, 2020. Both parties filed main briefs. Ms. Mejia filed a reply to PPL's main brief. PPL did not file a reply brief. The record closed on September 15, 2020, upon my receipt of Ms. Mejia's reply brief, and consists of a transcript of 97 pages, nine Complainant exhibits and two PPL exhibits.

FINDINGS OF FACT

1. The Complainant in this proceeding is Dorca Mejia.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation.
3. Ms. Mejia owns the property at issue in this proceeding, which is located at 37 Broad Street, Beaver Meadows, PA. (Tr. 12).

4. When Ms. Mejia bought the property in 2006, it was a single-family home. (Tr. 22).

5. Ms. Mejia subsequently converted the property to a three-unit rental property. (Tr. 23).

6. Ms. Mejia currently lives in Florida. (Tr. 25).

7. Gelson Colon serves as Ms. Mejia's property manager and takes care of the property at issue for Ms. Mejia. (Tr. 25).

8. On October 4, 2018, Anthony Harris, a PPL Customer Contact Representative, performed an inspection of Ms. Mejia's property and discovered foreign wiring conditions. (Tr. 67, 70-71).

9. A receptacle in apartment 3 was connected to the meter serving apartment 1. (Tr. 25, 28, 67; Mejia Ex. 5).

10. Mr. Harris determined that the receptacle in apartment 3 that was connected to the meter serving apartment 1 constituted foreign wiring. (Tr. 70; Mejia Ex. 5).

11. A hot water heater connected to the meter in apartment 2 was serving both apartments 2 and 3, and apartment 2 was being billed for the cost of heating the water going to apartment 3. (Tr. 70).

12. Mr. Harris determined that the hot water heater connected to the meter in apartment 2 which was serving both apartments 2 and 3 also constituted foreign wiring. (Tr. 71).

13. The receptacle in apartment 3 that was connected to the meter in apartment 1 was not connected to the wiring behind the receptacle and was inoperable at the time the property was inspected in October of 2018. (Tr. 31, 33-34, 58, 61).

14. Ms. Mejia's property manager, Mr. Colon, discovered that the wiring behind the receptacle was not connected to the receptacle. (Tr. 41).

15. The live wiring behind the receptacle was not connected to the receptacle but still registered voltage on the voltage meter used by Mr. Harris during his inspection, thereby suggesting that the receptacle was energized. (Tr. 41, 73).

16. Mr. Harris did not remove the receptacle plate cover to confirm that the receptacle was connected to the wiring. (Tr. 73).

17. Mr. Harris plugged the voltage tester into the receptacle, which registered voltage, but he did not plug any other appliances into the receptacle to see if they worked. (Tr. 40, 74).

18. Upon discovery of the foreign wiring conditions at Ms. Mejia's property, PPL disconnected the account in the apartment 3 tenant's name and transferred the balance on the account to Ms. Mejia. (Tr. 77).

19. The balance that was transferred into Ms. Mejia's name was \$8,237.87. (Tr. 79; PPL Ex. 1).

20. The entire balance of \$8,237.87 was accrued from October 15, 2016 to October 4, 2018, during the time the service in apartment 3 was in the name of the tenant. (Tr. 78; PPL Ex. 1).

21. PPL attempted to collect the unpaid charges from the tenant during the time the service was in the tenant's name. (Tr. 80).

22. On October 11, 2018, PPL sent a letter to Ms. Mejia informing her of the discovery of the foreign wiring condition and the transfer of the outstanding balance from the tenant's account into her name. (Tr. 83; Mejia Ex. 5).

23. Upon learning of the receptacle issue, Ms. Mejia's property manager installed a blank plate cover over the receptacle. (Tr. 43).

24. Mr. Colon submitted a form to PPL indicating that the receptacle issue had been fixed, but he did not inform PPL of his discovery that the receptacle had not been connected to the wiring and, therefore, was inoperable at the time of Mr. Harris's inspection. (Tr. 44-45; Mejia Ex. 7).

25. Upon receipt of notification from Mr. Colon that the foreign wiring condition had been corrected, the account was taken out of Ms. Mejia's name. (Tr. 79).

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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. 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 Transp. 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 & W. 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. Pa. Dep't of Public Welfare, White Haven Ctr.*, 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/her 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*, 461 A.2d 1234 (Pa. 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.” *See also, Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005); *Afshari v. PPL Elec. Utils. Corp.*, 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.

Section 1529.1 of the Code states that a property owner is financially responsible for a tenant's entire account once foreign load is verified on the tenant's utility service. 66 Pa.C.S. § 1529.1; *also see, Santos v. Metro. Edison*, Docket No. C-00967757 (Order entered August 7, 1997). 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. Phila. 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 material facts in the instant case are not in dispute. Both Ms. Mejia and PPL acknowledge that the receptacle at issue located in apartment 3 was connected to the meter for apartment 1. (Tr. 25, 28, 67). Ms. Mejia and her witness, Gelson Colon, testified that the receptacle was not connected to the wiring in the wall and was therefore inoperable. (Tr. 31-34, 41). PPL was unable to dispute this averment, since it did not remove the receptacle cover plate to confirm that the receptacle was connected to the wiring and was operable. (Tr. 31, 33-34, 41-42, 72-74). Ms. Mejia argues that, since the receptacle could not be used, she should not be held responsible for charges incurred by the tenant during the period of time before the foreign wiring condition was discovered in October of 2018. PPL argues that, since the receptacle wiring was, in fact, connected to the meter in a different apartment, a foreign wiring condition existed requiring that it transfer the tenant's entire balance into Ms. Mejia's name. In fact, PPL transferred the balance from apartment 3 into Ms. Mejia's name on October 4, 2018. (Tr. 78; PPL Ex. 1).

With respect to the apartment 3 receptacle, the issue is whether the receptacle that was connected to the meter serving apartment 1 constituted a foreign wiring condition where the receptacle was inoperable at the time of the PPL inspection and, consequently, no charges were

billed to apartment 1 from use of the receptacle in apartment 3. I conclude that a foreign wiring condition did still exist, authorizing PPL to transfer the balance at issue into Ms. Mejia's name.

The plain language of 66 Pa.C.S. § 1529.1(b) identifies the condition of a multi-unit property not being individually metered as the controlling condition in determining whether a foreign wiring situation exists, rather than the accrual of actual charges. This provision states, in relevant part, "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). It is undisputed in this proceeding that the wiring to the receptacle in apartment 3 was connected to the meter for apartment 1. Accordingly, under 66 Pa.C.S. § 1529.1, Ms. Mejia's multi-unit property was not individually metered, thus requiring PPL to list the account in Ms. Mejia's name and to hold her responsible for the payment of the charges incurred on the tenant's account. *See, Del Vecchio v. PPL Elec. Utils. Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005); *Afshari v. PPL Elec. Utils. Corp.*, Docket No. C-20055547 (Order entered August 15, 2007). As noted above, upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. This was done by PPL in October of 2018. (Tr, 79; PPL Ex. 1). 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. Here, upon receipt of notification from Mr. Colon that the foreign wiring condition had been corrected, the account was taken out of Ms. Mejia's name by PPL. (Tr. 79). The arrearage, however, remained with her. *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) (*Ace*).

I note that, in addition to the apartment 3 receptacle, PPL also discovered a second foreign wiring condition when it inspected the property in October of 2018. Mr. Harris testified that the water heater that services apartments 2 and 3 is connected to the meter for apartment 2. (Tr. 71). He testified that apartment 2 was being billed for the cost of heating the water used by apartment 3. (Tr. 71). Mr. Harris determined that this also constituted a foreign wiring condition. (Tr. 71). While this discovery would have authorized PPL to transfer any then outstanding balance from apartment 2 into Ms. Mejia's name, there is no evidence in the record

indicating that there was an outstanding balance for apartment 2 or that any such balance was transferred into Ms. Mejia's name. This second foreign wiring condition does, however, offer further support for PPL's decision to place the service to the property in Ms. Mejia's name until such time as the foreign wiring conditions were corrected.

As the party seeking affirmative relief from the Commission, Ms. Mejia bears the burden of proof. 66 Pa.C.S. § 332(a). Ms. Mejia failed to prove that PPL violated the Code, Commission regulations or any Commission order when it billed her for her residential tenant's account balance that accrued at the property prior to the correction of the foreign load conditions. Accordingly, the complaint is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. As the proponent of a rule or order in this proceeding, Complainant has the burden of proof. 66 Pa.C.S. § 332(a).
3. 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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).
4. 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.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).
5. "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." 66 Pa.C.S. § 1529.1(b).

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

7. 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. Phila. Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Dorca Mejia against PPL Electric Utilities Corporation at Docket No. F-2020-3019000 is hereby denied.

2. That the Docket in this proceeding, Docket No. F-2020-3019000, be marked closed.

Date: December 14, 2020

/s/
Steven K. Haas
Administrative Law Judge