

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Heinrich	:	
	:	
v.	:	C-2020-3021831
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision denies a formal complaint filed by a customer of an electric distribution company who averred that he should not be charged for utility service for the period of July 2017 through May 2019. The complaint will be dismissed because the complainant failed to satisfy his burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company when billing the complainant for his electric usage.

HISTORY OF THE PROCEEDING

On August 6, 2020, John Heinrich (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2020-3021831. The complaint is an untimely appeal of a decision of the Commission’s Bureau of Consumer Services, case number 3727307. In his complaint, Mr. Heinrich avers that he resides at 326 White Street, Weissport, Pennsylvania 18235 in Carbon County. Mr. Heinrich complains that there are incorrect charges on his account

for electric service provided to a service property he rented located at 7735 Pohopoco Drive, in Kunkletown, Pennsylvania. Complainant is willing to pay for electric service up to the month he moved from the service property (June 2017), but requests a credit on his account for any charges after he moved out.

On September 9, 2020, the Complaint was served upon PPL. On September 29, 2020, PPL filed a timely answer in response to Mr. Heinrich's complaint. In its answer, PPL admitted or denied the various averments in the complaint. In particular, PPL denied any incorrect charges on Complainant's bill. PPL responded that Complainant established electric service at 7735 Pohopoco Drive, Apt. 2, Kunkletown, PA 18058 on October 7, 2016 (service address). On April 24, 2019, PPL terminated the electric service at the service address for non-payment. On May 10, 2019, PPL rendered a final bill for the electric service at the service address in the amount of \$12,588.38. Respondent denied that Complainant had ever contacted PPL to disconnect service. PPL requested that Mr. Heinrich's complaint be denied and dismissed.

On September 30, 2020, the Commission issued a hearing notice scheduling an initial call-in telephonic hearing for this matter for November 10, 2020 and assigning me as the presiding officer. A prehearing order dated October 1, 2020 was issued setting forth various procedural rules that would govern that hearing.

The hearing convened on November 10, 2020, as scheduled. Mr. Heinrich appeared *pro se*. He and his wife, Sharon Heinrich, testified but no exhibits were offered for submission into the record. Graig M. Schultz, Esquire, appeared on behalf of PPL and presented one witness, Sherry Shaffer, who sponsored four exhibits that were admitted into the record. A transcript of 33 pages was created.

The record in this case closed on December 2, 2020, the day the transcript was submitted to the Commission. For the reasons discussed below, Mr. Heinrich's complaint will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant in this case is John Heinrich. Tr. 8.
2. The Respondent in this case is PPL Electric Utilities Corporation. Tr. 8.
3. Complainant resides with his spouse, Sharon Sponoski Heinrich, at 326 White Street, Weissport, Pennsylvania. Tr. 8.
4. The service address that is the subject of the dispute is a former residence at 7735 Pohopoco Drive, Apartment 2, Kunkletown, Pennsylvania. Tr. 8, 16.
5. John Heinrich resided at a service property located at 7735 Pohopoco Drive, Kunkletown, Pennsylvania from at least October 7, 2016 through June 2017. Tr. 10, 16, PPL Exhibit No. 5 (Account History).
6. John Heinrich was billed for electric service usage at Apartment 2, 7735 Pohopoco Drive, Kunkletown from October 7, 2016 (the date of connection) until May 10, 2019 (the date of disconnection). Tr. 14-17.
7. Sherry Shaffer is a customer service representative for PPL Electric Utilities Corporation. Tr. 14-15.
8. Ms. Shaffer has been employed with PPL for approximately 17 years. Tr. 15.
9. Neither Mr. Heinrich nor anyone acting on his behalf, such as his spouse, ever contacted PPL to order a disconnection of service. Tr. 14-16, PPL Exhibit Number 5.

10. PPL Exhibit No. 5 is a compilation of account contact history that shows no notation in June 2017 or any other time that either John or Sharon Heinrich contacted PPL to disconnect service. Tr. 14-17, PPL Exhibit No. 5.

11. PPL made multiple phone calls to the phone number associated with Mr. Heinrich's account in an attempt to collect outstanding payment and to notify Mr. Heinrich of pending termination prior to the disconnection of service at Pohopoco Drive on May 10, 2019. Tr. 26-27, PPL Exhibits Nos. 1, 2 and 5.

12. PPL Exhibit No. 4 is a compilation of account activity in a statement that shows a final balance on the account number ending in 4130 for Apt. 2, 7735 Pohopoco Drive was \$12,588.38. Tr. 21.

13. On August 8, 2019, Mr. Heinrich contacted PPL to establish service at 326 White Street. Tr. 24, PPL Exhibit No. 2.

14. PPL Exhibit No. 1 is an Account Activity Statement for account number ending in 4076, for service at 326 White Street in Weissport, PA that shows the debt of \$12,588.36 was transferred from account number ending in 4130 to account number ending in 4076 on or about August 12, 2019. Tr. 21-23, PPL Exhibit No. 1.

15. On October 3, 2019, the service account for service at 326 White Street was taken out of Mr. Heinrich's name and placed into his wife's, Sharon Heinrich, name. Tr. 24.

DISCUSSION

Legal Standards

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) (Patterson). “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. Heinrich contends that he is incorrectly being charged for service provided to a service property that he rented past the date that he and his wife moved out of the service property. Therefore, Mr. Heinrich bears 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); *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 & W. 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. Pa. Dept. of Pub. Welfare, White Haven Cntr., 480 A.2d 382 (Pa.Cmwlth.1984).

Certain provisions of Chapter 56 of the Pennsylvania Code apply regarding standards and billing practices apply to the instant case. Specifically, Section 56.16 provides in pertinent part:

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. . . .

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(a), (b).

Section 1406(b)(1)(ii) of the Public Utility Code requires the utility to attempt to contact the customer either in person or by phone and to provide notice of the proposed termination at least three days prior to the scheduled termination. 66 Pa.C.S. § 1406(b)(1)(ii). Further, Section 1406(e) provides that after November 30 and before April 1, an electric distribution utility shall not terminate service to customers with household incomes at or below 250% of the federal poverty level. The Code precludes the Commission from prohibiting an electric distribution company from terminating service during the winter months to customers with household income exceeding 250% of the federal poverty level. 66 Pa.C.S. § 1406(e).

John Heinrich's Position

In this case, Mr. and Mrs. Heinrich testified that Mr. Heinrich is incorrectly being charged by PPL for utility service not used by Mr. Heinrich after June 2017 until service was terminated at 7735 Pohopoco Drive, Kunkletown, Pennsylvania in May 2019. Mr. and Mrs. Heinrich testified they received no notice of termination prior to the termination, either through written correspondence or via telephone, and had no idea that service was still in Mr. Heinrich's name. Mr. Heinrich and Mrs. Heinrich testified that they contacted PPL to disconnect service on or about the date they moved from the service property in June 2017. Mr. Heinrich is willing to pay his bill up through June 2017. He requests a credit for any charges after June 2017 on the account pertaining to 7735 Pohopoco Drive.

PPL's Position

Conversely, PPL argues, “[H]ad the company received any sort of request that service be terminated in Mr. Heinrich’s name back in June of 2017 as he’s alleging, the company would have certainly complied with that request.” Tr. 29. However, there is no evidence in PPL’s system that there ever was a request to disconnect service. Tr. 29. PPL tried to call Complainant multiple times prior to termination of the 4130 account. PPL requests the complaint be denied and dismissed. Tr. 29.

Disposition

Mr. Heinrich and Mrs. Heinrich testified that they contacted PPL to disconnect service on or about the date they moved from the service property in June 2017. Mr. Heinrich is willing to pay his bill up through June 2017 for service rendered at 7735 Pohopoco Drive. However, Complainant offered no documentation to show he resided anywhere else other than 7735 Pohopoco Drive, Kunkletown, Pennsylvania from July 2017 – May 2019. He offered no written evidence to show he contacted PPL and requested a disconnection in June 2017, when he allegedly moved out.

In response to this claim, PPL produced business records and testimony of a customer service representative. Mr. Heinrich’s testimony is refuted by the testimony of PPL’s witness Sherry Shaffer, a customer service representative for PPL. Tr. 14-15. Ms. Shaffer has been employed with PPL for approximately 17 years. Tr. 15. Neither Mr. Heinrich nor anyone acting on his authorized behalf, ever contacted PPL to order a disconnection of service. Tr. 14-16, PPL Exhibit Number 5. Although Mr. Heinrich testified he called PPL on the date of his move in June 2017, Mr. Heinrich did not recall who he spoke to, what phone number he called, or the date of his move. Tr. 10-11. He admitted that he had no documentation to show he called PPL to disconnect service.

PPL Exhibit No. 5 is a compilation of account contact history that shows no notation in June 2017 or any other time that John Heinrich contacted PPL to disconnect service.

Tr. 14-17, PPL Exhibit No. 5. This exhibit shows Sharon Heinrich, his wife but roommate at the time, called on March 22, 2019 to say she was receiving text messages on her phone from PPL regarding shut off notices for the account ending in 4130, but that she had called to stop service three years ago. PPL's representative Georgina Evans told Ms. Heinrich there was no record of a request and she advised Ms. Heinrich to have Mr. Heinrich call PPL. PPL Exhibit No. 5. There is no evidence to suggest Mr. Heinrich called PPL regarding this account after March 22, 2019.

PPL Exhibit No. 4 is a compilation of account activity in a statement that shows a final balance on the account number ending in 4130 for Apt. 2, 7735 Pohopoco Drive of \$12,588.38. Tr. 21. PPL Exhibit No. 1 is an Account Activity Statement for account number ending in 4076, for service at 326 White Street in Weissport, PA that shows the debt of \$12,588.36 was transferred from account number ending in 4130 to account number ending in 4076 on or about August 12, 2019. Tr. 21-23, PPL Exhibit No. 1.

On August 8, 2019, Mr. Heinrich contacted PPL to establish service at 326 White Street. Tr. 24, PPL Exhibit No. 2. On October 2, 2019, the service account for service at 326 White Street was taken out of Mr. Heinrich's name and placed into Sharon Heinrich's name. Tr. 24. PPL made multiple phone calls to the phone number associated with Mr. Heinrich's account at Pohopoco Drive in an attempt to collect outstanding payment prior to the termination of service. Tr. 26-27, PPL Exhibits Nos. 1 and 2.

Mr. Heinrich's complaint will be dismissed because Mr. Heinrich has failed to present a *prima facie* case that PPL is responsible or accountable for the problem described in the complaint. Patterson. The burden of persuasion has not switched to PPL because Mr. Heinrich has not satisfied his initial burden to show that PPL violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company

Nonetheless, assuming *arguendo* that Mr. Heinrich has satisfied his initial burden and the burden of persuasion has shifted to PPL to rebut the evidence presented by Mr. Heinrich, his complaint should still be dismissed because PPL has effectively rebutted the evidence presented by Mr. Heinrich.

In the case of Martin v. PECO Energy Co. Docket No. F-2013-2360697 (Opinion and Order entered on December 19, 2013), the Commission held in pertinent part:

We find that the Complainant has failed to meet her burden of proving she requested termination of service on January 11, 2010. At the hearing, she testified that she called PECO on that date. The burden of going forward with the evidence then shifted to PECO to rebut her testimony. In response, PECO produced business records showing that the Complainant called on May 27, 2010, to have service terminated. PECO then acted on that request in a timely manner. No further evidence was produced by the Complainant. We find PECO's records to be persuasive and that the Complainant did not request termination of service until May 27, 2010.

Id. at 11.

Thus, in a similar case, the Commission held that testimony from a customer claiming that he/she requested termination of service is not substantial evidence to prove a violation of Section 56.16 when refuted by testimony of a customer service representative and the business records of a utility showing otherwise. I find in favor of PPL on this issue.

Finally, there is insufficient evidence to show PPL performed an erroneous termination in violation of Section 1406 of the Public Utility Code. 66 Pa.C.S. § 1406. The Account Contact History shows multiple attempts to contact Complainant via telephone regarding his account prior to termination and some as recent as April 9 and 11, 2019, within three days before the cut out for non-pay was issued, and on May 6 and 8, 2019, within three days the disconnection was completed on May 10, 2019. PPL Exhibit No. 5.

In conclusion, Mr. Heinrich has failed to present a *prima facie* case by presenting enough evidence to show that PPL is responsible or accountable for the problem described in the complaint. Patterson. The burden of persuasion has not switched to PPL because Mr. Heinrich has not satisfied his initial burden. Assuming *arguendo*, however, that Mr. Heinrich has satisfied his initial burden and the burden of persuasion has shifted to PPL to rebut the evidence presented by Mr. Heinrich, his complaint should still be dismissed because he has still failed to demonstrate by a preponderance of the evidence that PPL violated the Public Utility Code, a

Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to him. Mr. Heinrich's complaint will therefore 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 Cntr., 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. Mr. Heinrich did not give PPL at least 7 days' notice specifying the date on which it desired electric service be discontinued; therefore, in the absence of a notice, the customer is responsible for services rendered. 52 Pa. Code § 56.16(a), (b).

10. PPL properly transferred an unpaid balance to Mr. Heinrich's new residential service account in August 2019. 52 Pa. Code §56.16(a),(b).

11. PPL attempted to contact Mr. Heinrich by phone and to provide notice of the proposed termination at least three days prior to the scheduled termination. 66 Pa.C.S. § 1406(b)(1)(ii).

12. Mr. Heinrich has failed to satisfy his burden of demonstrating that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company in its provision of electric utility service to him.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by John Heinrich against PPL Electric Utilities Corporation on August 6, 2020 at docket number C-2020-3021831 is hereby denied and dismissed.
2. That this matter be marked closed.

Date: January 4, 2021

/s/
Elizabeth H. Barnes
Administrative Law Judge