

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keith Graham	:	
	:	
v.	:	C-2020-3020715
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision denies a formal complaint filed by a customer of an electric distribution company who alleged that there are incorrect charges on his bill because he is being charged for usage from the prior owner, he is not receiving proper credit for his excess solar generation and he is not being given the proper monthly credit through the company's customer assistance program. The complainant also complained that he is being prohibited from switching to an alternative electric generation supplier. The complaint will be dismissed because the complainant failed to satisfy his burden of demonstrating that the electric distribution company 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.

HISTORY OF THE PROCEEDING

On May 4, 2020, Keith Graham filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL), docket number C-2020-3020715. In his complaint, Mr. Graham averred that there are incorrect

charges on his bill and noted that he never received credit for an amount due on his account when he moved in for solar generation. Mr. Graham added that he is being overcharged a high usage rate. Mr. Graham requested that his monthly billing amount be fixed and that he should be given credit for solar generation that he is owed. Mr. Graham also requested that he be given the opportunity to select his electric generation supplier and to be able to participate in PPL's customer assistance program.

On July 28, 2020, PPL filed an answer admitting or denying the averments made in Mr. Graham's complaint. In particular, PPL admitted that Mr. Graham initiated service at the service address in November 2017, that he has solar panels installed at his property and that he is a net metering customer-generator who receives credits for the electric generation produced by his solar panels. PPL also admitted that Mr. Graham is on PPL's OnTrack customer assistance program to assist in paying his arrears and that PPL installed a new "smart meter" in March 2020. PPL denied, however, that there are incorrect charges on the bill or that the company has misread the meter or otherwise failed to give proper credit. PPL added that Mr. Graham has never generated more electricity than he has used in a billing period. PPL also noted that Mr. Graham can switch electric generation suppliers but not electric distribution companies unless he moves. PPL concluded by requesting that the complaint be denied in its entirety.

On July 29, 2020, the Commission issued a hearing notice establishing an initial telephonic hearing for this matter for September 9, 2020 at 10:00 a.m. and assigning me as the presiding officer.

The evidentiary hearing was held on September 9, 2020, as scheduled. Mr. Graham appeared *pro se*. Devin Ryan, Esquire, appeared on behalf of PPL. Prior to going on the record, the parties engaged in settlement discussions pursuant to the Commission's settlement judge regulations. Although a settlement was not achieved at that time, the parties agreed to continue settlement discussions amongst themselves and reschedule the hearing.

As a result, a further telephonic hearing was scheduled for December 10, 2020. The further evidentiary hearing was held on December 10, 2020, as scheduled. Again, Mr.

Graham appeared *pro se* and Mr. Ryan appeared on behalf of PPL. Mr. Graham presented oral testimony and five exhibits that were admitted into the record. Mr. Ryan presented three witnesses who sponsored a total of eight exhibits that were admitted into the record. A transcript of 107 pages was created.

The record in this case closed on January 14, 2021, the day the transcript was filed with the Commission. The complaint is ready for disposition. For the reasons discussed below, Mr. Graham's complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Keith Graham.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 4 Stine Avenue, Carlisle, PA.
4. Mr. Graham is enrolled in PPL's customer assistance program (CAP) called OnTrack. Tr. 17.
5. Mr. Graham attempted to switch to Liberty Power as his electric generation supplier but was unable to do so. Tr. 18, 20.
6. Mr. Graham has solar equipment on his home that was installed by Solar City. Tr. 22.
7. Graham Exhibit Number 1 is a compilation of documents regarding Solar City and Liberty Power. Tr. 26; Graham Exh. No. 1.

8. Graham Exhibit Number 2 is screenshots from the PPL website of hourly usage for various days in December 2019, as well as in January through April 2020, and July and August 2020. Tr. 26-27; Graham Exh. No 2.

9. Graham Exhibit Number 3 is OnTrack data showing credit being used faster than the time on the plan. Tr. 34; Graham Exh. No. 3.

10. Graham Exhibit Number 4 is information regarding Mr. Graham's OnTrack account including how much he will pay and how much will be forgiven. Tr. 35; Graham Exh. No. 4.

11. Graham Exhibit Number 5 is a portion of the prior owner of Mr. Graham's home's PPL bill due August 8, 2016 showing the customer charge, 811 kilowatts used, the total distribution charges and the total generation and transmission charges. Tr. 35-36; Graham Exh. No. 5.

12. Mr. Graham does not have any educational background or work experience related to smart meters or solar arrays. Tr. 38-39.

13. The solar panels were installed on Mr. Graham's home in September 2016. Tr. 39.

14. Mr. Graham updated his kitchen appliances about a year and a half after he moved into the service address. Tr. 40.

15. Currently, ten people live at the service address, including four people under the age of five. Tr. 41, 88.

16. The home at the service address is heated using space heaters and cooled using a central air conditioning system. Tr. 41-43, 88.

17. Tammy Kirschman is employed as a billing assistant with PPL and oversees net metering activities. Tr. 47.

18. PPL Exhibit Number 4 is PPL's net metering tariff for renewable customer generators. Tr. 49; PPL Exh. No. 4.

19. A net metering customer is an eligible, renewable energy customer who could also be considered a generator as well and receives a credit for energy produced through the customer's generation system. Tr. 50, 55.

20. Solar panels are an example of net metering and net metering customers who generate more than they consume can receive a credit for the excess amount. Tr. 50.

21. Mr. Graham has been a net metering customer since November 16, 2017. Tr. 52.

22. Mr. Graham has an RF mesh meter, sometimes called a "smart meter," installed at this home that has two channels – one that records the net usage and the other that records the net excess generation. Tr. 54.

23. OnTrack customer's billing capabilities are restricted and information for net metering customers is not available. Tr. 57.

24. Brenda Snyder is employed by PPL as a customer service representative working for the renewable energy billing and customer service department. Tr. 66.

25. PPL Exhibit Number 3 is the decision of the Commission's Bureau of Consumer Services (BCS) case number 3757249 and dated April 24, 2020 dismissing an informal complaint filed by Mr. Graham against PPL determining that PPL billed Mr. Graham correctly. Tr. 67; PPL Exh. No. 3.

26. PPL determines bills for net metering customers through an automated process whereby the excess kilowatts received back into PPL's system during the billing period is subtracted from the total kilowatts delivered to the customer during that same billing period. Tr. 68.

27. Mr. Graham is served by PPL under the residential customer RSO rate schedule. Tr. 68.

28. PPL Exhibit Number 6 (updated) is a spreadsheet that details the billing and credit history for Mr. Graham's account from November 16, 2017 through November 12, 2020. Tr. 69; PPL Exh. No. 6 (updated).

29. The information presented in PPL Exhibit Number 6 matches the bills prepared for Mr. Graham's account and shows that Mr. Graham received full credit for excess generation produced by his solar panels and that he does not produce overall excess generation and no excess kilowatts were banked or carried forward. Tr. 70.

30. Mr. Graham has received all the credits for excess generation that he is owed by PPL. Tr. 70.

31. PPL Exhibit Number 7 is a copy of the test of Mr. Graham's meter that PPL performed in March 2020. Tr. 71; PPL Exh. No. 7.

32. The results of the test of Mr. Graham's meter showed that the meter is 99.99 percent accurate under a full load test. Tr. 72; PPL Exh. No. 7.

33. Mr. Graham's meter read 5,500 kilowatts at the time he started his account with PPL because the meter is not reset to zero when a new customer moves into the property and that was the reading on the meter as of that date. Tr. 72.

34. Mr. Graham's first bill was for 1,828 kilowatts which was the sum of 343 kilowatts before he switched to an alternative electric generation supplier and the 1,485 kilowatts after he switched to an alternative electric generation supplier. Tr. 72-73.

35. Mr. Graham's usage during 2020 is comparable to his usage during 2019. Tr. 74-75.

36. Yvette Belfort is employed by PPL as a regulatory program manager and is responsible for overseeing PPL's universal service programs to assist low-income customers, including customers on OnTrack. Tr. 82.

37. PPL Exhibit Number 5 is the policies for PPL's OnTrack program. Tr. 83; PPL Exh. No. 5.

38. OnTrack provides income-eligible customers with three benefits: 1) a customized monthly payment that is based on income and household size; 2) a monthly credit; and 3) debt forgiveness. Tr. 83-84.

39. OnTrack Lifestyle is a program for a customer who has a rent or mortgage payment that is greater than his or her monthly income and lasts for nine months to allow PPL to verify that the customer is still eligible for the same program. Tr. 84.

40. Mr. Graham is enrolled in OnTrack Lifestyle. Tr. 84.

41. PPL Exhibit Number 2 (updated) is the account contact history for Mr. Graham's account. Tr. 85; PPL Exh. No. 2 (updated).

42. PPL Exhibit Number 8 is Mr. Graham's application to enroll in the PPL OnTrack program. Tr. 86; PPL Exh. No. 8.

43. Based on the information Mr. Graham provided on his CAP application, he is a level 1 customer and is within the zero to fifty percent poverty threshold for the program. Tr. 88.

44. Mr. Graham will have to pay \$44.00 per month each month over the nine-month enrollment period under the OnTrack Lifestyle program. Tr. 89.

45. PPL Exhibit Number 1 is the account activity statement for Mr. Graham's account that reflects the bills and appropriate credits processed monthly. Tr. 90-91; PPL Exh. No. 1.

46. The account activity statement for Mr. Graham's account indicates that the OnTrack credits were applied to Mr. Graham's account. Tr. 91; PPL Exh. No. 1.

47. PPL's standard offer program (SOP) for CAP customers is a Commission-approved program that allows OnTrack customers to shop only with suppliers that are participating in that CAP SOP and offers a 7% discount. Tr. 93.

48. Mr. Graham was unable to select Liberty Power as his electric generation supplier because Liberty Power is not participating in PPL's CAP SOP. Tr. 93.

49. An electric generation supplier's participation in PPL's CAP SOP is entirely voluntary. Tr. 94.

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). “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. Graham averred, among other things, that there are incorrect charges on his bill and noted that he never received credit for an amount due on his account, or for solar credits, when he moved in. Mr. Graham requested that his monthly billing amount be fixed and that he be given credit for solar generation that he is owed. Therefore, Mr. Graham has the burden of proof in this proceeding.

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).

On appeal, 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 Pa. Dept. of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa.Cmwlth.1984).

Position of the parties

In this case, Mr. Graham averred in his complaint that there was 5,500 kilowatt hours already on his meter and that he did not receive a credit of 6,796 kilowatt hours for his solar generation from his solar panels. Mr. Graham also requested that his monthly billing amount while enrolled in OnTrack be corrected from \$311.00 per month to \$191.00 per month, that he be given the proper solar credits he believes he is owed and that he be allowed to switch electric generation suppliers. During the hearing, Mr. Graham testified that PPL was not giving him full credit for his solar generation and that he is being prevented from being able to pick his supplier based on his status as a CAP customer. Mr. Graham provided significant testimony regarding SolarCity who installed the electric generation equipment on his home. Mr. Graham continued to maintain that he was not receiving the proper credit for his solar generation, especially when compared to the prior owner of the property at the service address. In support, Mr. Graham submitted five exhibits, including information he received from Liberty Power, screenshots from the PPL website that purport to show hourly electricity usage for multiple dates in various months in 2019 and 2020 and information regarding PPL's OnTrack program.

In response to the testimony and evidence presented by Mr. Graham, PPL presented three witnesses and eight exhibits. PPL witness Tammy Kirschman, a PPL billing assistant who oversees much of the net metering activities, discussed PPL's net metering tariff and explained in detail the process of net metering, including the role of SolarCity in the net metering process. Ms. Kirschman also testified regarding Mr. Graham's concerns that PPL was potentially able to remotely control his solar inverter, noting that PPL cannot do that. Next, PPL witness Brenda Snyder, a PPL customer service representative who works in renewable energy, testified regarding the automated process of how PPL determines the bill for net metering customers. Ms. Snyder testified regarding the billing and crediting history for Mr. Graham's account, noting that Mr. Graham received full credit for excess generation produced by his solar panels and that Mr. Graham's meter tested to be 99.99 percent accurate under a full load test. Ms. Snyder testified that the 5,500 reading Mr. Graham claims he was charged for and the 6,796 reading he claims he was not credited for were just the meter readings at the time he moved into the service address, not the amount from the prior residence that he is being charged for or not

credited for. Ms. Snyder also testified that usage at the service address in 2020 was comparable on a month-to-month basis to usage in 2019. Finally, PPL witness Yvette Belfort, a regulatory program manager for PPL's universal service programs and specifically OnTrack, testified regarding the OnTrack program policies as approved by the Commission, including OnTrack Lifestyle which Mr. Graham is enrolled in. Ms. Belfort testified regarding Mr. Graham's enrollment and participation in OnTrack and the account contact history and account activity statement for Mr. Graham's account. Lastly, Ms. Belfort also testified regarding Mr. Graham's interest in using Liberty Power as his electric generation supplier and PPL's CAP SOP. Overall, eight exhibits were admitted into the record that were sponsored by PPL's witnesses in support of the company's position that Mr. Graham's complaint should be denied.

Mr. Graham's complaint presents a unique and interesting convergence of issues – namely, he is a net metering customer enrolled in PPL's OnTrack program who would like to choose an alternative electric generation supplier. Record evidence in this case demonstrates, however, that Mr. Graham's complaint should be denied because he has failed to satisfy his burden to demonstrate that PPL's actions with regard to his account violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

Incorrect charges

With regard to Mr. Graham's claim that there are incorrect charges on his bill, in cases of alleged high billing, the Commission applies the Waldron rule, which provides that to establish a prima facie case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that complainant's billing history shows no prior abnormalities. Once the complainant makes out a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

Mr. Graham's argument that there are incorrect charges on his bill will be rejected because the evidence presented by Mr. Graham is outweighed by the evidence presented by PPL.

In general, PPL witness Kirschman testified regarding PPL's net metering tariff and explained the particular metering system that Mr. Graham has at the service address and the role of SolarCity in the provision of that service. Tr. 53-54. Ms. Kirschman testified that net metering customers get full credit for every kilowatt hour they produce, noting that the customer could be using the credit in one billing period or sending it back to PPL in another billing period if the customer is not using it, in which case it is banked for either future use or a cash-out. Tr. 55.

PPL witness Snyder testified regarding more detail pertaining to Mr. Graham's specific account. Ms. Snyder testified regarding the generation usage credits and cash-out associated with Mr. Graham's account. Tr. 68. In particular, Ms. Snyder testified regarding a spreadsheet providing the billing and credit history for Mr. Graham's account from November 16, 2017 through November 12, 2020. Tr. 69; PPL Exh. No. 6 (updated). Ms. Snyder testified:

Q. Is the information presented in Exhibit 6 consistent with the company's account statement for Mr. Graham?

A. Yes, it is. If you would look at the calculated net column, you'll see for the billing period from May 13, 2020 to June 12, 2020, the billing period on Exhibit 6 matches the 1,816 kilowatts billed to Mr. Graham, which also shows on Exhibit 1 on the account statement.

Tr. 69-70. Ms. Snyder added that "Mr. Graham has received full credits for excess generation produced by the solar panels. He does not produce overall excess for the month, so no excess kilowatts were banked or carried forward," concluding that Mr. Graham has received all of the credits for excess generation that he is owed by the company. Tr. 70.

In addition, Ms. Snyder testified that PPL tested Mr. Graham's meter for accuracy in March 2020 and that his meter tested "to be 99.99 percent accurate under the full load test." Tr. 71-72; PPL Exh. No. 7. Ms. Snyder noted that, after his meter was tested, Mr. Graham was given a new meter that was tested before it was deployed. Tr. 72. Finally, Ms. Snyder testified regarding Mr. Graham's concerns that the meter reading when the account started on November 21, 2017 read 5,500 and that there were 6,798 kilowatt hours of solar generation that he did not receive credit for. Tr. 72-73. Ms. Snyder testified that these were both the beginning readings of the respective meters

and not charges or credits which Mr. Graham should or should not incur. Tr. 72-73. Ms. Snyder testified that the meters are not reset to zero when a new account is opened. Id.

When balancing this evidence against the evidence presented by Mr. Graham in support of his complaint, it is clear that Mr. Graham has failed to satisfy his burden of proof that there are incorrect charges on his bill. For example, Mr. Graham frequently testified regarding his interactions with SolarCity. *See e.g.* Tr. 23-24. Yet, PPL witness Kirschman explained the differences between PPL and SolarCity. Notably, Ms. Kirschman explained that SolarCity only records Mr. Graham's total generation whereas PPL also records consumption. Tr. 54-55. Ms. Kirschman also explained that PPL records in alternative current (AC) whereas Solar City records in direct current (DC). Tr. 60. Following the initial hearing held in this case on September 9, 2020, Mr. Graham was given an opportunity to resolve this matter with the involvement of SolarCity. When that did not happen, Mr. Graham continued to pursue his complaint against PPL but did not present sufficient evidence to satisfy his burden of proof.

In addition, Mr. Graham testified regarding comments made by a representative from PPL when changing his meter. Mr. Graham noted that the PPL technician "specifically looked right at me and said, 'I'm going to tell you upfront. The meter – it looks like it is working fine,'" and "[t]his meter does not appear broken. I can tell that it looks like it's working like it's supposed to – or at least it appears to be working properly." Tr. 30. Such statements are hearsay and cannot be used, without additional competent evidence in the record, to support a finding that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. *See, Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366 (Pa.Cmwlth. 1976). Regardless, however, and as discussed below, record evidence in this case demonstrates that the meters at the service address functioned properly.

Similarly, Mr. Graham's references to the prior owner's accounts also do not support finding that there are billing errors on Mr. Graham's account. Tr. 24-25. Mr. Graham testified for example that "the utilities should have been fairly comparable from one to the other." Tr. 25. Yet, in cross-examination, Mr. Graham testified that there are ten people living in the home and that,

during the winter the home was heated with space heaters. Tr. 41. Both of these factors indicate high electric usage. Mr. Graham's argument will be rejected.

Mr. Graham's argument that his meter was not functioning properly is refuted, in part, by the fact that his meter tested at 99.99 percent accurate under the full load test. Tr. 72. Commission regulations generally require meters to be accurate within +/- 2%. 52 Pa.Code § 57.20(c). Mr. Graham's meter was then replaced with a new meter that was tested before it was installed. Although it is well established that the accuracy of the meter is an important factor in resolving billing disputes, other factors will be considered, such as billing history of the complainant, change in number of occupants, and potential for energy utilization. Waldron, supra. In this case, the fact that the meter tested accurate, and was replaced by a second meter that was new, rebuts Mr. Graham's assertions that there are incorrect charges on his bill given the paucity of evidence presented by Mr. Graham to support his position. Mr. Graham presented no additional relevant evidence to support a finding that his bills were unreasonably high. Id., see also, Thomas v. PECO Energy Co., Docket No. C-2010-2187197, at 5 (Order entered Nov. 15, 2011). To the contrary, the fact that there were ten occupants in the home and the home was heated using space heaters supports finding that Mr. Graham's arguments should be rejected.

In addition, in support of his arguments, Mr. Graham relied on Section 54.43 of the Commission's regulations, 52 Pa.Code § 54.43. Tr. 17, 44-45; Graham Exh. No. 1. Section 54.43 is entitled "Standards of conduct and disclosure for licensees," pertains to electric generation suppliers and is contained in the portion of the Commission's regulations regarding Electric Generation Supplier Licensing. Id. ("To protect consumers of this Commonwealth, *licensees* shall adhere to the following principles in the provision of electric generation service") (emphasis added). Section 54.43, therefore, is irrelevant to Mr. Graham's complaint against PPL because PPL is an electric distribution company, not an electric generation supplier. PPL cannot be found to have violated Section 54.43 of the Commission's regulations, as Mr. Graham argued. Mr. Graham's arguments to the contrary must be rejected.

Lastly, the exhibits presented by Mr. Graham also do not outweigh the exhibits presented by PPL. For example, Graham Exhibit Number 2 is approximately 80 screenshots of

individual days' hourly electric usage for various days in the months of December 2019 as well as in January through April, July, and August 2020. Tr. 26-27; Graham Exh. No. 2. Mr. Graham testified that this evidence demonstrates that he is not being credited for the electricity generated by his solar panels. Tr. 23. This information, however, cannot be used to make such a finding. In part, the evidence does not contain one complete billing period that can be compared to whatever PPL billed or credited Mr. Graham for in that billing period's bill. Where one screen shot may show net kilowatt of 0.16, for example, such usage on a particular day must be balanced with other usage for all the days throughout the entire billing period to be able to determine whether PPL has provided the correct overall credit for that billing period. No such determination can be made using Graham Exhibit Number 2. Graham Exhibit Number 2 only demonstrates Mr. Graham's net usage on particular days. Such a determination can be made, however, with PPL Exhibit Number 6 (updated) which shows that Mr. Graham was properly credited for his solar generation.

As such, Mr. Graham's arguments that there are incorrect charges on his bill are denied. Mr. Graham has failed to demonstrate by a preponderance of the evidence that PPL violated the Public Utility Code, a Commission order or regulation or Commission-approved tariff with regard to the charges on his bills.

Customer Assistance Program

With regard to Mr. Graham's claim that he is not being given full credit as an OnTrack customer, Mr. Graham argued that there was a delay in enrolling him in the program. Mr. Graham also testified that his OnTrack credits were used up. In support of this argument, Mr. Graham presented, among other things, a screen shot from the PPL website indicating that Mr. Graham is using more customer assistance credit than he has time on the plan. Graham Exh. No. 3.

In response, however, PPL witness Belfort, who has specific oversight for PPL's OnTrack program, testified regarding the policies surrounding the OnTrack program and sponsored the admission of the OnTrack program policies into the record of this proceeding. Tr. 83-84; PPL Exh. No. 5. Ms. Belfort testified that Mr. Graham is currently enrolled in PPL's OnTrack Lifestyle program and explained that the delay that Mr. Graham experienced in being enrolled was due to

PPL needing updated income information from Mr. Graham to complete the application. Tr. 85. Ms. Belfort also testified regarding the account contact history for Mr. Graham's account as well as his OnTrack application. PPL Exh. Nos. 2 and 8. Ms. Belfort testified that Mr. Graham is a Level 1 customer because his household income is within zero to 50% of the federal poverty level. Tr. 88. Ms. Belfort added that, as an electric heating customer, Mr. Graham is afforded a larger maximum credit than a non-heating customer because it is anticipated that heating customers will consume more electricity to heat their homes than non-heating customers. Tr. 88-89. Ms. Belfort testified that Mr. Graham will have to pay \$44.00 per month over the nine-month period he is enrolled in the OnTrack Lifestyle program and noted that the account statement for Mr. Graham's account reflects that the OnTrack credits have been applied to his account. Tr. 91-92; PPL Exh. No. 1.

When balancing this evidence against the evidence presented by Mr. Graham in support of his complaint that he is not being properly given the OnTrack credits, it is clear that Mr. Graham has failed to satisfy his burden of proof on this issue.

As an initial matter, Ms. Belfort testified that the reason for the delay in Mr. Graham's enrollment in OnTrack was because the company was waiting for Mr. Graham to verify his income. This is reasonable as income verification is an important part of ensuring that the proper customers receive the proper assistance from the company. In addition, Ms. Belfort demonstrated that the OnTrack credits have been properly credited to Mr. Graham's account. A review of PPL Exhibit Number 1 reveals that an OnTrack credit appears on Mr. Graham's account for each of the months from June 2018 to October 2020, the last month for which information was provided. PPL Exh. No. 1. Some of these credits were for several hundreds of dollars each.

As a result, Mr. Graham has failed to demonstrate that PPL committed any error with regard to properly crediting his account his OnTrack credits. Mr. Graham's testimony regarding the delay in enrollment and the fact, for example, that he is using his credits more quickly than he has time remaining on the plan is outweighed by the testimony of PPL's witness that the delay in enrolling Mr. Graham was caused by the delay in verifying his income and that Mr. Graham's account was properly credited with all the OnTrack credits to which he is entitled. As noted above, if a complainant establishes a *prima facie* case, the burden of going forward with the

evidence shifts to the utility. *Milkie, supra*. If the 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. *Id.* Mr. Graham has satisfied his burden to establish a *prima facie* case but has not rebutted PPL's evidence by a preponderance of the evidence.

Therefore, Mr. Graham's argument that PPL did not properly credit him his OnTrack credits is without merit and will be rejected.

Switching Generation Suppliers

With regard to Mr. Graham's claim that PPL is forcing him to use PPL as his generation supplier, this argument will also be rejected. Mr. Graham testified that PPL is discriminating against him based on his status as a CAP customer by not allowing him to pick an alternative electric generation supplier but forcing him to use PPL as his supplier. For example, Mr. Graham testified:

We furthermore believe that [PPL] is preventing us from being able to change our supplier so that they can keep control of our bill in-house. We tried to change numerous suppliers. Exhibit – there are a couple of exhibits there from Liberty Power where we had tried to change suppliers to that company and they approved us. And then, whenever it was time to exactly change, we would get another letter stating that we were denied or there was paperwork that wasn't properly transferred over and things of that nature.

Tr. 18. In support of this argument, Mr. Graham sponsored the admission into the record various documents from Liberty Power indicating that Liberty Power approved him for service. Tr. 19, 20; Graham Exh. No. 1. Mr. Graham added: "So, every time we've had or tried to change companies, we've had the same kind of issue. So, we've never actually been able to pick our supplier without some sort of interruption, something getting changed on us without us doing it." Tr. 21.

On cross-examination, however, Mr. Graham recognized that he is not familiar with PPL's standard offer program (SOP) and its impact on PPL CAP customers' ability to choose an alternative electric generation supplier. Mr. Graham testified:

Q. Is it your understanding that any customer involved in the company's Customer Assistance Program, also called CAP, can select whatever electric generation supplier that the customer wants?

A. Yes and no. From what I was informed by Brenda, you're supposed to be able to pick your supplier, but if you have renewable energy or solar like we do, you got to be selective on who you pick because not all of them will give you your credits, but we didn't find that out until numerous years of not knowing anything.

Q. Do you know what the company's standard offer program is for Customer Assistance Program customers?

A. No. No, I do not.

Tr. 39-40.

PPL witness Belfort, however, explained that Mr. Graham was unable to select Liberty Power as his alternative electric generation supplier because Liberty Power does not participate in PPL's CAP SOP. As Ms. Belfort testified:

Q. Could you generally explain what the CAP Standard Offer Program is?

A. Yeah, sure. So, the CAP Standard Offer Program or CAP SOP is a Commission-approved program that allows for OnTrack customers to shop only with suppliers that are participating in that CAP SOP program. So, CAP SOP offers a seven – a discount of seven percent, and the supplier has to be working with PPL through that Standard Offer Program, and that the shopping is restricted to suppliers that are participating in that program.

Q. Okay, so why was Mr. Graham unable to select Liberty Power as his electric generation supplier?

A. Liberty Power was not a participant in the CAP SOP program.

Tr. 93. Ms. Belfort then noted that all customers enrolled in OnTrack “are treated the same and can only shop through the Standard Offer Program, so the same suppliers are available to all customers participating in the program or not.” Tr. 93. Ms. Belfort concluded that an electric generation supplier’s participation in the Standard Offer Program is entirely voluntary. Tr. 94.

As a result, PPL is complying with its Commission-approved CAP SOP that limits customers enrolled in CAP to choose from alternative electric generation suppliers who participate in the CAP SOP. Since Mr. Graham is enrolled in CAP, he is unable to choose Liberty Power as his alternative electric generation supplier because Liberty Power does not participate in PPL’s CAP SOP.

As such, Mr. Graham’s argument that PPL erred by prohibiting him from choosing Liberty Power as his alternative electric generation supplier while he is enrolled in CAP is without merit and will be rejected because Liberty Power is not enrolled in PPL’s CAP SOP and cannot provide CAP customers generation supply.

Conclusion

Mr. Graham has failed to satisfy his burden to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to incorrect charges on his bill, failing to provide the proper customer assistance benefits or not allowing Mr. Graham to switch to an alternative electric generation supplier. PPL has demonstrated that it has accurately billed Mr. Graham, including providing any credits he may have generated through his solar array, and that he has been correctly credited through the PPL CAP OnTrack Lifestyle program. Finally, PPL has not violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company by not allowing Mr. Graham to enroll with Liberty Power for electric generation service because Liberty Power does not participate in PPL’s CAP SOP. Therefore, Mr. Graham’s complaint will be 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. 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 & 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, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Pub. Welfare, White Haven Ctr., 85 Pa.Cmwlt. 23, 480 A.2d 382 (1984).

9. Hearsay cannot be used, without additional competent evidence in the record, to support a finding that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. *See*, Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366 (Pa.Cmwlt. 1976).

10. It is well established that, although the accuracy of the meter is an important factor in resolving billing disputes, other factors will be considered, such as billing history of the complainant, change in number of occupants, and potential for energy utilization. Waldron v. Phila. Elec. Co., 54 Pa. PUC 98 (1980).

11. Mr. Graham has failed to satisfy his burden to demonstrate that PPL has 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Keith Graham against PPL Electric Utilities Corporation on May 4, 2020 at docket number C-2020-3020715 is hereby denied.

2. That this matter be marked closed.

Date: March 1, 2021

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