BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PATRICIA J. VAUGHN, Complainant, vs. PPL ELECTRIC UTILITIES CORPORATION, Respondent.	COMPLAINT DOCKET NO. F-2021-3029570

MEMORANDUM OF LAW OF RESPONDENT PPL ELECTRIC UTILITIES CORPORATION

AND NOW COMES Respondent, PPL Electric Utilities Corp. (hereinafter "Respondent" or "PPL Electric"), by and through their attorneys, Gross McGinley, LLP, and hereby file the following Memorandum of Law in support of its position in the Hearing held on February 2, 2022, and in support thereof, avers as follows:

I. FACTS AND BACKGROUND

The instant matter stems from a PUC Complaint filed by Patricia Vaughn ("Complainant") on or about November 29, 2021, as a result of a foreign load investigation conducted by Respondent, PPL Electric, on or about May 17, 2021, at a rental property owned by Complainant. As the result of the investigation, PPL determined that a foreign load existed on the meter servicing an account in the name of the Prousts, tenants of Complainant. Per Pennsylvania law and PPL Electric policy, Respondent PPL Electric transferred the unpaid portion of the bill from the Prousts' account to Complainant's. Complainant has objected to the transfer, contending that no foreign load actually existed as of the date of the investigation.

A hearing was held before the Honorable Gail M. Chiodo on February 2, 2022, at which Complainant's counsel appeared, but Complainant did not. At the hearing, Byron Barrows and Anthony Harris of PPL Electric testified as to the foreign load investigation they conducted on

May 17, 2021. Messrs. Barrows and Harris testified that before the COVID pandemic, the foreign load investigation would have been done in person. However, since COVID began in March 2020, PPL Electric had to develop an alternative manner in which to conduct the investigations which protected the safety of PPL Electric's customers and employees. (*See* Hearing Transcript 27:6-24) For the safety of all involved, the investigation was conducted virtually utilizing advanced technology (Facetime) which enabled the PPL Electric representative and customer to both see and speak with one another in real time. In this case, Mr. Barrows established an advanced technology session with Mrs. Poust, which enabled Mr. Barrows to request Mrs. Poust to perform various tasks while he visually and auditorily observed the same. (*See* Hearing Transcript Page 33:21-34:4) Such tasks included plugging and unplugging certain items to and from a foreign receptacle (Hearing Transcript Page 33:12-19), turning a hairdryer on and off, (*Id.*) and switching her own meter on and off (*See* Hearing Transcript Page 33:15) while Mr. Harris monitored the usage on Ms. Proust's meter. During this time, Mr. Harris was further able to observe the usage on the meter. (*See* Hearing Transcript Page 60:3-8) The gentlemen testified that through this method of investigation, they were able to determine that a foreign load existed.

Counsel for Complainant argued that this investigation was unreasonable as there was no way to verify that there were no other individuals present interfering with the integrity of the investigation. In support of this argument, Complainant's counsel pointed to an in-person foreign load investigation that Complainant had performed by third parties in August of 2021 which found no foreign load. Respondent argued that given the restrictions of the COVID pandemic, the investigation was wholly reasonable and sufficient under the circumstances. At the close of testimony, Judge Chiodo allowed the parties to brief their respective positions.

II. LEGAL ANALYSIS

A. THERE IS NO REQUIREMENT THAT FOREIGN LOAD INVESTIGATIONS BE PERFORMED IN PERSON

As an initial matter, counsel for Complainant has cited no authority, and PPL Electric is aware of none, that would require Respondent PPL Electric to investigate a tenant's foreign load claim in person. Indeed, to the extent that Complainant argues that Respondent was required to conclusively prove the existence of a foreign load before transferring the unpaid balance from the Prousts' account to her own, she is mistaken. The case of *Franckowiak v. PPL Elec. Utilities Corp.* 101 Pa. P.U.C. 630, 2006 WL 4794383 (Pa. P.U.C.), is instructive on this point. In *Franckowiak*, the complainant reported to PPL that she believed there was a foreign load on her meter. After a preliminary investigation, PPL agreed with her assessment and attempted to schedule a more thorough investigation with the landlord who refused to comply until after the complainant had moved from the premises. After a hearing, the ALJ determined that the balance should be transferred from the tenant's account to that of the landlord. On appeal, the PUC upheld the ruling and noted as follows:

> ***We find that the ALJ correctly determined that the Complainant met her burden of proof regarding the existence of foreign wiring and that PPL violated Section 1529.1 by failing to place the account in the name of the landlord after foreign wiring was strongly suspected. The ALJ observed that PPL believes that it cannot place an account in the property owner's name unless and until it substantiates the existence of foreign wiring. The ALJ correctly observed that this interpretation of Section 1529.1 is too narrow and would permit (and perhaps encourage) property owners to thwart the legislative intent by failing to promptly and fully cooperate with a utility's foreign wiring inspections***.
>
> The ALJ's recommended resolution will be accepted with modification. The Initial Hearing was held on November 16, 2005. This date has importance because it occurred after the Commission's final Order on the formal complaint of *Theodore Del Vecchio v. PPL Electric Utilities Corporation*, Docket No. Z-01464793 (Order

> entered September 13, 2005). In that proceeding, we held that the utility violated our Utility Company Dispute Procedures at 52 Pa. Code Section 56.151, for failing to promptly investigate the Complainant's foreign load complaint, and that the utility violated Section 1529.1 ***by failing to place the account in the name of the landlord immediately after foreign wiring was suspected.***
>
> This case is remarkably similar to *Del Vecchio* where the Commission assessed a civil penalty of $1,000. As in *Del Vecchio*, ***PPL did not place the account in the name of the landlord when it had a strong indication that foreign wiring existed***. The primary difference between this case and *Del Vecchio* is that the landlord in this case refused to cooperate with PPL. The landlord's failure to cooperate does not mitigate PPL's failure to place the account in the name of the landlord at the time that foreign wiring was strongly suspected. Not promptly placing the account in the landlord's name encourages dilatory behavior, as occurred here, to the undoubted frustration of one or more tenants.

Id. (Emphasis Added)

As *Franckowiak* makes clear through language such as "suspected," "strongly suspected," and "strong indication", Respondent was not required to conclusively verify the existence of foreign wiring before transferring the balance from the Proust account to that of Complainant. Rather, Respondent needed only to develop a suspicion of a foreign load through investigation, and Mr. Barrows and Mr. Harris testified quite extensively and credibly to doing precisely that. (*See* Hearing Transcript at Pages 28:1-40:15 and 58:7-63:20). The fact that Complainant did not directly preclude PPL from conducting an in-person investigation is of no moment, as the PUC held that the same standard applied in the *Del Vecchio* matter, where no affirmative interference with the foreign load investigation was found.

B. THE VIRTUAL FOREIGN LOAD INVESTIGATION WAS A REASONABLE RESPONSE TO THE UNPRECEDENTED COVID PANDEMIC AND ITS RESTRICTIONS

Although Mr. Barrows testified at the Hearing that he had no preference for the manner in which the foreign load investigations were conducted (*See* Hearing Transcript Page 52:3-4), the

uncontroverted testimony was that Respondent ordinarily conducts said investigations in person, but switched to a virtual format in the wake of the COVID pandemic to comply with guidelines regarding social distancing. Pennsylvania courts have long held that "Reasonableness is a question for the fact-finder and determined by consideration of all existing circumstances." *Reagan v. D. & D. Builders, Inc.,* 277 Pa. Super. 140, 143, 419 A.2d 700, 702 (1980). While COVID-19 has presented challenges never before faced by American businesses, Respondent argues that an approach that aimed to keep both its employees and its customers safe by eliminating direct contact, while also ensuring accuracy by using software connected directly to the customer's meter was infinitely reasonable under the circumstances. In fact, while COVID forced businesses to become innovative, virtual inspections have brought with them additional benefits. Virtual investigations increase safety for all involved and further increase efficiency so that investigations can be completed close in time to when complaints are issued. As noted in this case, the concern for foreign wiring was brought to the attention of PPL Electric on May 6, 2021, and the investigation was completed on May 17, 2021. *(See* PPL Exhibit 7, Page 22 to Hearing Transcript). This timely investigation is a benefit to all involved.

Complainant argues that she should have been given notice and an opportunity to be present at the virtual investigation. Not only does no affirmative rule exist that requires this, but taking this step would have increased the risk of COVID transmissions between those present. Moreover, there is no guarantee that Complainant would have appeared for the investigation even if she had been notified. After all, she was notified on May 18, 2021 of the finding of a foreign load (*See* PPL Exhibit 7 Page 24 to Hearing Transcript), and made no response of any kind until August 17, 2021, three months later (*See* PPL Exhibit 2 to Hearing Transcript). As such, the notion

that Complainant would have complied and appeared for the virtual foreign load situation is far from certain.

C. COMPLAINANT HAS NOT PROVIDED SUFFICIENT AFFIRMATIVE EVIDENCE TO MEET HER BURDEN OF PROOF

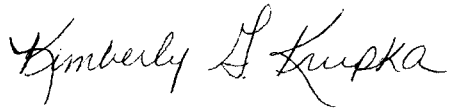
Franckowiak, supra also serves as a reminder that it is the party seeking relief that has the burden of proof pursuant to 66 Pa. C.S. § 332(a). Here, Complainant has not demonstrated that PPL was required to investigate the foreign load claimed by the Prousts in person, nor has she offered any evidence that the investigation conducted by PPL was compromised or falsified in any way. Indeed, her counsel raised several speculative hypotheticals during the hearing, but there was neither evidence offered nor testimony elicited as to any of these scenarios having actually taken place. As the party with the burden of proof, a series of "what ifs" and "could haves" is simply not sufficient to support her case. Additionally, the third-party report which indicates no foreign load as of August 2021 is wholly irrelevant as to whether a foreign load existed on the Prousts' meter three months prior, in May 2021. This is especially true given that Complainant reported to PPL's Dennis Worthington on August 17th the receptacle in question "might have been on [the Prousts'] meter," but that she was "confident it's not on there now. (*See* Hearing Transcript, Page 75:17-20.)

In short, Complainant has produced neither legal authority nor factual evidence to support her claim for relief and as such her complaint should be denied.

IV. CONCLUSION

Based on the above, it is respectfully requested that the Complaint of Patricia Vaughn be denied.

GROSS MCGINLEY, LLP



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BEFORE THE
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CERTIFICATE OF SERVICE

This is to certify that the RESPONDENT'S MEMORANDUM OF LAW on behalf of PPL ELECTRIC UTILITIES CORPORATION was mailed to counsel/complainant of record on behalf of Respondent by electronic mail, on this the 17th day of March, 2022.

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101 Pa.P.U.C. 630, 2006 WL 4794383 (Pa.P.U.C.)

Linda Franckowiak
v.
PPL Electric Utilities Corporation

Case 20054687

Pennsylvania Public Utility Commission

May 4, 2006; entered July 3, 2006

BY THE COMMISSION:

OPINION AND ORDER

Before the Commission for consideration is the Initial Decision of Administrative Law Judge (ALJ) Kandace F. Melillo issued January 23, 2006, in the above-captioned proceeding. There have been no Exceptions filed in this proceeding. Nonetheless, we requested review of this Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C. S. § 332(h), because of the similarity between the facts of this case and those of *Theodore Del Vecchio v. PPL Electric Utilities Corporation*, at Docket No. Z-01464793 (Order entered September 13, 2005). We believe that it is appropriate to apply the policy that we established in the *Del Vecchio* case in the instant proceeding.

History of the Proceeding

On April 19, 2005, Linda Franckowiak (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). In her Complaint, Ms. Franckowiak alleged that she was billed for electricity that she had not used and that she suspected that a foreign wiring situation existed.[1] She believed that she was being charged by PPL for high electric bills which should have been the landlord's responsibility. She requested a determination from the Commission that the landlord was responsible for the electric bills.

PPL filed a timely Answer to the Complaint on July 28, 2005, which acknowledged that it had been contacted by Complainant on March 23, 2004, to investigate the high bills and that the bills could not be justified based upon Complainant's potential for household usage. PPL further asserted that, after determining that there was a potential foreign wiring (Act 54)[2] issue, it contacted the landlord Dean McCartney on March 29, 2004, to arrange for a foreign wiring inspection. However, the landlord had not provided access to the property. PPL denied that it had been unreasonable in billing Complainant for the usage.

On July 28, 2005, PPL sought joinder of the landlord as a party to this proceeding by filing a Petition to Join an Indispensable Party (Petition to Join), which was duly served upon Complainant and Dean McCartney, as the landlord and property owner. No answer or response to the Petition to Join was filed by either Ms. Franckowiak or Mr. McCartney.

Mr. McCartney's counsel entered a Notice of Appearance on October 24, 2005, and Mr. McCartney filed an Answer to the Formal Complaint on November 14, 2005. Mr. McCartney's Answer admitted that he and PPL had been contacted by Complainant regarding high electric bills, but denied that he should be held responsible for the bills.

The Initial Telephone Hearing was held on Wednesday, November 16, 2005, at 10:00 a.m., with all parties present. PPL presented the testimony of two Company witnesses and introduced three (3) exhibits.[3] Mr. McCartney, who was represented by counsel and testified in his own behalf, presented no exhibits. Linda Franckowiak proceeded *pro se*, testified on her own behalf and presented no exhibits.

From February 1, 2003, to February 1, 2005, the Complainant occupied one of the two residential units at the service address.

The Complainant first contacted PPL concerning high electric bills on March 23, 2004. A PPL representative performed an investigation and determined the potential electric use for the billing address to be 1,561 kWh per month. For the period February 20, 2004, to March 22, 2004, the Complainant was billed for 2,738 kWh. The PPL representative suspected that a foreign wiring situation accounted for the unexplained usage over and above the connected load.[4]

On March 26, 2004, PPL began a number of attempts to contact the landlord to inform him of the suspected foreign wiring at the service address and to inquire about access to the second unit. When PPL was finally able to contact the landlord on April 20, 2004, the landlord did not agree to meet with PPL to provide access to the other apartment. It was not until September 1, 2005, that the landlord provided PPL with access to the property. By this time, the Complainant had moved from the location.

The hearing produced a transcript of 124 pages. The parties waived the filing of briefs and the record closed by Interim Order on December 8, 2005, upon receipt of the hearing transcript.

The ALJ issued an Initial Decision on January 23, 2006, that sustained the Formal Complaint. The ALJ determined that the Complainant's unpaid balance of $666.86 should be transferred to the account of the property owner, Mr. McCartney. The ALJ also ordered that PPL shall, henceforth, cease from deferring to the property owner's timetable in foreign wiring investigations and shall promptly and fully investigate such claims.

Discussion

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, the Complainant has alleged an overbilling due to the presence of foreign load.[5] Thus, it is clear that she is the party seeking affirmative relief from the Commission and, therefore, she is the party with the burden of proof. The Pennsylvania Supreme Court has held that when a litigant has the 'burden of proof,' it means that his claim will not be accepted until he offers sufficient proof to support it. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 856 (1950). In matters before the Commission, the burden of proof is met when the party establishes the necessary facts by a preponderance of the evidence. A preponderance of the evidence is that degree of proof which '*fairly out-weighs* the probative value of any proof offered against the claim.'*Id*. (Emphasis in original).

In her Initial Decision, the ALJ made twenty-two Findings of Facts (I.D. at 3-7) and reached eleven Conclusions of Law (I.D. at 17-19). We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication. No Exceptions were filed.

The ALJ determined that the Complainant met the standard for establishing a *prima facie* case that foreign or mixed wiring is the cause of her high electric bills. *See Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1219-1220 (Pa. Cmwlth. 2001). Specifically, the ALJ found the following:

(1) Complainant leased one unit of a two-unit building.

(2) She did not have control over the wiring in the building.

(3) The hot water heater for the other tenant and the breaker associated with that water heater was located in Complainant's apartment.

(4) The potential for energy utilization in her dwelling, based upon living space, the number of occupants, number, type and size of appliances, and heating and cooling methods, was considerably lower than the billed usage.

(5) The utility representative identified foreign wiring as a possible cause of the high usage. The ALJ found that the evidence submitted by the Complainant was sufficient to establish a *prima facie* case of foreign wiring that, unrebutted, would enable the Complainant to prevail on her Complaint. (I.D. at 11-12).

The ALJ concluded that the landlord failed to present sufficient evidence to rebut the Complainant's *prima facie* case.

Therefore, the ALJ recommended that the Complainant's foreign wiring complaint be sustained. (I.D. at 18).

The ALJ found that the Complainant's outstanding account balance of $666.86 is the landlord's responsibility. The ALJ also found that PPL violated Section 1529.1 of the Code, 66 Pa. C.S. § 1529.1, by not placing the Complainant's account in the property owner's name. (I.D. at 18-19). Although the ALJ found that PPL violated Section 1529.1, she did not recommend that a civil penalty be assessed.

We find that the ALJ correctly determined that the Complainant met her burden of proof regarding the existence of foreign wiring and that PPL violated Section 1529.1 by failing to place the account in the name of the landlord after foreign wiring was strongly suspected. The ALJ observed that PPL believes that it cannot place an account in the property owner's name unless and until it substantiates the existence of foreign wiring. The ALJ correctly observed that this interpretation of Section 1529.1 is too narrow and would permit (and perhaps encourage) property owners to thwart the legislative intent by failing to promptly and fully cooperate with a utility's foreign wiring inspections. (I.D. at 16).

The ALJ's recommended resolution will be accepted with modification. The Initial Hearing was held on November 16, 2005. This date has importance because it occurred after the Commission's final Order on the formal complaint of *Theodore Del Vecchio v. PPL Electric Utilities Corporation*, Docket No. Z-01464793 (Order entered September 13, 2005). In that proceeding, we held that the utility violated our Utility Company Dispute Procedures at 52 Pa. Code Section 56.151, for failing to promptly investigate the Complainant's foreign load complaint, and that the utility violated Section 1529.1 by failing to place the account in the name of the landlord immediately after foreign wiring was suspected.[6]

This case is remarkably similar to *Del Vecchio* where the Commission assessed a civil penalty of $1,000. As in *Del Vecchio*, PPL did not place the account in the name of the landlord when it had a strong indication that foreign wiring existed. The primary difference between this case and *Del Vecchio* is that the landlord in this case refused to cooperate with PPL. The landlord's failure to cooperate does not mitigate PPL's failure to place the account in the name of the landlord at the time that foreign wiring was strongly suspected. Not promptly placing the account in the landlord's name encourages dilatory behavior, as occurred here, to the undoubted frustration of one or more tenants.

As in *Del Vecchio*, we believe that the imposition of a civil penalty on PPL is justified. We have come to this conclusion because the facts in this case meet the standards we established in *Rosi v. Bell Atlantic — Pennsylvania, Inc*. at Docket No. C-00992409 (Order entered March 16, 2000), regarding the amount of civil penalty to be assessed. While *Rosi* involved telecommunications industry slamming, the Commission has utilized the standards therein established as a basis to develop the amount of civil penalties in cases regarding other utility issues. *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (Order entered December 21, 2000).

The first standard to be considered is whether the violation was intentional or negligent. If the violation were intentional, the Commission will start with the presumption that the penalty will be in the range of $500 to $1,000 per day. If, on the other hand, the violation were negligent, the Commission will start with the presumption that the penalty will be in the range of zero dollars to $500 per day. This first Standard is generic in nature and can easily be applied to any utility type. We believe, in this instance, that PPL's violations were negligent and, therefore, will carry a penalty in the lesser of the two ranges mentioned above.

The next two standards are phrased in *Rosi* to address the issue of slamming; however, they are to be used in other utility penalty cases beyond those involving slamming. The second *Rosi* Standard addresses the promptness with which the utility took steps to correct the issue, and the third *Rosi* standard questions whether the utility initiated procedures to prevent this (foreign load) from occurring again. The Complainant contacted PPL on March 23, 2004. While PPL's response to the initial foreign load complaint was appropriate, its follow-up was frustrated by the landlord's lack of cooperation. (I.D. at 1, 2). It was at this point in time that the account should have been placed in the landlord's name. The Complainant vacated her apartment on February 1, 2005, but it was not until September 1, 2005, that the landlord granted access to PPL to both apartments. (FOF Nos. 17, 18).

The fourth and fifth *Rosi* standards question the number of customers impacted by the violation, and whether the recommended penalty arises from a settlement or a litigated proceeding. As presented in this proceeding, only one customer was impacted by this fully-litigated proceeding. Standards six and seven question the compliance history of the utility, and

whether the utility cooperated with the Commission in attempting to correct the problem. PPL has a good compliance history with the Commission; however, the foreign wiring investigation did not occur until seven months after the Complainant vacated the premises and another tenant moved in. PPL's position is that it could not conduct a full investigation without access to the entire property and the property owner did not provide such access until September 1, 2005. We agree with the ALJ that the burden was inappropriately placed on the Complainant to arrange for the inspection of the entire building even though she was not authorized to provide full access. Section 1529.1 requires utilities to place accounts in the name of the property owner upon discovery of foreign wiring. 66 Pa. C. S. § 1529.1. As noted by the ALJ, in *Del Vecchio*, we found that Section 1529.1 was also intended to place the burden of a foreign wiring problem on the property owner and not on the tenant. (I.D. at 16).

The eighth and ninth standards consider the amount necessary to deter future violations and consider past Commission decisions regarding similar issues. As previously stated, the penalty will fall within the lesser of the two ranges specified in the first Standard. Regarding past Commission decisions addressing foreign load, this is the first time that we have addressed the situation here where a foreign wiring investigation could not be conducted until after the Complainant had moved and where the owner of the property is the party delaying the investigation. And lastly, the tenth *Rosi* standard is other relevant factors.

Consistent with the policy we established in *Del Vecchio*, PPL should have transferred responsibility for service effective the first billing period that the company suspected that there was foreign load. Accordingly, a civil penalty of $500.00 is appropriate, as is rebilling the account for the period March 23, 2004, to February 1, 2005. PPL is to recalculate the billing for this period, refunding all payments made by the Complainant over the $666.86 debit balance that remained at the time the Complainant discontinued service. The account balance for the entire period from March 23, 2004, through February 1, 2005, is to be transferred into the name of the landlord. Of course, it is proper for PPL to attempt to collect these amounts from the landlord. Therefore, based upon the discussion of the *Rosi* Standards, we shall modify the ALJ's recommendation, based upon our finding that PPL's violation was negligent, to $500;

THEREFORE,

***IT IS ORDERED*:**

1. That the Initial Decision of ALJ Melillo is adopted as modified regarding the civil penalty imposed.

2. That the Complaint of Linda Franckowiak against PPL Electric Utilities Corporation at Docket No. C-20054687 is sustained.

3. That within sixty days of the entry of this Opinion and Order, PPL Electric Utilities is to recalculate the billing for March 23, 2004, until February 1, 2005, as shown in PPL Hearing Exhibit No. 1, refunding all payments made by Linda Franckowiak over the $666.86 debit balance that remained at the time she discontinued service.

4. That within sixty days of the entry of this Opinion and Order, PPL Electric Utilities is to transfer the remaining account balance for the entire period from March 23, 2004, through February 1, 2005, into the name of Dean McCartney, the landlord.

5. That within twenty days of the date of entry of this Opinion and Order, PPL Electric Utilities Corporation shall pay a civil penalty in the amount of $500 by submitting a certified check for that amount to:

James J. McNulty, Secretary Pennsylvania Public Utility Commission P. O. Box 3265 Harrisburg, PA 17105-3265

6. That this Complaint proceeding is terminated and that the record thereof is marked closed.

ORDER ADOPTED: May 4, 2006

ORDER ENTERED: July 3, 2006

INITIAL DECISION

Before

Kandace F. Melillo

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On April 19, 2005, Linda Franckowiak (Complainant or Ms. Franckowiak) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent). In her Complaint, Ms. Franckowiak alleged that she was being charged by Respondent for high electric bills which should have been the landlord's responsibility. She requested a determination from the Commission that the landlord was responsible for the electric bills.

PPL filed a timely Answer to the Complaint on July 28, 2005, which acknowledged that it had been contacted by Complainant on March 23, 2004, to investigate the high bills and that the bills could not be justified based upon Complainant's potential for household usage. PPL further asserted that, after determining that there was a potential foreign wiring (Act 54)[1] issue, it contacted the landlord Dean McCartney on March 29, 2004, to arrange for a foreign wiring inspection but that the landlord had not provided access to the property. PPL denied that it had been unreasonable in billing Complainant for the usage.

On July 28, 2005, PPL filed a Petition to Join an Indispensable Party (Petition to Join), with a twenty-day Notice to Plead, which was served upon Complainant and Dean McCartney, as the landlord and property owner. In its Petition to Join, PPL averred that Mr. McCartney must be joined as a party since his rights as to the electric bills at issue would be determined as a result of this proceeding. It further averred that the granting of the Petition to Join would enhance efforts of PPL to gain access to the property for the foreign wiring investigation. No answer or response to the Petition to Join was filed by either Ms. Franckowiak or Mr. McCartney.

By Telephone Hearing Notice dated August 4, 2005, Ms. Franckowiak and PPL were notified that an Initial Telephone Hearing was scheduled in this matter for Thursday, September 8, 2005, at 10:00 a.m. I was assigned to preside in this matter.

By letter dated August 19, 2005, John F. Gross, Esquire, counsel for PPL, requested that the September 8, 2005, hearing be continued for 60 to 90 days, to allow for a disposition of its Petition to Join and to conduct discovery.

On August 23, 2005, I issued an Interim Order which joined Mr. McCartney as a party to the proceeding[2] and which granted a sixty-day continuance. The continuance was to allow time for service of Ms. Franckowiak's Complaint upon Mr. McCartney, to allow for the filing of an Answer by Mr. McCartney, and to provide an opportunity for discovery. The hearing was to be rescheduled for a date subsequent to November 8, 2005. Dean McCartney was directed to be added to the service list and the case caption.

On August 24, 2005, a Hearing Cancellation/Reschedule Notice was issued which apprised the parties that an Initial

Telephone Hearing would be held on Wednesday, November 16, 2005, at 10:00 a.m. Dean McCartney retained counsel and his attorney, James M. Polyak, Esquire, entered a Notice of Appearance on October 24, 2005, according to Commission records.

On November 3, 2005, I issued a Prehearing Order which provided applicable procedures regarding submission of proposed exhibits, attorney representation, continuances, subpoenas, discovery, and informal discussions between the parties. It emphasized the Commission's policy which encouraged settlements. 52 Pa. Code § 5.231 (a).

By cover letter dated November 9, 2005, PPL submitted copies of three proposed exhibits (PPL Hearing Exhibits 1, 2 and 3) for possible use at the upcoming hearing. In addition, Respondent Dean McCartney filed an Answer to the Formal Complaint of Linda Franckowiak on November 14, 2005. Mr. McCartney's Answer admitted that he and PPL had been contacted by Complainant regarding high electric bills, but denied that he should be held responsible for the bills.

The Initial Telephone Hearing was held as scheduled on Wednesday, November 16, 2005, at 10:00 a.m., with all parties present. PPL, who was represented by John F. Gross, Esquire, presented the testimony of two Company witnesses (William Grooms and Sandra Allen) and introduced three (3) exhibits (PPL Hearing Exhibits 1 through 3). Mr. McCartney, who was represented by James M. Polyak, Esquire, testified in his own behalf, and presented no exhibits. Linda Franckowiak proceeded *pro se*, testified in her own behalf, and presented no exhibits.

The hearing produced a transcript of 124 pages. The parties waived the filing of briefs, and the record closed by Interim Order on December 8, 2005, upon receipt of the hearing transcript. This case is now ready for a decision.

FINDINGS OF FACT

1. Complainant is Linda Franckowiak (Complainant or Ms. Franckowiak), who was a PPL Electric Utilities Corporation (PPL) residential ratepayer at 110 New Kirk Avenue, Shillington, PA, 19607, from February 1, 2003 to February 1, 2005. Tr. 12, 15, 17-19.

2. Respondent is PPL Electric Utilities Corporation (PPL or Respondent), a public utility providing residential electric service in the Commonwealth of Pennsylvania. PPL Hearing Exhibit (Ex.) 1, 3.

3. Additional Respondent is Dean McCartney, the owner of a residential building at 110 New Kirk Avenue, Shillington, PA, 19607, and Complainant's landlord during the time period of February 1, 2003 to February 1, 2005. Tr. 95.

4. The building located at 110 New Kirk Avenue, Shillington, PA, 19607 (110 New Kirk Avenue), owned by Mr. McCartney, contained two residential rental units during the time period that Ms. Franckowiak resided at the premises. Complainant did not have access to the other rental unit, and did not have control over the wiring. Tr. 16-19, 30, 67, 90, 112.

5. Complainant experienced higher than normal electric bills while residing at 110 New Kirk Avenue, and complained to the building owner Mr. McCartney. Mr. McCartney replaced the stove and hot water heater, but the high bills continued. Tr. 28-29.

6. The hot water heater and the breaker box associated with the hot water heater for the other tenant in the building was located in Ms. Franckowiak's apartment. Tr. 19-20.

7. The full-time residents in Ms. Franckowiak's household from February 1, 2003 to February 1, 2005, were two

adults and one child. Tr. 108-109.

8. The electric appliances in use in Ms. Franckowiak's apartment consisted of a 14-18 cubit foot automatic defrost refrigerator, stove, microwave oven, drip coffee maker, iron, hairdryer, two smaller televisions, three VCR/DVD players, a computer, and a vacuum cleaner. Ms. Franckowiak also used electricity for lighting, cooling and hot water heating, but had oil forced hot air heat. She had no supplemental heating source such as an electric space heater. PPL Hearing Exs. 2, 3; Tr. 23-25, 31-32, 110.

9. Ms. Franckowiak first contacted PPL to report high electric bills and a potential foreign load problem on March 23, 2004. During the initial contact, the PPL call screener computed a potential kilowatt hour (kwh) base load and heating load for Ms. Franckowiak, based upon amount of living space, number of occupants, number, type and size of appliances, and heating and cooling methods, of 1,561 kwh for the thirty-one day period of February 20, 2004, to March 22, 2004. Ms. Franckowiak was actually billed for 2,738 kwh during this same time period. Thus, PPL could only account for 57% of the actual bill, and concluded that the 43% remaining unexplained usage could be due to foreign wiring. PPL Hearing Exs. 2, 3; Tr. 15, 60-61, 64, 73-74, 78-79.

10. At the hearing, Ms. Franckowiak corrected certain errors in PPL's potential kwh calculation in that iron and hairdryer usage was to be included, but that the apartment cube and side-by-side refrigerator usage was to be deleted and replaced with electric usage for a 14-18 cubic foot automatic defrost refrigerator. Based upon these corrections, Complainant's potential kwh usage for the February 20, 2004, to March 22, 2004 time period was 1,476 kwh, or 54% of the 2,738 billed kwh. Tr. 23-24, 31-32.

11. To test for foreign wiring, PPL required simultaneous access to both residential units at 110 New Kirk Avenue. While Complainant could and would provide access to her own unit, she was not authorized to provide access to PPL to the other apartment. The assistance and cooperation of the landlord and property owner Dean McCartney was needed to obtain access to both units. Tr. 30, 70, 89-90.

12. PPL customer contact representative Sandra Allen first attempted to contact Mr. McCartney on March 26, 2004, to inform him of the suspected foreign wiring at 110 New Kirk Avenue and to inquire about access to the second unit. She did not reach Mr. McCartney but left him a message for a return call. Tr. 57-58, 65-66; PPL Hearing Exs. 2, 3.

13. By March 29, 2004, Mr. McCartney had not yet returned Ms. Allen's phone call, so Ms. Allen called again and left another message for a return call. Mr. McCartney returned her call that day and also spoke with Ms. Allen on April 2, 2004. Ms. Allen informed him about the suspected foreign wiring and that he would need to provide access to the entire property for PPL's investigation. Mr. McCartney indicated to Ms. Allen that he wanted to conduct his own investigation of the matter and that he would get back to Ms. Allen with those results by April 6, 2004. Tr. 66-69; PPL Hearing Exs. 2, 3.

14. Mr. McCartney did not get back to Ms. Allen on April 6, 2004, so Ms. Allen attempted to call him on April 7, 2004, and left another message for a return call. When Mr. McCartney did not return this call, Ms. Allen called him again on April 12, 2004, and left another message. She did not get a response so she called again on April 16, 2004. After Ms. Allen was unable to reach Mr. McCartney on April 16, 2004, she contacted Ms. Franckowiak and asked Complainant to contact Mr. McCartney since he was not returning Ms. Allen's calls. PPL Hearing Exs. 2, 3; Tr. 68-69.

15. On April 20, 2004, Ms. Allen called Ms. Franckowiak and inquired as to whether she could obtain access to the other apartment from the tenant as Mr. McCartney would not cooperate with PPL to complete a foreign wiring inspection of the entire building. Ms. Franckowiak indicated that Mr. McCartney had also not been returning her phone calls. PPL indicated to Complainant that it could do nothing more regarding the high bill complaint since the landlord would not meet with PPL at the premises to provide access to the entire building. Tr. 69-70; PPL Hearing

Ex. 2, 3.

16. Ms. Allen finally spoke with Mr. McCartney on April 20, 2004, but Mr. McCartney would not agree to meet with PPL to provide access to conduct the foreign wiring investigation. Instead, he wanted to resolve the matter himself. PPL Hearing Ex. 3.

17. Ms. Franckowiak vacated the apartment at 110 New Kirk Avenue on February 1, 2005, and discontinued service from PPL at that time. Tr. 18-19.

18. Mr. McCartney did not arrange for PPL to have simultaneous access to both apartments to conduct a foreign wiring investigation until September 1, 2005. At that time, a different tenant was residing at 110 New Kirk Avenue in Ms. Franckowiak's former apartment. Tr. 69-71.

19. PPL did not visit the property to perform any part of its foreign wiring investigation until September 1, 2005. Tr. 51.

20. There was no accuracy test performed on Ms. Franckowiak's meter. Tr. 79.

21. There is an outstanding balance of $666.86 on Ms. Franckowiak's account with PPL. Tr. 39-40; PPL Hearing Ex. 1.

22. Mr. McCartney acknowledged that he had not been prompt about returning PPL's phone calls due to other business responsibilities. He placed the responsibility of dealing with the potential foreign wiring situation on Ms. Franckowiak as it was her electric bill. He never agreed to allow PPL to have access to the entire building for a foreign wiring investigation while Ms. Franckowiak was in residence. Tr. 97, 101-102, 105.

DISCUSSION

In her Formal Complaint, Ms. Franckowiak claimed that she being unreasonably charged by PPL for high electric bills which should be the property owner's responsibility. As the Complainant seeking affirmative relief from the Commission, she bears the burden of proof. 66 Pa. C.S. § 332(a). Complainant must therefore demonstrate that Respondent provided unreasonable public utility service, under Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, due to overbilling.

An additional issue, in light of the Commission decision in *Del Vecchio v. PPL Electric Utilities Corporation*,[3] is whether PPL performed a reasonable foreign wiring investigation under the circumstances. I am mindful that the investigation was not completed until the first site visit on September 1, 2005, which was seven (7) months after Ms. Franckowiak had vacated the premises and over seventeen (17) months after she had first contacted PPL regarding high bills. This appears to be a case of first impression in that I could find no other Commission foreign wiring decision wherein, as in the instant case, the complainant's residence was not inspected by the utility for suspected foreign wiring while the complainant was in residence,[4] due to an uncooperative property owner.

To satisfy her burden of proof, Complainant must demonstrate that the named utility is responsible for the problem involved in the Complaint, in that the utility has violated the Public Utility Code or a regulation or Order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. § 701; *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600; 602 (1990), *alloc. den.*, 602 A.2d 863 (1992).

In *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980), the Commission explained the process of meeting the

burden of proof. In accordance with *Waldron*, the Complainant has the burden to put forth evidence establishing a prima facie case that she was overcharged by PPL for her electric usage. An additional concern is whether PPL performed a full and prompt investigation of this suspected foreign wiring complaint, as it was required to do under 52 Pa. Code § 57.12(a). *See also*, 66 Pa. C.S. § 56.151(2).

If Complainant establishes a prima facie case, the burden of going forward, but not the ultimate burden of proof, shifts to the utility and, in this case, an additional adverse party, to rebut the prima facie case with evidence which is at least co-equal. If the Complainant's evidence is rebutted, the burden of going forward shifts back to the Complainant, who must rebut the adverse parties' evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95.

I will address each of the issues separately.

Foreign Wiring Dispute

Ms. Franckowiak testified that she was the PPL ratepayer of record from February 1, 2003, to February 1, 2005, in one of two adjoining residential units located at 110 New Kirk Avenue, Shillington, PA (110 New Kirk Avenue). Tr. 18-19. During this period of time, Ms. Franckowiak experienced high electric bills and contacted her landlord, Dean McCartney, about the problem. Tr. 15. She believed that foreign or mixed wiring existed because her neighbor's water heater and the breaker box containing the switch associated with the water heater were located in Complainant's apartment. Tr. 19. In response to Ms. Franckowiak's complaint, the landlord replaced the stove and hot water heater in the apartment, but the problem continued. Tr. 28-29.

Ms. Franckowiak also contacted PPL about her high bills. During the initial call, PPL's call screener asked questions about living space, number of occupants, number, types, and sizes of electric appliances, and the heating and cooling source for the apartment. Tr. 73-74. Using this information, PPL computed a potential kilowatt hour (kwh) base load and heating load, and compared that to Ms. Franckowiak's actual billed kwh for the same period (2/20/04-3/22/04). PPL Hearing Ex. 2. Ms. Franckowiak testified that, based upon this information, PPL had indicated to her that it was not possible for her to have used the kwh for which she was billed.[5] Tr. 15.

In its evidentiary presentation, PPL presented Sandra Allen, a PPL customer contact representative (CCR). Ms. Allen sponsored PPL Hearing Exhibit 2, which contained the kwh comparison referenced by Ms. Franckowiak in her testimony. This exhibit showed a potential base load calculation for Ms. Franckowiak of 1338 kwh and a heating load of 223 kwh (combined 1561 kwh) for the thirty-one (31) day period of February 20, 2004 to March 22, 2004, as compared to the 2738 kwh for which she was billed. Thus, PPL could account for only 57% of the bill (1561 kwh/ 2738 kwh = .570124 or 57%) based upon its calculations, and the remaining 43% was unexplained. PPL Hearing Ex. 2; Tr. 78-79. Ms. Allen concluded that the unexplained usage could be due to foreign wiring.[6] Tr. 64.

In her testimony, Ms. Franckowiak corrected PPL's base load calculation, in that an iron and hairdryer usage was to be included in the analysis, but that the apartment cube and side-by-side refrigerator usage should be deleted and replaced with usage for a 14-18 cubic foot automatic defrost refrigerator. Tr. 23-24, 31-32. Based upon these corrections, the potential thirty-one (31) day base load was decreased to 1253 kwh[7] or 1476 kwh combined (1253 kwh + 223 heating load), which is 54% of the 2738 kwh for which Ms. Franckowiak was billed (1476 kwh/ 2738 kwh = 0.53907 or 54%).

PPL also presented the testimony of William Grooms, a PPL employee and supervisor of the PPL CCRs which perform high bill investigations. Mr. Grooms prepared an informal case response (PPL Hearing Ex. 3, pp. 1-4) regarding this matter for the Commission's Bureau of Consumer Services (BCS) investigator. In this report, it is noted as follows: 'CCR explained [to Ms. Franckowiak] one of the reasons the usage does not match projected usage could be foreign wiring and explained Act 54 procedures'. Tr. 47-48; PPL Hearing Ex. 3, p. 2.

Ms. Franckowiak testified that PPL needed to perform an on-site foreign wiring inspection of the entire two-unit property as part of its high bill investigation, and required permission from the landlord to do this. Tr. 30. Complainant provided the name and phone number of the landlord and property owner, Mr. McCartney, to PPL to arrange for the inspection, but the

landlord was not cooperative. Sandra Allen corroborated Ms. Franckowiak's testimony as she indicated that access to the entire building was required and that Mr. McCartney did not agree to and arrange for access until September 1, 2005. As a result, the inspection did not take place while Ms. Franckowiak resided at the property. Tr. 17, 69, 90, 114.

As stated previously, I believe this to be a case of first impression in that a suspected foreign wiring case is being presented without the results of a foreign wiring investigation conducted while Complainant resided at the property. I view this as similar to billing dispute cases involving meter accuracy, with respect to establishment of a prima facie case. In these cases, the Commission and appellate courts have not required that a complainant demonstrate meter inaccuracy in order to prevail.[8] Indeed, Commonwealth Court has recognized that a customer could prevail in a billing dispute case through circumstantial evidence, *despite* a test that showed meter accuracy. *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Commw. 2001). When a complainant has presented testimony that the number of household occupants has not changed, that the potential for energy utilization was low, and that the complainant's prior billing history showed no previous abnormalities, he or she has established a prima facie case which, unrebutted by a utility, would entitle a complainant to prevail.[9]

Similarly, in the instant case, Ms. Franckowiak need not present definitive evidence of foreign wiring in order to set forth a prima facie case that she was being billed for someone else's usage. Rather, Complainant's prima facie case can be established through circumstantial evidence which raises an inference that foreign or mixed wiring is the cause of high electric bills. *Milkie v. Pa. P.U.C.*, *supra*. In the instant case, evidence was presented as follows: (1) Complainant leased one unit of a two-unit building; (2) she did not have control over the wiring in the building; (3) the hot water heater for the other tenant and the breaker associated with that water heater was located in Complainant's apartment; (4) the potential for energy utilization in her dwelling, based upon living space, the number of occupants, number, type and size of appliances, and heating and cooling methods, was considerably lower than the billed usage; and, (5) the utility representative identified foreign wiring as a possible cause of the high usage. Tr. 15-20, 30, 64, 112; PPL Hearing Exs. 1, 2 and 3. This evidence is sufficient, in my view, to establish a prima facie case of foreign wiring which, unrebutted by others, would enable the Complainant to prevail on her complaint.

Since a prima facie case was established by Ms. Franckowiak, the burden of going forward with the evidence to rebut the prima facie case shifted to the utility and the landlord/property owner. *Waldron*, *supra*.

William Grooms testified that Ms. Franckowiak first contacted PPL on March 23, 2004, regarding a potential foreign load problem, and that Sandra Allen was assigned to conduct an investigation. Tr. 41. Ms. Allen testified that she needed simultaneous access to both apartments at 110 New Kirk Avenue in order to conduct a complete investigation, and thus needed the landlord's assistance. Tr. 70, 112. She tried several times to contact Mr. McCartney about gaining entrance to the other apartment.[10] When she did reach him, Mr. McCartney's response was that he would try other methods to resolve the problem rather than arranging for PPL to conduct a foreign wiring inspection. Tr. 66-70; PPL Hearing Exs. 2, 3. However, the problem was not resolved and Ms. Franckowiak filed an informal complaint with the Commission's BCS on or about June 18, 2004, and a Formal Complaint on April 19, 2005. PPL Hearing Exs. 2, 3.

As asserted by Ms. Allen, the first time that a foreign wiring inspection of the entire premises was able to be conducted was September 1, 2005. Prior to that date, Mr. McCartney had not given permission or otherwise arranged for PPL to obtain access to the second rental unit. Tr. 69-71. Another tenant occupied Ms. Franckowiak's former dwelling at the time of the September 1, 2005 investigation. Tr. 71.

To perform the foreign wiring test on September 1, 2005, Ms. Allen turned on all appliances in both apartments and then threw the breaker switch associated with electric power to Ms. Franckowiak's former apartment (first apartment). She observed that all appliances were operating in the second apartment after the breaker switch had been thrown, and therefore concluded that there was no foreign wiring situation existing at that time in the first apartment. Tr. 70-71. Ms. Allen, who is not an electrician, was unable to ascertain whether the electric wiring had been recently modified. Tr. 84. There was no accuracy test performed on Ms. Franckowiak's meter. Tr. 79.

Mr. Grooms testified that when Ms. Franckowiak vacated the property on February 1, 2005, there was an outstanding balance of $666.86. Tr. 39-40; PPL Hearing Ex. 1. Mr. Grooms introduced the BCS informal complaint decision which determined that, despite PPL's lack of access to the property to perform a foreign wiring investigation, Ms. Franckowiak was responsible for the outstanding balance. PPL Hearing Ex. 3.

Mr. McCartney testified that he is quite busy with his real estate business and frequently traveled out of state to attend to his properties. Tr. 97. He acknowledged that he had been contacted by PPL about obtaining access to the entire building at 110 New Kirk Avenue for a foreign wiring investigation and admitted that he was not prompt about returning PPL's calls. Tr. 101. He placed the responsibility on his tenant Ms. Franckowiak to deal with PPL because it was her electric bill. Tr. 102, 105.

Mr. McCartney further stated that he had his own electrician check the property but that no problem was located. He denied making any changes or having the electrician make changes to the wiring in order to mask a foreign or mixed wiring situation. Tr. 96-97.

For the following reasons, I find that PPL and Mr. McCartney have not rebutted Complainant's prima facie case of foreign wiring, and that Complainant has therefore met her burden of proof. The only evidence presented by PPL to rebut Ms. Franckowiak's prima facie case is the result of an on-site investigation conducted seven (7) months *after* Ms. Franckowiak had vacated the premises, and after another tenant had moved into the apartment.[11] It is pure speculation as to whether the conditions which existed at the time of the investigation were the same as existed at the time that Ms. Franckowiak was in residence and was experiencing high electric bills. Since the result of this investigation is not probative of the wiring conditions that existed during the relevant time period of this case, I have not considered it in reaching my decision.

I note that Mr. McCartney testified concerning the findings of his own electrician regarding the property. Tr. 97. However, the electrician was not presented as a witness and any statements made by others about these findings is hearsay. While the evidence was not the subject of an objection, it was not corroborated by other competent evidence of record, and therefore cannot support a finding of fact. *See*, *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (1976).

Mr. McCartney also contended that he did not make changes in the wiring and *did not request* that his electrician make changes to mask a foreign wiring situation. Tr. 97. This testimony is not probative of whether or not changes to the wiring were indeed made by that electrician *or any other electrician or contractor* and, as discussed above, the electrician was not presented as a witness.

Since Ms. Franckowiak has met her burden of proof, her Complaint as to foreign wiring will be sustained. The Commission has previously ruled that the existence of foreign wiring precludes a premises from being considered 'individually metered' for purposes of 66 Pa. C.S. § 1529.1 (Section 1529.1). *Harman*, *supra*: *Elizabeth Santos v. Metropolitan Edison Company*.[12] Section 1529.1 requires that utilities place electric accounts in the name of the property owner when the premises are not individually metered.

Section 1529.1 of the Public Utility Code 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.

In *Santos v. Metropolitan Edison Company* (*Santos*), *supra*, the Commission held that '[t]he utility must …place the account in the landlord's name upon discovery of the foreign load *and collect unpaid bills only from the landlord*.' (emphasis added) *Santos* at 14. The Commission also stated that '*the utility must pursue collection of any unpaid amounts from the landlord and not from the tenant*.' (emphasis added) *Santos* at 16. Accordingly, the outstanding account balance of $666.86 at issue in this proceeding is the responsibility of the landlord.

PPL's Foreign Wiring Investigation

Pursuant to 52 Pa. Code § 57.2(a), PPL had a duty to *fully and promptly investigate* Ms. Franckowiak's foreign wiring complaint. *See also*, *Del Vecchio*, *supra*. Ms. Franckowiak first contacted PPL about high electric bills on March 23, 2004, but PPL did not actually visit the premises to conduct an investigation until September 1, 2005, which was seven months after Ms. Franckowiak had vacated the premises, and seventeen months after Ms. Franckowiak had first notified PPL of the problem. Tr. 17, 41, 51, 80, 83. In my view, a seventeen-month delay between the initiation of a complaint and the on-site inspection of the premises does not constitute a full and prompt investigation.

PPL's position is that it could not conduct a full investigation without access to the entire property, and the property owner did not provide such access until September 1, 2005. PPL's witness Sandra Allen testified as to several phone calls that she made to the property owner between March 26, 2004 and April 20, 2004, but these calls were apparently not sufficient to obtain the landlord's cooperation. Instead, the burden was inappropriately placed on the tenant Ms. Franckowiak to arrange for the inspection of the entire building,[13] even though there is no evidence that she was authorized to provide access to the other dwelling unit.

As stated previously, Section 1529.1 requires utilities to place accounts in the name of the property owner upon the discovery of foreign wiring. However, as found by the Commission in *Del Vecchio*, *supra*, Section 1529.1 was also intended to place the burden of a foreign wiring problem on the property owner and not the tenant. In the instant case, PPL apparently concluded that it could not place an account in the property owner's name *unless and until* it substantiated the existence of foreign wiring.[14] This statutory interpretation is too narrow and would permit (even perhaps encourage) property owners to thwart legislative intent by failing to promptly and fully cooperate with a utility's foreign wiring inspections. Under principles of statutory construction, laws must be interpreted to give effect to legislative intent. 1 Pa. C.S. § 1921.

Section 1529.1 provides that the property owner is always responsible for payment of utility services for residential units which are not individually metered, and is also responsible for utility services for individually metered dwelling units, *unless* the utility is notified otherwise by the tenant or authorized representative. In the instant case, PPL had been originally contacted by Ms. Franckowiak to initiate service in her name. Subsequently, PPL received notice from the tenant ratepayer that, while the apartments were originally thought to be individually metered, the wiring now merited further investigation. PPL promptly notified the property owner of the suspected foreign wiring situation, but must follow through and not defer to the landlord's timetable. If the property owner or his/her agent does not arrange for a complete and thorough foreign wiring inspection by the utility within a reasonable period of time, the utility should provide notice that the account will be transferred to the property owner, until the matter is resolved. The account can later be transferred back to the tenant, if warranted by the results of the investigation.

Given that the instant case is one of first impression, I do not find the imposition of a civil penalty on PPL to be warranted. Instead, I will direct that PPL cease and desist in the future from deferring to the property owner's timetable and that it fully and promptly complete foreign wiring investigations by placing the burden of the investigation on the property owner rather than the tenant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this case. 66 Pa. C.S. §§ 701, 1501, 1529.1.

2. The party filing the complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa. C.S. § 332(a).

3. 'Burden of proof' means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (1990), *alloc. den.*, 602 A.2d 863 (1992).

4. Since evidence was presented that (1) Complainant is a residential ratepayer who leased one unit of a two-unit building; (2) she did not have control over the wring in the building; (3) the hot water heater for the other tenant and the breaker associated with that water heater was located in Complainant's apartment; (4) the potential for energy utilization based upon living space, number of occupants, number, type and size of appliances, and heating and cooling methods, was considerably lower than the billed usage; and, (5) the utility has identified foreign wiring as a possible cause of the high usage, Complainant has set forth a prima facie case of foreign wiring which, unrebutted by other parties, would entitle her to prevail. *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Commw. 2001); *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980).

5. Respondent has a duty to make a full and prompt investigation of high bill and suspected foreign wiring complaints of its customers. 66 Pa. C.S. § 1501; 52 Pa. Code § 57.12(a).

6. Hearsay evidence which is admitted without objection, but is uncorroborated by competent evidence of record, may not support a finding of fact. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (1976).

7. Complainant's prima facie case of foreign wiring was not rebutted by other parties and therefore, she has met her burden of proof. 66 Pa. C.S. § 332(a).

8. Section 1529.1 of the Public Utility Code (Code), 66 Pa. C.S. § 1529.1, requires that electric bills for leased residential premises which are not individually metered be placed in the name of the property owner.

9. The existence of foreign wiring, even if *de minimus*, precludes a premises from being considered individually metered for purposes of Section 1529.1 of the Code. *James David Harman v. PPL Electric Utilities Corporation*, Docket No. C-20031793, Order acknowledging finality of Initial Decision entered September 8, 2004; *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757, Opinion and Order entered August 7, 1997.

10. Section 1529.1 of the Code must be interpreted so as to give effect to legislative intent. 1 Pa. C.S. § 1921. The legislative intent of Section 1529.1 of the Code is to place the burden of addressing a suspected foreign wiring situation on the property owner and not the tenant. *Theodore P. Del Vecchio v. PPL Electric Utilities Corporation* (*Del Vecchio*), Docket No. Z-01464793, Opinion and Order entered September 13, 2005.

11. A prima facie case of foreign wiring, which is not rebutted by other parties, requires that the account be placed in the name of the property owner, and that unpaid bills be collected only from the owner. Accordingly, the landlord and property owner Dean McCartney is responsible for the unpaid balance of $666.86. *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757, Opinion and Order entered August 7, 1997.

ORDER

1. That the Formal Complaint filed by Linda Franckowiak at Docket No. C-20054687 is sustained.

2. That the unpaid balance of $666.86 in Ms. Franckowiak's account, related to electric service at 110 New Kirk Avenue, Shillington, PA, 19607, shall be transferred to the account of the property owner Dean McCartney.

3. That PPL Electric Utilities Corporation shall henceforth cease and desist from deferring to the property owner's timetable in suspected foreign wiring investigations, and shall promptly and fully investigate these claims.

Kandace F. Melillo

Administrative Law Judge

Date: January 23, 2006

Opinion and Order

Initial Decision

Footnotes

1 Also referred to as foreign load.

2 *See*, 66 Pa. C.S. § 1529.1, the section of Act 54 which addresses foreign wiring in rental property.

3 One of the PPL exhibits, PPL Hearing Exhibit No. 1, is the Account Activity Statement of the Complainant from March 4, 2003, until July 22, 2005.

4 ALJ Finding of Fact No. 9.

5 Foreign load is any consumption that is not related to the customer's usage.

6 Here, the record is insufficient to determine whether PPL violated 52 Pa. Code § 56.151.

7 The calculation is performed as follows: (a) Add 33 kwh for the iron and hairdryer to the thirty-day base load (1295 + 33 = 1328 kwh); (b) subtract the 115 kwh difference between the combined 265 kwh for a side-by-side refrigerator and apartment cube (225 + 40 = 265 kwh) and the 150 kwh for the 14-18 cubic foot automatic defrost refrigerator (265 kwh - 150 kwh = 115 kwh), for a total corrected thirty-day kwh base load of 1328 kwh - 115 kwh or 1213 kwh; (c) divide the 1213 kwh by 30 to derive a daily kwh of 40 kwh; and, (d) add the 40 kwh daily total to the 1213 kwh base load to derive a *31 day* total of 1253 kwh.

8 *See, e.g.*, *Milkie v. Pa. P.U.C.*, 768 A.2d 1217, 1219-1220 (Pa. Commw. 2001); *Pileggi v. PPL Electric Utilities Corporation*, Docket No. F-01445913, Commission Order recognizing finality of ALJ decision entered June 1, 2005.

9 *See, Dyckman v. PPL Electric Utilities Corporation*, Docket No. C-20030661, Order entered December 16, 2004; *Replogle v. Pennsylvania Electric Company*, 54 PA PUC 528 (1980).

10 For example, at one point in PPL's investigation, the landlord had not been returning PPL's calls and consequently, Ms. Franckowiak was asked to assist PPL in contacting him. PPL Hearing Ex. 3, p. 3.

11 Indeed, PPL's evidence bolstered Ms. Franckowiak's case as PPL acknowledged that it could not account for over 40% of the usage for which Complainant was billed. Tr. 78-79.

12 *Santos v. Metropolitan Edison Company*, Docket No. C-00967757, Opinion and Order entered August 7, 1997.

13 For example, Sandra Allen testified that she asked Ms. Franckowiak to speak with the other tenant about allowing PPL to have access to her apartment to conduct the investigation. Tr. 71. Mr. McCartney also placed the foreign wiring burden on Complainant, as indicated by his failure to promptly respond to PPL's phone calls and his testimony that Complainant should deal with PPL because it was her electric bill. Tr. 102.

14 The BCS investigation also was thwarted by a lack of cooperation of the property owner, as evidenced by the informal complaint decision. PPL Hearing Ex. 3.

1 *See*, 66 Pa. C.S. § 1529.1, the section of Act 54 which addresses foreign wiring in rental property.

2 In *Eppinger v. Duquesne Light Company*, Docket No. F-00438448, Opinion and Order entered March 26, 1999 (referenced in 1999 Pa. PUC LEXIS 102), the Commission joined the tenant as a necessary party in an Act 54 complaint proceeding brought by a landlord against the utility. *See also*, *Stoltzfus v. Pennsylvania Power and Light Company*, 1995 Pa. PUC LEXIS 83, wherein the tenants were similarly joined as indispensable parties in an Act 54 complaint proceeding.

3 *See*, *Theodore P. Del Vecchio v. PPL Electric Utilities Corporation* (*Del Vecchio*), Docket No. Z-01464793, Opinion and Order entered September 13, 2005.

4 As stated in the Findings of Fact, Complainant vacated the premises on February 1, 2005, and the property was not inspected for foreign wiring until September 1, 2005. For reasons to be further discussed herein, I do not find a foreign wiring inspection performed seven months after Complainant had vacated, and while a different tenant was in residence, to be probative of conditions that existed while the Complainant was in residence. Therefore, I have not taken findings from this inspection into account in my Initial Decision.

5 Mr. McCartney's attorney objected to admission of this evidence as hearsay. I overruled this objection as admissions of party opponents are an exception to the hearsay rule in Pennsylvania. *See*, Pa. Rules of Evidence (Pa. R.E.) 803(25); *Salvitti v. Thropp*, 343 Pa. 642, 23 A.2d 445 (1942); Tr. 15-16. Also, PPL's own witness corroborated Complainant's testimony in that the billed usage was at least 43% higher than potential usage. Tr. 79.

6 Foreign wiring or foreign load is defined as utility service provided to others but for which a customer is being billed. *James David Harman v. PPL Electric Utilities Corporation* (*Harman*), Docket No. C-20031793, Final Order entered September 8, 2004, acknowledging finality of ALJ Weismandel's Initial Decision.

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