

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia J. Vaughn	:	
	:	
v.	:	F-2021-3029570
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision sustains the complaint filed by an owner/landlord of a multi-unit residential apartment building who disputes the electric company’s transfer of a tenant’s account to the owner’s account following the company’s virtual foreign load investigation. This decision finds that the property owner met her burden of proof by demonstrating by a preponderance of the evidence that the company violated Sections 1529.1(b) and 1501 of the Public Utility Code, and Section 57.12(a) of the Commission regulations regarding the transfer, and did not provide adequate and reasonable service. 66 Pa.C.S. §§ 1529.1(b), 1501; 52 Pa. Code § 57.12(a). Therefore, this decision directs the company to remove the disputed tenant’s charges on the owner’s account and imposes a \$500 civil fine on the company.

HISTORY OF THE PROCEEDING

On October 25, 2021, Patricia J. Vaughn filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PPL Electric Utilities

Corporation (“PPL”) averring that there are incorrect charges on her bill.¹ Specifically, Ms. Vaughn alleges that “PPL claimed to have found foreign wiring in a rental unit and transferred the bill for that unit to the Complainant, including a large past due balance.” Complaint ¶ 4. Ms. Vaughn, who owns the property at issue, contends that there was no foreign wiring at the premises.

Ms. Vaughn attached to her complaint a letter to her from PPL dated July 30, 2021, which advised her: (1) that on May 17, 2021, PPL investigated the wiring in her building concerning Apartment 1; (2) that PPL’s investigation found that wiring for a receptacle on the rear porch of Apartment 2 and three common-use hall lights are connected to the meter serving Apartment 1; and (3) that pursuant to Act 54, PPL will transfer the tenant’s unpaid balance of \$4,555.32 to her newly created account for which she was now responsible as well as monthly bills that were generated each month on the tenant’s account, until the foreign wiring was fixed. As relief, Ms. Vaughn seeks to have PPL remove the tenant’s charges from her account.

On December 7, 2021, PPL filed an answer denying the material allegations of the complaint. PPL contends that upon its discovery of a foreign load at the rental unit at issue, PPL was obliged to remove the electric bill of the unit, inclusive of the tenant’s balance, and place the same into the name of the landlord, Ms. Vaughn. Hence, PPL contends that the transfer of charges was proper, and requests that the complaint be denied.

On December 16, 2021, a Hearing Notice was served on the parties scheduling an initial telephonic hearing for February 2, 2022, and the case was assigned to me. In anticipation of the hearing, a prehearing Order was served on December 28, 2021, setting forth various procedural rules that would govern the hearing.

The hearing convened as scheduled on February 2, 2022. The Complainant was represented by counsel, Andrew J. Primerano, Esquire. Ms. Vaughn did not appear. However,

¹ This formal complaint is a timely appeal from a determination by the Commission’s Bureau of Consumer Services (BCS) at No. 3799048, in response to Complainant’s informal complaint. Review of informal complaint determinations are heard *de novo*. 52 Pa. Code § 56.403(a).

over no objection from PPL, the hearing proceeded in Ms. Vaughn’s absence. Complainant, through counsel, presented the testimony of Charles G. Franklin, an electrician and electrical contractor, who sponsored two exhibits. Both proposed exhibits were “fix forms” indicating that two electricians found no foreign wiring; one form was completed by Mr. Franklin and one form was completed by another electrician and contractor, Jeremy Long. Complainant Exhibit 1, which form was completed by Mr. Franklin, was admitted into the record. Complainant Exhibit 2, which form was completed by Mr. Long, was denied admission into the record as hearsay.

PPL was represented at the hearing by Kimberly G. Krupka, Esquire. PPL presented the testimony of five witnesses, all employed by PPL: Byron Barrows, customer contact representative; Anthony Harris, senior contact representative; Patrick Anderson, senior electrical engineer; Dennis Worthington, supervisor of regulatory compliance; and Donna Brower, customer service representative. Through these witnesses, PPL sponsored the following four exhibits², all of which were admitted into the record:

- PPL Exhibit 1 - Account Activity Statement of Complainant
(7/30/2021 - 11/12/2021) (1 page)
- PPL Exhibit 2 - Account Contact History (10/22/2017 - 1/20/2022) (2 pages)
- PPL Exhibit 4 - Account Activity Statement of Tenant
(9/3/2019 - 11/22/2021) (2 pages)
- PPL Exhibit 7 - “Investigate Foreign Wiring Order” (8 pages)

At the conclusion of the hearing, a discussion was held regarding the opportunity to submit briefs or memoranda of law which addressed, in particular, the issues raised at the hearing concerning PPL’s virtual foreign load investigation. Following this discussion, an Order was issued on February 4, 2022, memorializing the parties’ agreement that a brief or a memorandum could be filed within fourteen days after the hearing transcript was filed.

² PPL’s Exhibits are out of sequential numbering since PPL did not move into admission all of its proposed exhibits which were pre-marked. Further, PPL did not move into admission all of the pages included in its proposed Exhibit 7. Therefore, PPL Exhibit 7 consists of eight pages numbered 22-27 and 36-37.

On February 28, 2022, a 105-page hearing transcript was filed. On March 17, 2022, both parties submitted post-hearing memoranda in support of their respective positions.³ Subsequently, an Order was issued which memorialized that the record closed on this date. This case is now ready for disposition.

FINDINGS OF FACT

1. The Complainant is Patricia J. Vaughn.
2. The Respondent is PPL Electric Utilities Corporation.
3. Ms. Vaughn owns the multi-unit residential apartment building located at 910 Warren Street, Berwick, Pennsylvania. Tr. 9, 28.
4. On May 5, 2021, Ryan Poust, who was the tenant and ratepayer of record at 910 Warren Street, Apartment 1 (service address), contacted PPL and complained of possible foreign wiring, averring that he thought the receptacle on his neighbor's back porch was connected to his meter, as well as possibly a hallway light. Tr. 28, 31; PPL Exhibit 7.
5. On May 6, 2021, as a result of Mr. Poust's call, PPL's Contact Center prepared a "Foreign Wiring Investigation Order" and assigned the investigation to Byron Barrows, a PPL customer contact representative. Tr. 26, 31; PPL Exhibit 7.
6. Mr. Barrows has been employed by PPL since 1982 and his current duties include investigating a ratepayer's concern of possible foreign wiring. Tr. 27.
7. Prior to March 2020, PPL investigated a tenant's foreign wiring (also referred to as foreign load) concerns by performing an in-person investigation at the service

³ Attorney Primerano emailed the undersigned, copying counsel for PPL, Complainant's memorandum. However, since it appeared that counsel did not file this memorandum with the Commission's Secretary's Bureau, I forwarded counsel's memorandum to the Secretary's Bureau for docketing in this matter.

address, during which a PPL investigator, not the customer, would personally turn the customer's meter off and on and personally observe "what went off, what stayed on." Tr. 50, 51-52.

8. Prior to March 2020, when PPL conducted foreign load investigations in-person and on-site, PPL would "always have the ratepayer or a representative of the ratepayer present" for the investigation. Tr. 52.

9. After March 2020, due to the Covid-19 pandemic, PPL instituted a policy that foreign wiring investigations were to be conducted virtually, when possible, by interacting with a person at the site and utilizing cellphones and FaceTime or Google Duo. Tr. 27.

10. PPL instituted its policy of virtual foreign load investigations due to Covid-19 safety concerns of "multiple parties together in confined areas." Tr. 53.

11. On May 17, 2021, Mr. Barrows spoke with Mrs. Poust⁴ to address the Pousts' foreign wiring concerns; Mrs. Poust told Mr. Barrows that she "knew since she moved in" that her neighbor's receptacle and hall lights were on their meter. Tr. 32; PPL Exhibit 7.

12. On May 17, 2021, following his initial conversation with Mrs. Poust, Mr. Barrows proceeded to conduct a virtual foreign load investigation with Mrs. Poust, and was assisted by Anthony Harris, a PPL senior contact representative. Tr. 33.

13. During the virtual investigation, Mr. Harris was located at PPL's Command Center, a system by which PPL receives all of its data through their meters' AMI system, and in real time can verify whether there is any load on any particular meter. Tr. 57, 69.

14. Mr. Harris' role was to monitor the usage of the meter serving Apartment 1 (the "Poust meter") by confirming, when directed by Mr. Barrows to do so, whether the Poust

⁴ Mrs. Poust was never explicitly identified at the hearing but both parties treated her as Mr. Poust's co-tenant; therefore she is treated as such in this decision.

meter was turned off by verifying that the load dropped to zero, and vice versa-i.e., whether the Poust meter was turned on by verifying a registered load. Tr. 57.

15. At no time during the investigation was Mr. Harris directed to monitor any load, or the absence of any load, on the house meter which serves the common-use areas of the building. Tr. 65.

16. On May 17, 2021, Mr. Barrows investigated the foreign load concerns of the Pousts at Apartment 1 as follows:

- a. Mr. Barrows and Mrs. Poust both used iPhones to communicate with each other and could see each other using FaceTime. (Tr. 33-34);
- b. Mr. Barrows used a separate landline phone to communicate with Mr. Harris, who was located at PPL's Command Center. (Tr. 37);
- c. Mr. Barrows asked Mrs. Poust to show him "the receptacle that she was concerned with" and Mrs. Poust showed him a receptacle. (Tr. 34);
- d. Mr. Barrows instructed Mrs. Poust to plug into this receptacle a hair-dryer and turn it on to confirm that this receptacle did work, which Mrs. Poust did; and Mr. Barrows could hear the hairdryer running. (Tr. 34);
- e. Next, Mr. Barrows instructed Mrs. Poust to shut off Apartment 1's meter at the meter box, which she did; then using the landline phone, Mr. Barrows contacted Mr. Harris to verify that this meter went off; Mr. Harris confirmed that the Poust meter's usage dropped to zero. (Tr. 34);
- f. Next, Mr. Barrows instructed Mrs. Poust to plug her hairdryer back into the receptacle and Mr. Barrows saw Mrs. Poust plug the hairdryer into a receptacle; next, Mr. Barrows instructed Mrs. Poust to turn the hairdryer on, which Mrs. Poust said she did; Mr. Barrows could not hear the hairdryer running. (Tr. 34-35);
- g. Next, Mrs. Poust "proceeded around, opened the front door or the door and showed me [Mr. Barrows] the hall lights were off." (Tr. 34);

- h. Next, “we [Mrs. Poust and Mr. Barrows] turned the breaker back on, and we verified that the hairdryer worked again” and Mr. Harris confirmed that the meter did pick up a load again. (Tr. 34-35);
- i. Next, Mr. Barrows instructed Mrs. Poust to plug in the hairdryer and run it “while we checked the Command Center and verified foreign wiring.” (Tr. 34-35);
- j. Next, Mrs. Poust “went around and showed me the [hall] lights came back on.” (Tr. 35).

17. Based on his May 17, 2021 virtual investigation, Mr. Barrows concluded that foreign wiring was verified because the receptacle on the rear porch of Apartment 2, and three common-use hall lights were on the meter serving Apartment 1. Tr. 36, 40; PPL Exhibit 1.

18. Mr. Barrows handwrote the following notation on the “Foreign Wiring Order” which he was completing contemporaneously during his investigation:

“Checked receptacle, Apartment two porch, with hairdryer. Mrs. Poust shut off Meter 301170888 at meter. Tony Harris verified it through command Center. The meter was off. Rechecked with the hairdryer and hall lights, there were three of them, all off. Mrs. Poust turned breaker back on and Harris – Tony Harris verified load. Checked hall lights and hairdryer back on. Ran hairdryer while Tony watched meter.”

Tr. 35; PPL Exhibit 7.

19. Mr. Barrows testified that during the investigation he had “limited vision for sure” because it was limited to the “small area” of his and Mrs. Poust’s cellphone screens and what video images Mrs. Poust’s iPhone camera picked up. Tr. 46, 54.

20. When Mrs. Poust walked from one place to another during the virtual investigation, Mrs. Poust focused her iPhone camera towards the way she was walking, or on the receptacle only, or the lights only, and sometimes all Mr. Barrows could see was the ground or part of Mrs. Poust’s hand. Tr. 54.

21. Mr. Barrows could not tell if anyone else was present at the scene with Mrs. Poust, or if anyone else was assisting her, but he did not see or hear anyone else. Tr. 47-48.

22. Mr. Barrows testified that Mrs. Poust showed him three hallway lights; that the lights were “inside the front”, but he could not recall whether he was able to see all three hall lights at the same time. Tr. 49.

23. Mr. Barrows could not recall which floor the common-use hall lights were on but thought “they were going right up the steps.” Tr. 49.

24. At no time could Mr. Barrows observe both Mrs. Poust at the electric breaker box and the receptacle or at the electric breaker box and any of the common-use hall lights. Tr. 45-46.

25. At no time could Mr. Barrows observe the switch on the hairdryer to see if it was in the “on” or “off” position but he could hear it running when Mrs. Poust said she turned it on. Tr. 46-47.

26. The amperage (AMP) when the hairdryer was running is consistent with the AMP usage that would be caused by the use of a hairdryer. Tr. 69; PPL Exhibit 7.

27. On May 18, 2021, Mr. Barrows called Complainant and left her a voice message to return his call. Tr. 41.

28. On May 18, 2021, Ms. Vaughn returned Mr. Barrows’ call, and Mr. Barrows verbally informed Ms. Vaughn of his findings of a foreign load—namely, that the receptacle to Apartment 2 and three common-use hall lights, were found to be serving Apartment 1; and Ms. Vaughn replied that it would be fixed that same day. Tr. 41; PPL Exhibit 7.

29. Mr. Barrows handwrote his findings on PPL's "Investigate Foreign Wiring Order" which document is subsequently used by other PPL employees to send out written notices to the tenant and owner and to bill the owner when a foreign load is found. Tr. 42.

30. It is PPL's policy that "once the foreign wiring is found, that the tenant's account gets placed into the landlord's name." Tr. 76-77.

31. Ms. Donna Brower is a PPL customer service representative whose duties include billing and handling Act 54 (foreign load) paperwork once the customer contact representative completes the investigation. Tr. 83.

32. PPL Exhibit 4 is the account activity for Mr. Poust from the time he opened his account at the service address to the time it was taken out of his name due to alleged foreign wiring, including all charges and payments on the account. Tr. 84; PPL Exhibit 4.

33. PPL Exhibit 4 shows that Mr. Poust established service at Apartment 1 on September 3, 2019; and at this time, PPL transferred Mr. Poust's unpaid charges from a prior location of \$2,775.22. Tr. 84; PPL Exhibit 4.

34. From the time Mr. Poust opened his PPL account in September 2019 to when the account taken out of his name due to foreign wiring on July 23, 2021, Mr. Poust made no payment on the account, and his total balance was \$7,560.21. Tr. 85; PPL Exhibit 4.

35. On July 29, 2021, PPL adjusted Mr. Poust's account by cancelling his three back bills dated May 27, 2021, June 23, 2021, and July 23, 2021, and removed associated late payment charges; after these adjustments, the total balance of Mr. Poust's account was \$7,330.54. Tr. 85-86, PPL Exhibit 4.

36. On July 30, 2021, PPL established an account in Complainant's name, effective May 17, 2021 (the date PPL concluded its foreign wiring investigation) and transferred Mr. Poust's balance of \$4,555.32 to Complainant's new account. Tr. 87; PPL Exhibit 1.

37. PPL's July 30, 2021 transfer of \$4,555.32 includes charges accumulated by Mr. Poust at Apartment 1 since 2019 and excludes charges accumulated by Mr. Poust from a prior location of \$2,775.22. Tr. 86-87; PPL Exhibits 1, 4.

38. On July 30, 2021, PPL sent Ms. Vaughn written notice which: (1) advised her that PPL investigated wiring in her building on May 17, 2021 and found wiring for the receptacle on Apartment 2 and three common use hall lights is connected to the meter serving Apartment 1; (2) informed her that pursuant to Act 54, it was transferring Mr. Poust's unpaid balance of \$4,555.32 to her, for which she was now responsible as well as monthly bills that were generated each month on the tenant's account, until the foreign wiring was fixed; and (3) provided her with her "Act 54 PUC Rights and Property Owner's Notification Foreign Load Wiring Fix Form." PPL Exhibits 1, 2.

39. Also on July 30, 2021, PPL sent Ms. Vaughn a total bill for \$4,774.99, which consisted of the tenant's account balance transfer of \$4,555.32, plus \$219.67 electric service consumption of the tenant from May 17, 2021 to July 27, 2021. PPL Exhibit 1.

40. Mr. Charles G. Franklin is an electrician and licensed electrical contractor who has owned his own business, MFF Electrical, located in Berwick, Pennsylvania, for about ten years; prior to owning MFF Electrical, he worked as an electrician for the previous owner for about eight years. Tr. 8; Complainant Exhibit 1.

41. Mr. Franklin is engaged in electrical contract work, construction and building maintenance. Tr. 8.

42. Ms. Vaughn called Mr. Franklin "after she had received notification from PPL . . . that there was a report of foreign wiring", and she asked Mr. Franklin to investigate everything that was in PPL's report. Tr. 9, 21.

43. Mr. Franklin is familiar with the building located at 910 Warren Street because he has done maintenance work in that building in the past including some painting,

repairing and replacing flooring, carpeting, and roofing shingles; the last time he was in the building was two or three weeks prior to the hearing held on February 2, 2022, to attend to frozen pipes in the basement. Tr. 8, 15-16.

44. Mr. Franklin described the building located at 910 Warren Street as having three stories and containing eight residential units; there is one unit in the basement, three units on the first floor, three units on the second floor, and one unit on the third floor. Tr. 10, 16-17.

45. Mr. Franklin observed that the apartment building has nine meters, a meter for each of the eight residential units and one for “the house meter” which serves the common-use areas of the building. Tr. 10, 16-17.

46. Mr. Franklin observed that there is a stairway in the building that goes from the first floor to the second floor; that there are three common-use ceiling hallway lights, one light is located at the bottom of the stairs, another light is located at the top of the stairs, and another light is located by the back door, by the fire escape. Tr. 17.

47. Mr. Franklin observed that the three common-use ceiling hallway lights operate on a three-way switch, one switch is located at the bottom of the stairs and one switch is located at the top of the stairs. Tr. 17, 20-21.

48. Mr. Franklin observed that each apartment on the first floor has its own porch light. Tr. 20.

49. Mr. Franklin observed that the receptacle to Apartment 2 (the receptacle at issue) is located outside on the back porch area which is under another set of fire escape steps. Tr. 18, 21.

50. Mr. Franklin had another licensed electrician and contractor, Mr. Jeremy Long, who is from Long Electric, also investigate PPL’s report of alleged foreign wiring

51. contemporaneously, and Mr. Franklin watched and walked through the testing with Mr. Long and observed Mr. Long do the same testing that Mr. Franklin performed. Tr. 10, 22.

52. On August 13, 2021, Mr. Franklin investigated PPL's report of alleged foreign wiring concerning Apartment 1 as follows:

- a. Mr. Franklin personally went to the property at issue. (Tr. 10);
- b. At Mr. Franklin's request, electrician Jeremy Long also arrived at the property for the purpose of also "tracing out" the alleged foreign wiring, whose testing Mr. Franklin observed. (Tr. 10, 22);
- c. Mr. Franklin and Mr. Long turned the power off to the "house panel" (the meter that serves the common-use areas) which Mr. Franklin observed caused all three common-use ceiling hallway lights to go off, as well as the power to the receptacle at issue. (Tr. 10, 18);
- d. Mr. Franklin traced the wiring from the three common-use ceiling hall lights to the house panel. (Tr. 20-21);
- e. Mr. Franklin traced the wiring from the receptacle and noticed it was tied to the basement lights. (Tr. 18, 21);
- f. Mr. Franklin observed that the basement lights were also on the same circuit as the house panel. (Tr. 10);
- g. Mr. Franklin noticed "something funny" about the connection of the receptacle in that when he shut off the house meter and checked for power, he noticed that when he turned the basement lights on, the receptacle did not work; but when he turned the basement lights off, the receptacle worked; this indicated to Mr. Franklin that there must be a bad connection at the junction box; however, he did not remove or repair it because Ms. Vaughn did not want the wiring altered so that it could be reinspected by PPL to resolve this matter concerning the Poust meter. (Tr. 10, 18);
- h. Mr. Franklin traced the wiring from the receptacle to the house meter. (Tr. 10, 19, 21);
- i. In order to verify that the receptacle was connected to the house panel, Mr. Franklin used a multimeter and a pin plug tester to trace down to the first junction box, which is right inside the basement door, on a beam to the left side; from there it went to another junction box where the basement lights are tied in, and although at that point it went into a

wall, he was able to ultimately trace it over to the house panel. (Tr. 19);

- j. Mr. Franklin did not observe any wiring for either of the items at issue -- the receptacle at Apartment 2 or the common-use hallway lights, go into the meter that was serving Apartment 1. (Tr. 11, 19-21);
- k. Mr. Franklin observed, "I traced everything [receptacle and hallway lights] back to the house panel. And you know, when the panel's off, they are off. And when the panel's on, they are on." (Tr. 19).

53. Based on his investigation, Mr. Franklin concluded that no foreign wiring existed at the service address concerning Apartment 1. Tr. 10-11.

54. Mr. Franklin recorded his conclusion that no foreign wiring existed at the service address on PPL's "fix form" which Ms. Vaughn had given him with instructions to complete when his testing was done and return to Ms. Vaughn. Tr. 11; Complainant Exhibit 1.

55. Mr. Franklin observed Mr. Long perform the same testing including also tracing the wiring, and saw that Mr. Long made the same conclusion--i.e., no foreign wiring existed at the property concerning Apartment 1. Tr. 11-13, 22.

56. On August 17, 2021, Ms. Vaughn contacted Mr. Barrows to express her dissatisfaction with PPL's outcome of its virtual investigation and requested to speak to a supervisor. Tr. 75; PPL Exhibit 2.

57. On August 17, 2021, Dennis Worthington, a supervisor of regulatory compliance at PPL, contacted Ms. Vaughn and he contemporaneously took notes as to his conversation with her. Tr. 74-76; PPL Exhibit 2 (Complainant's Account Contact History).

58. During the August 17, 2021 phone call, Mr. Worthington testified and recorded that all the following transpired: (1) that Ms. Vaughn said she had two electricians inspect the wiring and neither could find any foreign wiring; (2) that the electricians discovered that the receptacle at issue loses power when the basement lights are turned on; (3) that she did not know about this receptacle previously and it might have been on the tenant's meter but is not

now; and (4) that she requested PPL to reinvestigate the foreign wiring, to which Mr. Worthington replied that PPL could but it would not change PPL's conclusion that foreign wiring existed at Apartment 1 on May 17, 2021. Tr. 75, 76; PPL Exhibit 2.

59. PPL Exhibit 7 is a Fix Form which indicates that both electricians, Mr. Franklin and Mr. Long, concluded that no foreign wiring existed as a result of their testing on August 13, 2021. PPL Exhibit 7.

60. On November 12, 2021, a new tenant accepted service at Apartment 1. Tr. 87; PPL Exhibit 7.

61. On November 12, 2021, PPL prepared a final bill on Ms. Vaughn's Apartment 1 account which totaled \$4,805.15. Tr. 87-88; PPL Exhibit 1.

62. At the time of the hearing held on February 2, 2022, PPL was still implementing its policy of conducting foreign wiring investigations virtually where possible. Tr. 51-52.

63. PPL's witness, Mr. Barrows, agreed that an in-person, on-site field investigation is a more effective and preferable method over a virtual or remote investigation to determine whether a foreign load exists. Tr. 51.

DISCUSSION

Legal Standards

As a matter of law, to establish a legally sufficient claim, 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. P.U.C. 196 (1990) (*Patterson*). The offense must be a violation of the Public Utility Code ("Code"), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

As the proponent of a rule or order, a complainant bears the burden of proof by a preponderance of the evidence-i.e., by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. 66 Pa.C.S. § 332(a); *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950). The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied his or her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234 (Pa. 1983).

This shifting of burdens as between parties is referred to as the burden of persuasion. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the parties seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *Moore v. Nat'l Fuel Gas Distr.*, No. C-2014-2457555 (Final Order entered Aug. 25, 2015). In determining whether a complainant has met the ultimate burden of persuasion, the factfinder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *Id.*, citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005).

Additionally, the Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Substantial evidence has been defined to mean such relevant evidence that a reasonable mind may 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. *Id.*, *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Ms. Vaughn, as the proponent of a rule or order, bears the burden of proof in this proceeding.

The term “foreign load” refers to the situation where a customer’s meter registers utility usage not exclusive to the customer’s dwelling unit or its occupants. *Santos v. Met. Ed. Co.*, No. C-00967757 (Opinion and Order entered August 7, 1997). Act 54 refers to the 1993 Act that amended the Code to include Section 1529.1 (relating to duty of owners of rental property), 66 Pa.C.S. § 1529.1. When foreign load is discovered, Section 1529.1 outlines the affirmative duties of the property owner and the utility 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 ...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 ... 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 ...

(c) Failure to give notice.-- Any owner of a residential building ... failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1 (emphasis added).

Thus, the owner of a rental property is responsible for the payment of utility services where there are one or more dwelling units not individually metered. The phrase “not individually metered,” as used in Section 1529.1, is not defined in the Code or Commission regulations. *See, I-A Realty v. Pa. Pub. Util. Comm’n*, 63 A.3d 480, 483 (Pa. Cmwlth. 2013) (*I-A Realty*). However, since the enactment of Section 1529.1 of the Code in 1993, the Commission has consistently defined “not individually metered” in its decisions as the “utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants.” *Id.* at 483 (citations omitted).

The Commission’s long-standing policy in implementing Section 1529.1 was explained in detail in *Ace Check Cashing Inc. v. Phila. Gas Works*, No. C-2008-2056428 (Opinion and Order entered May 21, 2010). Upon finding foreign load, the utility must list the account, including any arrearages, in the landlord's name. The landlord is responsible for paying the utility bills until the foreign load is corrected. After the foreign load is corrected by the landlord and verified by the utility, the utility is to place the account back into the tenant's name. However, the landlord remains responsible for any arrearages on the tenant's account. *Id.*

The application of Section 1529.1 by the utility is mandatory. The utility does not have discretion when a foreign load is discovered. There is no *de minimus* exception, and any dispute regarding the financial responsibilities of the parties, as between landlord and tenant, is a matter to be resolved in the Court of Common Pleas and outside this Commission’s jurisdiction. *Id.* at 7-8.

As the Commission explained in *McGee v. PPL Elec. Utils. Corp.*, No. C-2016-2549952 (Order entered July 12, 2018), Section 1529.1 is intended to protect residential tenants from the loss of utility service because another customer has service terminated by the utility. It recognizes that the property owner is in a better position than a tenant to know about and correct the existence of the foreign load. The operation of Section 1529.1 provides an incentive for the landlord to correct the foreign load situation resulting from the wiring, plumbing or piping for which the landlord is responsible.

The Code imposes a duty on every public utility company to furnish adequate, efficient and reasonable service to its customers and the public. 66 Pa.C.S. § 1501. The Commission regulations provide that a “public utility shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission.” 52 Pa. Code § 57.12(a).

Parties’ positions

Ms. Vaughn objects to the transfer of the unpaid portion of the Pousts’ bill to her, contending that no foreign wiring existed at the Pousts’ unit, Apartment 1, on May 17, 2021. Ms. Vaughn’s arguments can be summarized as follows: (1) that PPL’s virtual investigation was ineffective and flawed and that the on-site field investigation of electricians Mr. Franklin and Mr. Long is the more reliable evidence; (2) that PPL should have given Ms. Vaughn notice of its investigation so that she or her representative could have been present for such; (3) that the tenants were motivated to manipulate PPL’s virtual investigation to avoid their responsibility for payment of an electric bill of over \$7,000; and (4) that even if it is determined for the sake of argument, that a foreign load existed, it would be against equity and good conscience to transfer the Pousts’ unpaid, long overdue, substantial balance to Ms. Vaughn.⁵

PPL contends that Ms. Vaughn did not meet her burden of proof to show that PPL did not comply with the Code, regulations or prior decisions in transferring the account for the service address to the Complainant. PPL’s arguments can be summarized as follows: (1) that there is no requirement in the Code or regulations which requires that foreign load investigations be conducted in person; (2) that virtual investigations were a reasonable response to the unprecedented Covid-19 pandemic and its restrictions and it increased safety to its customers and employees by limiting the number of people in a “confined area;” (3) that there is no requirement or duty to provide Complainant notice and an opportunity to be present at PPL’s investigation; (4) that Complainant did not offer any evidence to show that its investigation was compromised or falsified; and (5) that PPL is not required to conclusively verify the existence of a foreign load

⁵ See Complainant’s Memorandum at 4-5 (as if the Memo included page numbers, which was not included).

before transferring the unpaid balance from the Pousts' account to her but PPL needed to only develop suspicion of a foreign load, citing *Franckowiak v. PPL*, No. 20054687, 101 Pa. P.U.C. (Opinion and Order entered July 3, 2006) (*Franckowiak*), and *Del Vecchio v. PPL*, No. Z-01464793 (Opinion and Order entered Sept. 13, 2005) (*Del Vecchio*).⁶

Disposition

At issue in this proceeding is PPL's finding that the receptacle on the rear porch of Apartment 2, and three common-use hall lights were on the meter serving Apartment 1 in the building owned by Ms. Vaughn. Ms. Vaughn disputes this finding and PPL argues its actions were reasonable.

I find that Complainant presented evidence sufficient to initially satisfy her burden of proof that the alleged foreign load did not exist. Thereafter, the burden of going forward with evidence shifted to Respondent. However, I find that PPL did not meet its burden of going forward with evidence that rebutted the evidence of the Complainant. When the evidence presented by both parties is viewed as a whole, I find that Ms. Vaughn met her ultimate burden of proof by a preponderance of the evidence that PPL violated 66 Pa.C.S. §§ 1529.1(b) and 1501 and 52 Pa. Code § 57.12(a), as discussed further below. Therefore, the Complainant must prevail. *Milkie, Burlison*.

Ms. Vaughn presented the testimony of Mr. Franklin, an experienced licensed electrician and electrical contractor. Mr. Franklin testified that he and Mr. Long, another electrician, physically turned the power off at the house meter, which Mr. Franklin then observed caused the three common-use hallway lights at issue to go off as well as the receptacle at issue. Further, Mr. Franklin traced the wiring from the common-use hall lights and the receptacle back to the house panel. Mr. Franklin concluded, "I traced everything [receptacle and hallway lights] back to the house panel . . . when the panel's off, they are off. And when the panel's on, they are on." Tr. 19. Further, Mr. Franklin observed another electrician, Jeremy Long, do the same

⁶ See PPL's Memorandum at 3-6.

testing and arrive at the same conclusion –i.e., that no foreign wiring existed. As Mr. Franklin explained in response to questioning from PPL’s counsel, “[w]hen I called the other electrician in, I watched and walked through it with him and watched him do the same testing . . . He came up with . . . the exact same thing.” Tr. 22.⁷

PPL does not challenge Mr. Franklin’s qualifications as an electrician or his conclusion that no foreign wiring existed at the time of his investigation. Rather, PPL argues that Complainant did not initially satisfy her burden of proof because Mr. Franklin’s conclusion in August 2021 “is wholly irrelevant as to whether a foreign load existed on the Prousts’ [sic.] meter three months prior, in May 2021.”⁸ However, I do not find this argument persuasive for the following reasons: (1) PPL violated Section 1529.1(b) and provided unreasonable service in violation of Section 1501 by not listing the account in Complainant’s name until two-and-one-half months (75 days) from when it suspected a foreign load; (2) PPL provided unreasonable service by not providing Complainant written notices of its findings and the consequences of its finding for two-and-one-half months; (3) Complainant was prejudiced by PPL’s delay because once Complainant received the bill and notices, she contacted an electrician to investigate the alleged foreign load and the electrician found no foreign load existed; and (4) PPL’s argument implies an inference that Complainant could have corrected the alleged foreign load in the interim, which inference is not supported by the evidence. These reasons are discussed further below.

The evidence produced at the hearing shows that PPL discovered the alleged foreign load on May 17, 2021, and verbally informed Ms. Vaughn of its findings the next day. However, PPL did not bill Complainant for the transferred charges until about two-and-one-half months later – i.e., on July 30, 2021, which is 75 days later. The delay of 75 days was not

⁷ Although Complainant’s proposed Exhibit 2, which is PPL’s Fix Form signed by Mr. Long in which Mr. Long also recorded his conclusion that no foreign wiring existed, was excluded as hearsay, Mr. Franklin was permitted to testify to what he saw and heard Mr. Long do. As noted, the above testimony was elicited by counsel for PPL on cross-examination. Further, PPL’s Exhibit No. 7 also shows Mr. Long’s conclusion that no foreign wiring existed.

⁸ PPL’s Memorandum, at 6. *Also see*, Tr. at 24 wherein PPL made a motion for nonsuit following Complainant’s presentation of her evidence, which motion was denied at the hearing.

explained by PPL.⁹ Therefore, I find that PPL violated Section 1529.1(b), the express language of which requires the Respondent to “forthwith” place the account for public utility service in the name of the landlord who is held responsible for the utility services. 66 Pa.C.S. § 1529.1(b). The delay is also not reasonable, as required by Section 1501, 66 Pa.C.S. § 1501. Additionally, there is no evidence that PPL verbally informed Ms. Vaughn on May 17, 2021 of the consequences of its findings and the implications of Act 54. Further, PPL did not provide written notice of the results of its investigation and written notice of the consequences of its finding until 75 days later, on July 30, 2021, which I also find is unreasonable service.

The evidence produced at the hearing shows that on July 30, 2021, PPL established an account in Complainant’s name, effective May 17, 2021, and transferred the tenant’s balance of \$4,555.32 to Complainant’s new account. Tr. 87; PPL Exhibit 1. Also on July 30, 2021, PPL sent Ms. Vaughn written notice which informed her that pursuant to Act 54, it was transferring Mr. Poust’s unpaid balance of \$4,555.32 to her and for which she was now responsible as well as the monthly bills that were generated each month on the tenant’s account until the foreign wiring was fixed. Further, along with this written notice, PPL issued Ms. Vaughn a total bill for \$4,774.99, which consisted of the tenant’s account balance transfer of \$4,555.32, plus \$219.67 electric service consumption from May 17, 2021 to July 27, 2021. PPL Exhibits 1, 2. This 75-day delay also explains why PPL had to adjust Mr. Poust’s account on July 29, 2021 by cancelling three back monthly bills dated May 27, 2021; June 23, 2021; and July 23, 2021, totaling \$219.67.

I also find that Complainant was prejudiced by PPL’s delay. Had the account been placed in Complainant’s name closer to May 17, 2021 or “forthwith” thereafter, PPL would not have had to adjust multiple monthly bills, which multiple bills were presented to Complainant on July 30, 2021 as part of her total bill of \$4,774.99. Further, in light of PPL’s delay, I find Ms. Vaughn’s timing of her August 2021 investigation to be reasonable. Mr. Franklin testified that “after she [Ms. Vaughn] received notification from PPL . . . that there was

⁹ This delay also appears to be contrary to PPL’s own policy which its witness testified in rebuttal that, “it’s PPL’s policy that *once* the foreign wiring is found, that the tenant’s account gets placed into the landlord’s name.” Tr. 77 (emphasis added).

a report of foreign wiring”, she requested Mr. Franklin to “investigate everything that was in PPL’s report.” Tr. 8, 9, 21. I find it reasonable that Mr. Franklin’s investigation occurred within two weeks or fourteen days later--i.e., on August 13, 2021, after the written notices of PPL’s findings, transfer of charges, and issuance of a bill. Further, the July 30, 2021 notices also included PPL’s Fix Form, and instructions on how to complete it once the alleged foreign wiring is fixed in order for the account to be turned back over to the tenant. I find it reasonable that Mr. Franklin used PPL’s written notice to investigate the alleged foreign load, followed by his completion of PPL’s Fix Form by himself and Mr. Long.

I find support in this conclusion that PPL’s 75-day delay violated Sections 1529.1(b) and 1501 of the Code in other Commission decisions. For example, in *Desai v. Columbia Gas of Pa.*, No. C-20043212 (Opinion and Order entered Feb. 17, 2006), the Commission found that the delay from November 13, 2003 to January 9, 2004 [58 days] “in itself, is contrary to the dictates of Section 1529.1(b), which requires an affected public utility to ‘forthwith list the account for the premises in question in the name of the owner.’” *Id.* at 4 (emphasis added). Further, the Commission found the 58-day delay “constitutes inadequate and unreasonable service within the meaning of Section 1501.” *Id.* at 5.

I also find support in *Fresh Start Capital LLC v. Equitable Gas Co.*, No. C-2009-2104054 (Final Order entered Oct. 6, 2011) (*Fresh Start*), wherein the Commission found that a delay of 64 days from the company’s alleged discovery of a foreign load to written notice of its findings, written notice of consequences of the finding, and the issuance of a bill which transferred the tenant’s charges, was unreasonable service, even where the property owner was present for the company’s on-site foreign load investigation and was verbally informed of the alleged foreign load. Also see, *McGee v. PPL*, No. C-2016-2549952 (Opinion and Order entered July 12, 2018), wherein the Commission found that a delay of six months to provide timely notice and to timely transfer the account into the actual property owner’s name raises Section 1501 concerns and is potentially prejudicial to a property owner; however, finding that the property owner was not relieved of responsibility for the account because the owner failed to show he corrected the foreign wiring, or how PPL’s delay in notifying him caused him undue burden in fixing the foreign wiring.

Next, PPL's relevancy argument implies, although PPL does not explicitly argue, that it should be inferred that sometime between May and August of 2021, Ms. Vaughn could have corrected the foreign wiring; hence, the results of the August investigation are irrelevant. To the extent that PPL suggests that the Commission makes this inference, I find that the evidence does not support such an inference. As discussed above, once Ms. Vaughn received the written notices and the bill of transferred charges totaling \$4,774.99, she called the electrician who she routinely calls to have not only electric work done in her building but also construction and building maintenance as well. Mr. Franklin testified that he was familiar with the building because his relationship with Ms. Vaughn is such that she routinely calls on him when she needs work in the building done. I also note that when Mr. Franklin brought his finding of what appeared to him to be a bad connection concerning the junction box in the basement to the attention of Ms. Vaughn, Ms. Vaughn replied that she did not want Mr. Franklin to correct or repair it at that time because she did not want the wiring altered so that it could be reinspected by PPL to resolve this matter concerning the Poust meter. I do not find these actions of Complainant consistent with PPL's suggested inference that Complainant could have corrected the foreign wiring in the interim by a different electrician or third party.

I also find illustrative the case of *Jones v. PPL*, No. F-2019-3012336 (Final Order entered Aug. 14, 2020) (*Jones*). In *Jones*, PPL filed a formal complaint to appeal a BCS determination wherein BCS made such an inference concerning the landlord's opportunity for the correction of a foreign load due to the passage of time. In *Jones*, PPL transferred a tenant's charges to the landlord based on the tenant's general foreign load verbal complaints to it and lack of cooperation of the landlord to provide PPL access to certain areas of the building so it could complete its foreign load investigation. However, PPL reversed its initial investigation finding and transferred the tenant's arrears balance back to the tenant after PPL gained access to the building four months later and determined no foreign load existed. In response to the tenant's informal complaint, BCS determined that since it was reasonable to believe that the landlord could have corrected the foreign load between the time PPL could not access the property in August 2018, until PPL was allowed access to it over four months later in December 2018, PPL had no basis or evidence to reverse their initial investigation and transfer the tenant's arrears balance back to the tenant. On appeal, PPL objected to any determination that it be required to

infer that any delay in access to a premises, even a delay caused solely by the landlord, results in a presumption of foreign wiring that cannot be overcome by later inspection. The Commission agreed and held that such an inference was not supported by the facts. The Commission found that PPL had no evidence that the landlord fixed any foreign wiring problems during the delay. Therefore, PPL was not required to infer that the landlord could have corrected the foreign load between the time the company could not access the property and when they were able to gain access over four months later.

Although the facts in *Jones* differ from the instant case in that PPL did initially virtually access the building owned by Ms. Vaughn, the reasoning of *Jones* as to appropriateness of drawing any inference from the landlord's response time is applicable in the instant case. In this case, there was no evidence presented to infer that Ms. Vaughn fixed the alleged foreign wiring in the interim from May 17, 2021 to August 13, 2021. Further, as discussed above, Ms. Vaughn's actions are inconsistent with such an inference. As discussed above, Ms. Vaughn's August 2021 investigation is reasonable considering PPL's delay in providing written notices and a bill to her.

Consequently, Ms. Vaughn has satisfied her initial burden of proving that PPL violated the Public Utility Code.

Next, having found that Ms. Vaughn presented evidence sufficient to initially satisfy her burden of proof, it must be examined whether PPL presented evidence sufficient to rebut the evidence of the Complainant. *Milkie, Burlison*. I find that PPL did not carry its rebuttal burden.

Initially it should be noted that I agree with PPL on a number of its arguments. First, I agree that it is well settled that there is no requirement which obligated PPL to give prior notice to Ms. Vaughn and an opportunity for her or her representative to be present during PPL's foreign load investigation in response to a tenant's complaint. *Ferguson v. Phil. Gas Works*, No. C-2017-2591174 (Opinion and Order entered June 14, 2018). Second, I agree that Ms. Vaughn's arguments as to the alleged motive of the tenants to manipulate the testing as an

avenue to eliminate a substantial past due balance, is speculative and not at issue in this case. The focus of this decision is, as it must be, on the actions, or inactions, of PPL. *Patterson*, 66 Pa.C.S. § 701.

Third, I agree that there is no requirement in the Code, Commission regulations or prior Commission decisions that require that foreign load investigations be conducted in person. Fourth, I note that I do not find it necessary to determine whether PPL's policy since March 2020 to conduct virtual foreign wiring investigations where possible was a reasonable response to the unprecedented Covid-19 pandemic.¹⁰ PPL's policy is not at issue here. As stated above, at issue in this case is whether PPL's actions involving the Poust meter were reasonable and complied with the Code and Commission regulations.

Fifth, I agree that PPL was not required to conclusively verify the existence of a foreign load before transferring the unpaid balance from the Pousts' account to Complainant's account. Rather, PPL needed to only develop suspicion of a foreign load through investigation. *Franckowiak*. However, as discussed below, a utility's responsibilities may require further investigation and a utility's suspicion may be overcome by subsequent investigation and the charges reversed.

A utility has an affirmative duty to investigate a foreign load complaint. If, after investigation, the utility suspects a foreign load situation, the utility is required to transfer the account to the name of the owner. *Id.* In *Franckowiak*, the Commission held that the utility is not required to substantiate the foreign load because such a requirement would encourage dilatory behavior by a landlord and thwart the legislative intent of Section 1529.1 to encourage cooperation with a utility's foreign wiring inspections.

For example, in *Franckowiak*, the Commission found that PPL was required to transfer charges from the tenant to owner once it had a basis to suspect a foreign load without an in-person, on-site investigation. Ms. Franckowiak first contacted PPL to report high electric bills

¹⁰ Neither party in their respective post-hearing memorandum cited to any other decision addressing a virtual foreign load investigation. Indeed, I also could not find any such reported decision.

and a potential foreign load problem. 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 for a 31-day period. PPL concluded that Ms. Franckowiak was actually billed for a much higher total kWh than her potential kWh during this same time period. Thus, since PPL suspected foreign load from its call screening analysis, the transfer of the charges from tenant to landlord was required at this time. However, as discussed below, a suspicion can be overcome by later inspection and the charges reversed.

A foreign load investigation must be adequate and reasonable. 66 Pa.C.S. § 1501. *Fresh Start*. Further, Commission regulations also requires that a public utility “shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission.” 52 Pa. Code § 57.12(a). This is where I disagree with PPL and agree with Ms. Vaughn that PPL’s investigation was not reasonable, adequate, and full.

One of PPL’s conclusions is that the receptacle on the back patio of Apartment 2 was on the meter of Apartment 1. The evidence presented by PPL supports the finding that when Mrs. Poust turned off the meter to Apartment 1, PPL could and did remotely verify that this meter was off, since it registered zero. Tr. 57. However, PPL did not present evidence to adequately identify that the receptacle which Mrs. Poust plugged her hairdryer into was in fact the receptacle at issue-i.e., Apartment 2’s outside receptacle. The evidence shows that PPL’s customer service representative, Mr. Barrows, asked Mrs. Poust to show him “the receptacle that she was concerned with” and Mrs. Poust showed him a receptacle. Tr. 34. While there may have been some discussion between Mr. Barrows and Mrs. Poust prior to the testing during which Mrs. Poust stated this is the receptacle that she was concerned with, there is no testimony regarding how PPL identified this as Apartment 2’s receptacle other than Mr. Barrows asked her to plug the hairdryer into “the receptacle she was concerned with.” Mrs. Poust may have plugged the hairdryer into her own patio’s receptacle, which would also support the registering of a load consistent with the amperage use of a hairdryer when the meter to Apartment 1 was turned on, and conversely, the registering of no load when the meter to Apartment 1 was turned off. This does not mean I give any weight to Complainant’s argument that Mrs. Poust

manipulated the testing, as discussed above. Rather, I find that the evidence presented by PPL does not support how this receptacle was identified.

However, more significant is Mr. Franklin's testimony regarding his testing as to Apartment 2's receptacle. Mr. Franklin testified that he physically traced the wiring to this receptacle to the house panel.¹¹ Further, he explained that he reached this conclusion after using a multimeter and pin plug tester for tracing. He further explained why he thought this receptacle must involve a bad connection at the junction box because the receptacle's operability was linked to whether the basement lights were off or on. Tr. 18, 20-21. Mr. Franklin's testing showed that in order for the receptacle to be on, the basement lights must be off, and in order for the receptacle to be off, the basement lights must be on. Tr. 10, 18. Therefore, I do not see how it is convincing then that when Mrs. Poust plugged the hairdryer into this receptacle, how it was able to register a load, or not register a load, by turning Apartment 1's meter off/on. Consequently, I cannot find that PPL rebutted the Complainant's evidence that Apartment 2's receptacle was not on Apartment 1's meter.

PPL's other conclusion is that three common-use hall lights were on the meter of Apartment 1. Initially, I note similar to above, that PPL did not present sufficient testimony as to how it identified the three common-use hall lights. PPL's witness could not identify where the lights were, or even if it viewed three separate lights. Mr. Barrows believed they were "in the apartment" and thinks they were going "right up the steps." However, he acknowledged that, "You know, this was back in May and – yeah, you're really jogging my memory as to what I actually seen, you know, back in May, but she walked around, showed me the hallway – hallway lights went off." Tr. 49. PPL's testimony did not take into consideration that the three common-use hall lights operated on a 3-way switch, one at the top of the stairs and one at the bottom of the stairs, and whether these could have been used to turn the lights off and on, even innocently by someone else, assuming these were the hall lights PPL saw. *See, e.g.*, a somewhat similar situation in *Loyle v. PECO*, No. F-2016-2531016 (Final Order entered Jan. 27, 2017) (*Loyle*) (finding that the company, upon a second on-site investigation of foreign load at the request of

¹¹ The terms "house panel" and "house meter" were used interchangeably by Mr. Franklin during his testimony. Both refer to the meter serving the common-use areas of the apartment building.

the property owner, reversed its initial foreign load finding because the company's first inspection did not consider that the hall light at issue was a battery operated motion sensor light, which affected the company's initial finding of a foreign load).

In contrast, Mr. Franklin testified that he and Mr. Long turned the power off to the house panel which Mr. Franklin observed caused all three common-use ceiling hallway lights to go off. Tr. 10, 18. Further, Mr. Franklin physically traced the wiring from the three common-use ceiling hall lights to the house panel. Tr. 20-21. Consequently, I cannot find that PPL rebutted Complainant's evidence that the three common-use hall lights were not on Apartment 1's meter.

What I do acknowledge is that PPL's evidence does support that it had a basis to develop a suspicion of a foreign load as a result of its May 2021 investigation. Thus Respondent acted reasonably and in accordance with Section 1529.1 in establishing an account for Ms. Vaughn and transferring the tenant's account balance. However, consistent with PPL's position in *Jones* and other Commission cases, a suspicion or presumption of foreign load can be overcome by later inspection, and the company's initial suspicion can be reversed, the landlord's account cancelled, and the tenant's arrears transferred back to the tenant. *See, e.g., Jones* (PPL reversed its initial conclusion of a foreign load which was based upon a suspicion, cancelled the account created in the landlord's name, and put the disputed amount back onto the tenant's account); *Fresh Start* (the Commission found that the company's on-site investigation was unreasonable, and ordered the company to cancel the account created in landlord's name and put the disputed amount back onto the tenant's account); and *Loyle*.

Therefore, I find that PPL's initial transfer of the charges from the tenant to Ms. Vaughn based on its suspicion was in accordance with the Code. However, I find its foreign load investigation was not full, adequate and reasonable when it refused to reinvestigate or revisit its May 2021 investigation of the foreign load once Ms. Vaughn notified PPL within two weeks of receipt of the bill, that two electricians both found no foreign load and found that Apartment 2's receptacle was on the house meter and its operability was linked to whether the basement lights were off or on. On August 17, 2021, Ms. Vaughn asked PPL to reinvestigate its

conclusions, since she had two electricians verify that there was no foreign wiring as to Apartment 1, to which PPL responded it could, but it would not change PPL's conclusion that foreign wiring existed at Apartment 1 on May 17, 2021. Tr. 75, 76; PPL Exhibit 2. However, this ignores PPL's own 75-day delay in billing Complainant and providing notices and its "fix form." Complainant's investigation occurred within two weeks after receiving proper notice under Section 1529.1(b). PPL cannot complain of a reinvestigation within three months of its initial investigation, when proper notice and a bill were not provided by PPL for two-and-one-half months.

PPL also argues that its refusal to not reinvestigate is supported or bolstered by a statement made by Ms. Vaughn to PPL's supervisor of regulatory compliance, Mr. Worthington, during their phone call on August 17, 2021, during which she called to contest PPL's conclusion. PPL points to Mr. Worthington's testimony in which he testified: "At some point during the conversation she [Ms. Vaughn] acknowledged that the receptacle might have been on this electric meter, but she's confident it's not on there now." Tr. 75.¹² PPL argues that this shows that Ms. Vaughn acknowledged that Apartment 2's receptacle was on the Poust meter in May 2021.¹³

However, PPL's argument is misplaced and overlooks the entirety and context of Ms. Vaughn's phone call with Mr. Worthington. Both Mr. Worthington's testimony and PPL records show that Mr. Worthington testified and/or recorded that all the following transpired during this conversation: (1) that Ms. Vaughn said she had two electricians inspect the wiring and neither could find any foreign wiring; (2) that the electricians discovered that the receptacle at issue loses power when the basement lights are turned on; (3) that she did not know about this receptacle previously and *it might have been on the tenant's meter* but is not now; and (4) that she requested PPL to reinvestigate the foreign wiring to which Mr. Worthington replied that PPL could but it would not change PPL's conclusion that foreign wiring existed at Apartment 1 on May 17, 2021. Tr. 75, 76; PPL Exhibit 2 (Account Contact History, entries for Aug. 17, 2021).

¹² PPL's Memorandum, at 6.

¹³ *Id.*

It is clear that Ms. Vaughn stated to Mr. Worthington that both electricians found no foreign wiring existed as to Apartment 1. It is unclear, however, to which “*tenant’s meter*” Ms. Vaughn was referring in Mr. Worthington’s testimony cited above, given that she explained to Mr. Worthington that the electricians found that Apartment 2’s receptacle is tied to the basement lights, which is tied to the house meter. Mr. Worthington did not testify, nor is it recorded in PPL’s “account contact history” that Ms. Vaughn stated that Apartment 2’s receptacle was on the meter servicing Apartment 1. *Id.* Ms. Vaughn’s statements are consistent with Mr. Franklin’s testimony that there was a rental unit in the basement, and the basement lights were tied to the house meter, not Apartment 1’s meter. Therefore, any issue with the receptacle to Apartment 2 involved the tenant, if any, in the basement or perhaps Apartment 2, but not the tenant(s) in Apartment 1. To conclude otherwise, as PPL suggests, is to take Ms. Vaughn’s comments out of context of her entire conversation.

Finally, having found that PPL did not rebut the evidence, when viewing the evidence as a whole, the evidence supports a determination that Complainant has met her ultimate burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a). I find the testimony of Complainant’s electrician, Mr. Franklin, credible and his conclusion supported by his testing. On the other hand, Mr. Barrows testified that during the investigation he had “limited vision for sure” because it was limited to the “small area” of his and Mrs. Poust’s cellphone screens and what video images Mrs. Poust’s iPhone camera picked up; that when Mrs. Poust walked from one place to another, sometimes all Mr. Barrows could see was the ground or Mrs. Poust’s hand; that he did not positively identify which receptacle and lights his testing involved; that he could not tell if anyone was present at the scene or assisting her; that he did not know where the hallway lights were located in the building or that they operated on a three-way switch at the top and bottom of the stairs. Tr. 46, 54. Finally, PPL acknowledged that an in-person, on-site field investigation is a more effective and preferable method over a virtual or remote investigation to determine whether a foreign load exists. Tr. 51.

Accordingly, under the totality of the circumstances presented at the hearing, I find it to be unreasonable service that PPL did not reinvestigate the alleged foreign load, and Complainant sustained her ultimate burden of proof

Civil Penalty

Because record evidence demonstrates that Respondent violated the Public Utility Code and the Commission regulation, penalties must be addressed. Specifically, this decision finds that PPL failed to comply with Section 1529.1(b), and provide reasonable service under Section 1501 by creating an account and billing Ms. Vaughn 75 days after the alleged foreign load was discovered. 66 Pa.C.S. §§ 1529.1(b), 1501. This decision also finds that PPL provided unreasonable service and did not conduct a full foreign load investigation by not reinvestigating the alleged foreign wiring when Ms. Vaughn informed PPL that two electricians physically inspected and found no foreign wiring existed within two weeks after receiving proper notices. 66 Pa.C.S. § 1501; 52 Pa. Code § 57.12(a).

Pursuant to Section 3301 of the Code, the Commission may impose a maximum civil penalty of \$1,000 per day for each continuing violation of the Code, its regulations or its orders. 66 Pa.C.S. § 3301(a), (b). The Commission has set forth, in a statement of policy, the factors and standards for evaluating if a fine for violating a Commission order, regulation or statute is appropriate. 52 Pa. Code § 69.1201(a). The factors and standards are:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company

techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c).

The first factor is whether the conduct was of a serious nature, such as willful fraud or misrepresentation, or less egregious, such as administrative filing or technical errors. The delay in listing the account in Complainant's name and transferring the charges was not explained by PPL. Therefore, the evidence does not show willful fraud or misrepresentation and it is more likely that the delay was due to an administrative or technical error. Therefore, this factor does not warrant a higher penalty.

The second factor is whether consequences were of a serious nature resulting in damages to property or injury to persons. There is no evidence that PPL's violation resulted in property damage or personal injuries. Therefore, this factor is not applicable.

The third factor is whether the offending conduct was intentional or negligent. Again, since the delay in listing the account in Complainant's name and transferring the charges was not explained by PPL, there is no evidence to determine whether the delay was intentional; therefore, it is reasonable to view this delay as negligent. Therefore, this factor does not warrant a higher penalty.

The fourth factor is whether the utility has modified its internal practices and procedures to address the offensive conduct at issue to deter and prevent similar conduct in the future. Again, since PPL did not present any evidence as to the reason for the delay, there is no evidence whether this was an isolated incident or more systematic. Therefore, this factor is neutral.

The fifth factor is the number of customers affected and the duration of the violation. There is no evidence that these violations affected anyone beyond the parties in the instant case. Therefore, this factor does not warrant a higher penalty.

The sixth factor is the compliance history of the offender, PPL. The record does not include a history of PPL's past offenses. Therefore, this factor is not applicable.

The seventh factor is whether the actions of the regulated entity were cooperative or discordant with a Commission investigation. Since there is no evidence of a Commission investigation, this factor is not applicable.

The eighth and ninth factors are respectively, the amount of a civil penalty required to deter future violations and prior Commission decisions in similar cases. I have only found a few cases in which a company was fined for the delay in listing the account in the owner's name and transferring the charges, and conducting an incomplete and inadequate foreign load investigation. In *Fresh Start*, a fine of \$250 was imposed for the company's delay of 64 days; and a fine of \$2,500 was imposed for failure of the company to provide unreasonable service in its foreign load investigation when it concluded there was a foreign load based on the cluster of pipes in the basement and not tracing the pipe from the basement into the first and

second floor apartments. In *Desai*, a fine of \$100 was imposed for the delay of two billing cycles before notifying the owner that he is responsible for payment of the tenant's bill accruing.

The tenth factor is any "other relevant factor." I find it reasonable to consider in the instant case a similar consideration in *Fresh Start*—namely, that the owner or owners of a residential rental property must pay bills and taxes, and the property must be maintained. Having adequate cash flow is a necessity for a landlord. The consequences of an unexpected foreign load determination can be significant for an owner of a residential rental property, depending upon the owner's financial means. In *Fresh Start*, the foreign load determination involved a transferred account of \$2,636.22, which the presiding officer found serious. In the instant case, the initial foreign load determination involves a transferred account of \$4,774.99, which I deem significant.

Therefore, considering all the factors above, and the totality of the circumstances in the instant case, I find a total civil penalty of \$500 appropriate which is sufficient to deter future violations of this type.

For the reasons stated above, the Respondent will be directed within thirty (30) days of the entry of a Final Commission Order in this case to pay a civil penalty in the amount of \$500.00 by sending a certified check or money order payable to the Commonwealth of Pennsylvania.

CONCLUSIONS OF LAW

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

2. As a matter of law, to establish a legally sufficient claim, 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. P.U.C. 196 (1990). The

offense must be a violation of the Public Utility Code, a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

3. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

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*, 70 A.2d 854 (Pa. 1950).

5. The owner of a rental property is responsible for the payment of utility services where there are one or more dwelling units not individually metered. 66 Pa.C.S. § 1529.1.

6. If a residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. 66 Pa.C.S. § 1529.1(b).

7. Every public utility company has the obligation to furnish adequate, efficient and reasonable service to its customers and the public. 66 Pa.C.S. § 1501.

8. A public utility shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission. 52 Pa. Code § 57.12(a).

9. The Commission may impose a maximum civil penalty of \$1,000 per day for each continuing violation of the Code, its regulations or its orders. 66 Pa.C.S. § 3301(a), (b).

10. Complainant has met her burden of proof that Respondent violated Sections 1529.1(b) and 1501 of the Code by failing to forthwith list the account for the premises in question

in the name of the Complainant once it suspected a foreign load situation. 66 Pa.C.S. §§ 1529.1(b), 1501.

11. Complainant has met her burden of proof that Respondent violated Section 1501 of the Code by failing to reinvestigate the suspected foreign load once Complainant notified Respondent that two electricians both found no foreign load, within two weeks of Respondent's written notices and issuance of a bill to Complainant of the transferred charges. 66 Pa.C.S. § 1501.

12. Complainant has met her burden of proof that Respondent violated Section 57.12(a) of Commission regulations by not make a full investigation of complaints made by its customers, either directly to it or through the Commission. 52 Pa. Code § 57.12(a).

13. Complainant has met her burden of proof that no foreign load existed on May 17, 2021 concerning Apartment 1 and Complainant is not responsible for service provided to Apartment 1.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Patricia J. Vaughn against PPL Electric Utilities Corporation at Docket No. F-2021-3029570 is hereby sustained.

2. That within thirty (30) days of the entry of a Final Order issued by the Pennsylvania Public Utility Commission, PPL Electric Utilities Corporation is directed to remove the charges for usage from 910 Warren Street, Berwick, Pennsylvania, Apartment 1, from the account of Complainant, Patricia J. Vaughn.

3. That within thirty (30) days of the entry of a Final Order issued by the Pennsylvania Public Utility Commission, PPL Electric Utilities Corporation is directed to pay a civil penalty of five hundred dollars (\$500.00) by sending a certified check or money order to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

4. That upon payment of the penalty, the Secretary shall mark this matter at Docket No. F-2021-3029570 as closed.

Date: June 9, 2022

_____/s/
Gail M. Chiodo
Administrative Law Judge