

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lawrence Kingsley	:	
	:	
v.	:	C-2020-3019763
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Lawrence Kingsley (Complainant), which was originally based on a Complaint filed on May 12, 2020 (which Complainant subsequently amended), involving two issues; first, whether PPL Electric Utilities Corporation (PPL or Company) violated the provisions of Section 1501 of the Pennsylvania Public Utility Code in connection with vegetation management on the premises of Complainant; and second, which formed part of the basis of the Amended Complaint, is whether Complainant was misbilled for charges related to service formerly in the name of Linda Schoener, deceased, with whom he lived at the service address. PPL has consistently denied that it violated the Public Utility Code (Code) or the rules and regulations of the Pennsylvania Public Utility Commission (Commission) with respect to service to Mr. Kingsley and with respect to billing. As will be explained, below, Complainant failed to meet his burden of proving by a preponderance of the evidence that PPL violated the Code or the regulations of the Commission, and his Complaint (and Complaint as Amended) is dismissed.

## HISTORY OF THE PROCEEDING

On May 11, 2020, Lawrence Kingsley filed a formal Complaint with the Commission against PPL alleging that PPL failed to provide safe and adequate service in that PPL contractors were overly aggressive in cutting trees on his property. Complainant also alleged that PPL had not communicated its plans to engage in vegetation management to Complainant. Complainant referred to a case determined by the Commission's Bureau of Consumer Services (BCS) at Case No. 3682784.<sup>1</sup>

Complainant's request for relief as stated in his formal Complaint constituted both a complaint with respect to PPL's vegetation management and a request for the issuance of a directive from the Commission to PPL to observe the terms of an agreement purportedly reached through the BCS proceeding. Indeed, Complainant went so far as to request that the Commission pre-approve sanctions on PPL in case PPL did not adhere to what Complainant characterized as an informal agreement.

On June 1, 2020, PPL filed an Answer to the formal Complaint. In sum, PPL denied any violation of the Code or of any regulation of the Commission and asked that the Complaint be dismissed.

On June 10, 2020, Chief Administrative Law Judge (CALJ) Charles E. Rainey, Jr. assigned this matter to the Commission's Mediation Unit. Ultimately, the Chief of the Mediation Unit filed a report with CALJ Rainey indicating that the matter had not been resolved, and the case was thereafter assigned to me as presiding judge.

At that point, Complainant embarked on a series of filings and requests, none of which are allowed by the Commission's procedural regulations in the Pennsylvania Code, Title 52, Chapter 5, to obtain a copy of the summary report of the Chief of the Mediation Unit to the

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<sup>1</sup> I note that this case is not a timely appeal from the BCS determination but is a separately filed formal Complaint. Further, it was the status of the BCS Complaint which Complainant misrepresented as will be discussed in this Decision.

CALJ. Complainant repeatedly refused to accept my assurances that the report was procedural only and contained no discussion of or recommendation with respect to the relative merits of this case.<sup>2</sup> These actions on Complainant's part consumed an inordinate amount of time and effort on the part of the presiding officer and PPL as will be explained, below.

On October 5, 2020, Complainant filed what he titled a, "Memorandum," but which was in fact an extended recital of Complainant's personal opinion with respect to PPL, its management, and its operations. No responsive filing to this Memorandum was required of PPL, and none was filed.

On October 6, 2020, a hearing Notice was issued setting November 17, 2020, as the date for a telephonic evidentiary hearing in this case.

On November 12, 2020, a Notice was issued cancelling the hearing scheduled for November 17, 2020. This cancellation was ordered at my direction because of the uncertain procedural posture of this case given the ambiguity of the formal Complaint. Indeed, on November 12, 2020, I also issued a prehearing Order alerting the parties of my concerns, the reasons therefore, and required Complainant to file an Amended Complaint by December 14, 2020, and PPL to file an Answer thereto by January 8, 2021.

On November 20, 2020, I issued a prehearing Order explaining in part that no procedure for "formalization," by the Commission of a BCS informal agreement exists as was requested by Complainant.

On November 30, 2020, Complainant filed what he titled a Motion to Strike and a Motion for Sanctions. This document was not related to pre-hearing discovery issues but reflected Complainant's ongoing misunderstanding of the nature of the summary report from the Chief of Mediation to the CALJ, casting that report as a virtual *in camera* proceeding wherein

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<sup>2</sup> It was explained to Complainant that the report was an internal Commission document which even the presiding officer did not have access to and that the report had no bearing whatsoever on the ultimate decision in this case as a *de novo* proceeding.

the merits of this case had been heard. As was stated to Complainant, such a proceeding never took place, and his Motion was denied.

On December 15, 2020, Complainant filed an Amended Formal Complaint (this being the first of two Amendments of his Formal Complaints), but which was not so much an amendment, but a conflation of the allegations set forth in the original Complaint along with the opinions of Complainant stated in his October 5, 2020, "Memorandum." However, the significance of this (first) Amended Formal Complaint is that it raised the misbilling issue and provided notice of the same to PPL for the first time.

On January 4, 2021, PPL filed an Answer and New Matter to the Amended Formal Complaint, repeating in more detail its Answers to the original Formal Complaint and attempting to respond to Complainant's ongoing misunderstanding with respect to the report of the Chief of Mediation to the CALJ. PPL also denied any misbilling of Complainant. In its New Matter, PPL contended that the Complaint in this case is barred by the Statute of Limitations, the Doctrine of Waiver and the Doctrine of Estoppel. PPL, however, offered no explanation or argument as to why these bars are applicable to this case. PPL reiterated that it had not violated any provision of the Code or regulation of the Commission in this matter.

No responsive pleading was received from Complainant in answer to PPL's New Matter.

On January 5, 2021, Complainant filed a Motion for Leave to Substitute a Corrected Version of Amended Complaint. This document, however, and the Corrected Version efiled the same day contained no substantive changes to the Amended Complaint.

On February 8, 2021, Complainant filed a document styled, "Reply to PPL's Answer to Formal Complaint." The Commission's procedural rules do not allow for such a pleading which, in any event, was merely a recitation of Complainant's previous allegations against and strident opinions with regard to PPL, its management, and its operational practices, generally, as well as related to this case.

On March 25, 2021, a hearing Notice was issued setting April 29, 2021, as the date for an Initial Hearing in this case. This was followed on April 6, 2021, by a Notice cancelling the hearing and rescheduling it for May 6, 2021, as I was informed by the parties that they were still engaged in discovery.

On May 5, 2021, one day before the hearing, Complainant filed: a Renewed Motion to Strike and a Motion for Sanctions, and a Motion to Compel Discovery and Motion for Sanctions. On this date, the parties also jointly filed a Motion for Continuance on the basis that they had that day served additional discovery requests on one another.

On May 6, 2021, I issued an Order denying the Joint Motion for Continuance and requiring the parties to attend the scheduled hearing.<sup>3</sup>

On May 6, 2021, a telephonic hearing which I changed to a prehearing conference due to the May 5, 2021, filings by the parties, was held in this case. Complainant appeared and represented himself. Kimberly G. Krupka, Esquire, appeared on behalf of PPL. No testimony was taken, or evidence received.

Immediately after the hearing, I issued a post-Hearing Order directing that within 20 days from May 6, 2021, Complainant was to file a further Amendment of his Complaint limiting the Complaint to the specifics of PPL's actual implementation of its vegetation management plan vis-à-vis Complainant's property, and Complainant's property only, not the property of neighbors or others in PPL's service territory. The Order further directed that within 20 days of the filing of Complainant's further amended Complaint, PPL would file an Answer or responsive pleading to the further amended Complaint.

On May 27, 2021, no filing of an Amended Complaint having been made by Complainant, I issued an Order closing the record in this case.

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<sup>3</sup> This Order was communicated to the parties by email on May 5, 2021.

On June 1, 2021, counsel for PPL provided me with an ecopy of the second Amended Complaint which Complainant had served on her on May 26, 2021. As Complainant had at least attempted to comply with my Order of May 6, 2021, even though he had not perfected his efileing with the Secretary of the Commission, I issued an Order on June 1, 2021, rescinding that part of the Order of May 27, 2021, which had closed the record in this case.

On June 10, 2021, Complainant successfully efiled a second (further) Amended Formal Complaint in this case.

On June 30, 2021, PPL filed an Answer to that Amended Complaint.

On July 20, 2021, a telephonic evidentiary hearing was held in this case pursuant to Notice. Complainant appeared and represented himself, providing testimony and offering the following exhibits that were received into evidence: Complainant's Exhibit 1, a picture of aerial clearance of overhead distribution wires; Complainant's Exhibit 2, a picture of aerial clearance of overhead distribution wires; Complainant's Exhibit 3, a picture of aerial clearance of overhead distribution wires; Complainant's Exhibit 4, a picture of a tree in the water; Complainant's Exhibit 5, a picture of a truncated tree; Complainant's Exhibit 6, a picture of an uprooted tree; Complainant's Exhibit 7, a picture of branches on the ground; Complainant's Exhibit 8, a picture of branches on the ground; Complainant's Exhibit 9, a picture of branches on the ground; Complainant's Exhibit 10, a picture of branches on the ground; Complainant's Exhibit 11, a picture of branches on the ground; and, Complainant's Exhibit 12, a picture of branches on the ground. Kimberly G. Krupka, Esquire, appeared on behalf of PPL and presented the testimony of Tyler Marino, a Forester for the Lancaster district employed by PPL, and offered the following exhibits that were received into evidence: PPL Exhibit 7, several pages from a Deed Book relative to Complainant's property; and, PPL Exhibit 12, several pages from the *PPL Manual Specification for Distribution Vegetation Management*. The record was left open pending additional discovery and for the scheduling of a further hearing on the billing issue raised by Complainant.

On November 1, 2021, Complainant filed a Motion to Compel Answers to Interrogatories.<sup>4</sup>

On January 13, 2022, PPL filed an Answer to the Motion which I accepted as filed *nunc pro tunc*.

On January 28, 2022, an Order was issued denying with prejudice Complainant's Motion to Compel.

On March 10, 2022, a final day of telephonic evidentiary hearing was held. Complainant was present and testified. Before that hearing convened, Complainant filed a document presented as a hearing document (but which had been neither requested nor permitted), which he titled, "Complainant's Trial Memorandum." In sum, that document was not a Memorandum of Law relative to some point of procedure, for not a single specific reference to statutory or case law was included. Instead, it set forth argument, supported by nothing but Complainant's opinion, that PPL had acted unlawfully. "Complainant's Trial Memorandum," was rejected and not allowed into the record pending a ruling with respect to the same. The hearing then proceeded. PPL was again represented by Kimberly G. Krupka, Esquire, who presented the testimony of Kelly Bell, a Customer Service Representative employed by PPL. In addition to Ms. Bell's testimony, Ms. Krupka offered the following Exhibits that were received into evidence: PPL Exhibit 13, Mr. Kingsley's Current Account Activity Statement; PPL Exhibit 14, Customer Contacts on Mr. Kingsley's Current Account; PPL Exhibit 16, Estate of Linda Schoener Account Activity Statement; PPL Exhibit 17, Contacts on Account in Linda Schoener's Name. After cross-examination and closing arguments, I rejected, "Complainant's Trial Memorandum" as it was essentially a brief. I also very clearly stated that post-hearing briefs would not be accepted in this case. The hearing then adjourned.

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<sup>4</sup> I also note that on November 1, 2021, Complainant filed a Petition for Transcript Corrections. The Petition was unopposed, and so the requested corrections were adopted. See 52 Pa. Code § 5.253(f)(2).

On April 6, 2022, the court reporter filed Pages 127-210 of the transcript of the final day of evidentiary hearing in this matter held March 10, 2022, along with the PPL Exhibits received into evidence on that date. The record in this case closed on April 6, 2022 and consists of the hearing transcripts of May 6, 2021 (prehearing conference), July 20, 2021, and March 10, 2022, a total of 210 pages, along with the Exhibits received into evidence at those hearings.

On May 2, 2022, Complainant filed with the Secretary of the Commission a document that he titled, "Complainant's Amended Motion for Reconsideration," which was, in fact, a re-working of Complainant's rejected, "Trial Memorandum," now styled as the very post-hearing brief that had been expressly disallowed by me at the close of the hearing on March 10, 2022.<sup>5</sup> PPL filed no Answer or responsive pleading to the Motion.

On May 12, 2022, I issued an Order Denying with Prejudice Complainant's Amended Motion for Reconsideration, striking the "Trial Memorandum/Main Brief," filed with the Secretary of the Commission, and striking the "Trial Memorandum/Main Brief," which Complainant also attached as an Exhibit to Complainant's Amended Motion for Reconsideration.

This matter is ready for disposition.

For the reasons stated herein, Complainant has failed to prove, by a preponderance of the evidence, that PPL violated any provision of the Public Utility Code or the rules and regulations of the Commission. Because of Complainant's failure to comply with my rulings and Orders, and because of his misrepresentations in this proceeding, which will be discussed below, the Complaint is dismissed.<sup>6</sup>

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<sup>5</sup> I also note that on May 2, 2022, Complainant separately filed a Petition for Transcript Corrections. The Petition was unopposed, and so the requested corrections were adopted. *See* 52 Pa. Code § 5.253(f)(2).

<sup>6</sup> Unless otherwise noted, references to the Complaint include the Amended Complaints and the allegations therein.



## FINDINGS OF FACT

1. Lawrence Kingsley is the Complainant in this case.
2. PPL Electric Utilities Corporation is a Commission jurisdictional electric distribution company and is the Respondent in this matter.
3. Complainant receives electric distribution service from PPL at his residence, 2161 West Ridge Drive, Lancaster, Pennsylvania. Tr. at 33.
4. On March 1, 2019, Complainant inspected his property and found displaced or cut vegetation which he attributed to PPL's vegetation management on his property which he claimed had occurred in or around April, 2017. Tr. at 36.
5. Complainant's requested relief is twofold: first, that the Commission direct PPL to notify him in advance of any vegetation management scheduled to take place at his property, and second, that the Commission direct PPL to refund the approximately \$1,986.00 in billing that Complainant has paid and to rebill charges for service at the property to the estate of Linda Schoener. Tr. at 61.
6. The residential property in Lancaster is Complainant's residential address. Tr. at 60.
7. In 2019, Complainant spoke with an Asplundh tree-trimming crew and objected to vegetation management being conducted on his property, and no work was performed. Tr. at 73-76.
8. PPL Exhibit 7 is an excerpt from a Deed Book relative to Complainant's property which contains the statement that PPL has the right " . . . to cut down, trim and remove and keep cut down and trimmed any and all trees, brush, or under growth on said premises (the

service address), which in the judgment of said company may at any time hereafter can be removed.” Tr. at 88; PPL Exhibit 7.

9. In its vegetation management program, PPL tries to maintain a fifteen-foot clearance between vegetation and electric distribution lines. Tr. at 89-90.

10. The intent of vegetation management is to allow the provision of safe, reliable electric service to all customers. Tr. at 90.

11. Vegetation overgrowth may result in outages, momentary interruptions, and hinder the ability to repair a line. Tr. at 90.

12. PPL has a regular schedule for vegetation management maintenance based on a five-year cycle, though this may vary. Tr. at 90.

13. The last time that Complainant’s property was scheduled for vegetation management was during the 2018-2019 cycle. Tr. at 91.

14. PPL has no record of vegetation management having been performed on Complainant’s property in 2017. Tr. at 91-92, 98, 117.

15. The previous time period for vegetation management on Complainant’s property would have been during the 2014-2015 maintenance period. Tr. at 92, 99.

16. PPL through a contractor regularly provides notice to customers with respect to scheduled vegetation management by phone, in person, or by mail. Tr. at 93.

17. PPL Exhibit 12 is a document containing several pages from the *PPL Manual Specification for Distribution Vegetation Management (Manual)*, directing contractors with respect to PPL’s policies. Tr. at 94; PPL Exhibit 12.

18. PPL contractors are required to adhere to the directions of the *Manual*, are provided with a copy of the *Manual*, and are required to keep it on their trucks for reference. Tr. at 103.

19. For vegetation management planning and notification, PPL uses a contractor, EPI Environmental Consultants (EPI). Tr. at 105.

20. PPL provides EPI with specifications and guidance. Tr. at 106.

21. PPL confirms compliance with its guidance through on-site inspections. Tr. at 107.

22. PPL Forester, Tyler Marino, testified that upon review of the photos taken by Complainant, that there was no evidence that tree trimming beyond the 15-foot clearance customarily maintained had taken place. Tr. at 95-96.

23. Disputes with landowners with respect to vegetation management are resolved on a case-by-case basis. Tr. at 113.

24. Complainant shared both an apartment in New York City and the Lancaster residence (*i.e.* the service address in this matter) with Ms. Linda Schoener who died on March 20, 2015. Tr. at 57-58, 69.

25. When residing in New York City, Complainant would still go to the Lancaster property to check on the property and to perform maintenance. Tr. at 57-58.

26. After Ms. Schoener's death but prior to being appointed the administrator of Ms. Schoener's estate, Complainant paid the utility bills for the Lancaster property. Tr. at 58.

27. In or around September, 2015, Complainant was appointed the administrator of Linda Schoener's estate. Tr. at 61, 141.

28. In September, 2015, Complainant became the owner of the Lancaster property. Tr. at 143-144.

29. In October, 2015, the PPL account was placed in the name of the Estate of Linda Schoener. Tr. at 141-142.

30. In August, 2017, the PPL account was placed in Complainant's name. Tr. at 142.

31. Complainant has never paid a security deposit on the account while it has been in his name, nor did Ms. Schoener pay a security deposit. Tr. at 145, 156-157.

32. PPL account number ending in 98011, though reflecting Mr. Kingsley's New York City mailing address, was for service at the Lancaster address from March 16, 2018, to February 8, 2022. Tr. at 152-153; PPL Exhibit 13.

33. Account ending in 98011, was placed in Mr. Kingsley's name on August 24, 2017. Tr. at 154; PPL Exhibit 14.

34. When a customer dies, PPL provides one of three billing options: put the account in the name of the estate, place the service in a new name, or terminate service. Tr. at 156.

35. PPL cannot maintain an account in the name of a deceased person. Tr. at 156.

36. The total accumulated charges from the time the estate account opened in October, 2015 until it was placed in Complainant's name in August of 2017, amount to \$1,011.68. Tr. at 157-158.

37. If an account is in the name of the estate, PPL will accept payment from any party; it does not have to come from the estate. Tr. at 158.

38. There was no correspondence or any contact from Complainant to PPL trying to terminate the account during the time while it was in the name of the estate. Tr. at 158.

39. On May 6, 2021, Complainant contacted PPL for the first time with an inquiry about a security deposit. Tr. at 159.

40. Complainant was advised by PPL on May 6, 2021, that any security deposit was waived. Tr. at 160.

41. Despite knowing that a security deposit had never been assessed upon or paid by himself or by Ms. Schoener, Complainant attempted to have the Commission direct repayment of a security deposit. Tr. at 187.

### DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of 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 Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

This case, which was originally based on a Complaint filed on May 12, 2020 (which Complaint was subsequently amended), involves two issues; first, whether PPL violated the provisions of Section 1501 of the Pennsylvania Public Utility Code in connection with vegetation management on the premises of Complainant, and second, whether Complainant was misbilled for charges related to service formerly in the name of Linda Schoener, deceased, as set forth at his Amended Complaint at Paragraphs 31-34. *See*, 52 Pa. Code Chapter 56.

PPL has consistently denied that it violated the Public Utility Code or the rules and regulations of the Commission in any way. As this Complaint is being dismissed based on Complainant's failure to meet his burden of proof, Complainant's requests that the Commission direct PPL to engage in a personalized notification procedure for Complainant relative to vegetation management, his requests for reimbursement for charges he paid for electric service, and his attempt to recover a security deposit that had never been paid are all denied.

#### Complainant's Vegetation Management Complaint

Complainant asserted that PPL failed to provide reasonable and adequate service as required by Section 1501 of the Code, which states in pertinent part:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statute at 66 Pa.C.S. § 1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd*, 420 A.2d 371 (Pa. 1977); *see also, Behrend v. Bell Tel. Co. of Pa.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.*, Docket No. C-00015494 (Opinion and Order entered June 14, 2002); *Re: Metro. Edison Co.*, 80 Pa.P.U.C. 662 (1993).

Specifically, Complainant claimed that on or around March 1, 2019, he inspected his property in Lancaster and found displaced or cut vegetation which he attributed to PPL's vegetation management on his property that he claimed occurred in or around April, 2017. Tr. at 36. On cross-examination, however, Complainant was unable to identify with specificity when the vegetation management occurred. Tr. at 70-71.

Complainant's Exhibits 1-12, which consist of various pictures of vegetation, branches, overhead distribution wire clearances and other fauna do not support a finding that PPL was in any way involved in the displacement of vegetation. The pictures were taken by

Complainant in preparation for the hearing and he claims that they are evidence of PPL “butchering” his vegetation and consequent “debilitation.” Tr. 36-50; Complainants Exhibits 1-12. While I accept that the pictures were taken on Complainant’s property by Complainant, all they show is foliage and ground-fall. Complainant established no causal link between what we see in the pictures and PPL’s vegetation management. The majority of the pictures are of branches laying on the ground and may be nothing but natural ground-fall. Complainant produced no probative evidence that any of the fallen, dead, or cut vegetation came about because of the activities of PPL, and thus his exhibits are of little evidentiary value. Tr. at 51, 77-78. His allegation that PPL was responsible for cuttings and unremoved branches is entirely speculative and was denied by PPL. I agree.

Complainant asserts that PPL had an obligation to notify him of vegetation management activities on his property. Complainant did not show any regulatory requirement or provision in PPL’s tariff that such notice is required. PPL’s internal requirements with respect to vegetation management generally is reflected in PPL’s tariff, and specific notice requirements are a matter of contract with their third-party contractor, EPI Environmental Consultants. In any event, Complainant would not have received notice of impending vegetation management in 2017 because, according to the testimony of Tyler Marino, PPL’s District Forester for the Lancaster area, no vegetation management occurred on Complainant’s property during that year. Tr. at 91-92, 98, 117. I find his testimony credible. When vegetation management did take place in 2019, Complainant spoke directly with the PPL vegetation management contractor, Asplundh, and no vegetation management was performed on that occasion. Tr. at 73-76.<sup>7</sup>

In response to Complainant’s testimony, PPL presented the testimony of Tyler Marino, the PPL Forester responsible for vegetation management in the Lancaster area. I find Mr. Marino’s testimony credible. Mr. Marino assumed his current position with PPL in 2019, but in preparation for the evidentiary hearing he reviewed PPL’s maintenance records for the Complainant’s property. Tr. at 100.

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<sup>7</sup> Complainant made a contention at hearing that PPL is required to site wires underground on new construction. Whether correct or not, that is irrelevant to this case. Tr. at 56.



PPL also produced PPL Exhibit 7, which is an excerpt from a Deed Book relative to Complainant's property which contains the statement that PPL has the right to cut down, trim and remove and keep cut down and trimmed any and all trees, brush, or under growth on said premises, which in the judgment of said company may at any time hereafter can be removed. Tr. at 88; PPL Exhibit 7.

PPL Exhibit 12, several pages from the *Manual*, was referenced by Mr. Marino in his testimony. Mr. Marino testified that he had reviewed Complainant's photographs and found no indication that tree trimming in excess of the standard 15-foot clearance had taken place assuming *arguendo* that PPL had even made such cuttings. Tr. at 95-96.

Prior to and during the testimony of Mr. Marino, it was clear that Complainant has based his Complaint with respect to vegetation management on actions that he alleged occurred in 2017. Mr. Marino testified that no vegetation management was performed on Complainant's property at that time. Tr. at 91-92, 98, 117. Again, I find Mr. Marino's testimony credible. As stated above, the photos taken by Complainant in 2019 are of no evidentiary value to Complainant's case as there has been no link established between the photos and vegetation management by PPL. Complainant's assertion that the condition of his property as shown in his exhibits was caused by PPL is conjecture, at best. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A. 2d 12 (1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012); (citing, *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

Complainant has not met his burden of showing by a preponderance of the evidence that PPL violated a provision of the Code or the rules and regulations of the Commission in conducting its vegetation management program on Complainant's property, and his Complaint in this respect is dismissed.

## Complainant's Billing Complaint

Complainant alleged that he has been misbilled by PPL. Complainant shared both an apartment in New York City and the Lancaster service address with Ms. Linda Schoener who died on March 20, 2015. Tr. at 57-58, 69. When in New York City, Complainant would still go to the Lancaster property periodically to check on the property and to perform maintenance. Tr. at 57-58. After Ms. Schoener's death but prior to being appointed the administrator of Ms. Schoener's estate, Complainant paid the utility bills for the Lancaster property. Tr. at 58. Complainant is the administrator of Linda Schoener's estate. Tr. at 61.

Complainant's contention, in part, is that that PPL incorrectly required him to pay the monthly electric bill for 29 months after the death of Ms. Schoener who was the original account holder. Tr. at 131. Complainant is seeking a direction from the Commission to PPL to refund the approximately \$1,986 in billing that Complainant claims to have paid and to rebill charges for service at the property to the estate of Linda Schoener.<sup>8</sup> Complainant is also seeking a refund of a security deposit which he asserted was assessed on the account and which he implied was required when Complainant had his name placed on the service. Tr. at 133-134.

PPL presented the testimony of Kelly Bell, a PPL Service Representative with respect to the billing of Complainant's account. Ms. Bell's testimony was confined to a description of PPL's exhibits and to PPL's billing practices. The calculation of bills was not an issue in this matter, and she presented no testimony in that respect. I find her testimony credible.

With respect to the security deposit that Complainant wants refunded, it was established at hearing that neither Complainant nor Linda Schoener were ever asked by PPL to provide a security deposit, but upon presentation of that fact, Complainant shifted his claim for refund of a deposit based on Complainant's unsupported assertion that prior owners of the property paid a security deposit in 1950. Tr. at 145-146. As Complainant stated:

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<sup>8</sup> This amount is based on Complainant's calculations.

I would expect her parents to have paid it. Linda, of course, inherited the property from her mother, because her father died much earlier. So the accounting went – my belief, and I'd have to rely on deduction, is that the account would have been in the name of her father or mother, and then in Linda's name, especially when Linda became the personal representative of her mother.

Tr. at 146.

The entire matter of the security deposit is troubling. On May 6, 2021, before the first evidentiary hearing in this case convened (on July 20, 2021) Complainant contacted PPL for the first time with an inquiry about a security deposit. Tr. at 159. Complainant was advised by PPL on May 6, 2021, that any security deposit was waived. Tr. at 160. Despite knowing this, Complainant continued to argue for the refund of a security deposit in this case. As there is no evidence that a security deposit was ever assessed or paid, Complainant's request for its refund will be denied and his Complaint in this respect dismissed.

Ms. Bell also testified with respect to a number of PPL Exhibits. PPL Exhibit 13 is a Current Account Activity Statement for PPL account number ending in 98011. Though reflecting Mr. Kingsley's New York mailing address, the Statement is for service at the Lancaster address from March 16, 2018, to February 8, 2022. Tr. at 152-153; PPL Exhibit 13. PPL Exhibit 14 is a Customer Contact Record on Complainant's account ending in 98011, which reflects the fact that the account was placed in Mr. Kingsley's name on August 24, 2017. PPL Exhibit 16, an Account Activity Statement for the Estate of Linda Schoener. The total accumulated charges from the time the estate account opened in October, 2015 until it was placed in Complainant's name in August of 2017, amount to \$1,011.68. Tr. at 157-158. The point of this testimony is that if an account is in the name of the estate, PPL will accept payment from any party; it does not have to come from the estate. Tr. at 158. Significantly, although he was aware of how the account was being billed, there was no correspondence or any contact from Complainant to PPL trying to terminate the account during the time while it was in the name of the estate. Tr. at 158. Complainant's request that he be refunded what he paid while the account was in the name of Linda Schoener's estate is without basis.

A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for the utility service provided to them. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Scaccia v. W. Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); and *Bolt v. Duquesne Light Co.*, 66 Pa. P.U.C. 463 (1988). Complainant did not establish by a preponderance of the evidence that he has been misbilled by PPL, and he is not entitled to a refund of any of the charges he paid, including those paid after the death of Linda Schoener but while he was the administrator of her estate and while he was still using the electric service provided by PPL at the residence they had shared.

Complainant's allegations with respect to misbilling are dismissed.

#### Disposition

Complainant failed to meet his burden of showing by a preponderance of the evidence that PPL violated any provision of the Code or any regulation of the Commission. The Complaint of Lawrence Kingsley filed at Docket No. C-2020-3019763, is dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

3. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

4. To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of 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 Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

5. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered November 16, 2006) (citing, *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Order entered January 12, 2012) (citing, *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

6. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

7. A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for the utility service provided to them. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers. *Mill v. Pa. Pub. Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); and *Bolt v. Duquesne Light Co.*, 66 Pa. P.U.C. 463 (1988).

