

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Virginia DeJesus	:	F-2023-3040665
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A complaint by the owner of a rental property is dismissed. The account of the tenant was properly transferred to the owner because of the presence of a foreign load.

HISTORY OF THE PROCEEDINGS

Virginia DeJesus (Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL) with the Pennsylvania Public Utility Commission (Commission) on May 8, 2023.¹ Ms. DeJesus checked the “other” box on the Formal Complaint form and explained that PPL added the utility service balance of her tenant to her bill. She explained that the tenant was aware that there was only one meter at the service address and that his rent was reduced to compensate him for the single meter. As relief, Ms. DeJesus asked that the Commission direct PPL to remove the tenant’s balance from her bill.

¹ The Complaint is a timely appeal from the Bureau of Consumer Services determination at BCS No. 3892570.

PPL filed an Answer to the complaint on June 5, 2023. PPL admitted that it transferred tenant's balance to Ms. DeJesus' account. PPL averred that a company representative confirmed that there was foreign wiring present at the rental property. PPL denied the other allegations in the complaint and explained that PPL had followed the relevant Commission regulations.

The Office of Administrative Law Judge (OALJ) issued an order on June 6, 2023, referring the matter to the OALJ Mediation Unit. The parties did not resolve their dispute. On July 20, 2023, OALJ served a hearing notice scheduling a telephone hearing on September 5, 2023, and assigned the complaint to me. I issued a prehearing order which explained the hearing procedures on July 20, 2023.

The hearing convened as scheduled. Ms. DeJesus appeared, self-represented. She offered her own testimony, as well as the testimony of her husband, Jenry Mora. PPL appeared represented by Megan Rulli, Esquire. PPL presented the testimony of two witnesses, Anthony Harris and Holly Hankerson. PPL offered six exhibits which were admitted into the record. The hearing produced a transcript of 97 pages. After I received the transcript, I closed the record by order issued on October 2, 2023.

FINDINGS OF FACT

1. The Complainant is Virginia DeJesus who resides at 701 Winters Avenue, West Hazelton, PA. (Tr. 8).
2. Ms. DeJesus owns a rental property at 645 Winters Avenue (rental property). (Tr. 11-12).
3. PPL, the Respondent, is a jurisdictional public utility.

4. Ms. DeJesus' husband, Jenry Mora, maintains and manages the rental property. (Tr. 12).
5. In May 2021 Ms. DeJesus rented the property to Stanley Stephen Drew (tenant). (Tr. 13, 14).
6. Ms. DeJesus and Mr. Drew did not have a written lease. (Tr. 22).
7. PPL established an electricity account in the name of Mr. Drew on May 4, 2021. (Tr. 66; PPL Ex. 5).
8. Mr. Mora wanted to create another living space in the basement of the rental property. (Tr. 17-18, 38).
9. Mr. Mora began renovations on the basement in January or February 2022. (Tr. 31).
10. Ms. DeJesus and Mr. Mora reduced Mr. Drew's rent in exchange for the inconvenience. (Tr. 17-18, 32, 38).
11. The basement can be accessed through an external door. (Tr. 30).
12. Mr. Drew had access to the basement. (Tr. 21, 35, 40).
13. However, Ms. DeJesus and Mr. Mora permitted a friend to stay in the basement in April or May 2022. (Tr. 25, 28, 32, 38).
14. Mr. Drew contacted PPL in January 2023 and reported that there was an apartment in the basement of the rental property, but only one meter. (Tr. 44-45).

15. Anthony Harris, a PPL customer contact representative, telephoned Ms. DeJesus on January 13, 2023. (Tr. 45).

16. Mr. Harris did not visit the property to confirm the foreign load or the tenant's access to the basement. (Tr. 39, 46).

17. PPL sent Ms. DeJesus a notice of foreign load dated February 13, 2023, which notified her that due to the foreign load at the property, she is required to install a second meter. (PPL Ex. 6).

18. The February 13, 2023 letter informed Ms. DeJesus that the tenant's outstanding electricity balance would be transferred to her account. (PPL Ex. 6).

19. In response to the telephone call and notification of foreign load, Ms. DeJesus tried to contact PPL many times. (Tr. 36-37).

20. PPL transferred \$1,980.40 from the tenant's account to Ms. DeJesus' account. (Tr. 61, 68, 79; PPL Ex. 6, PPL Ex. 1).

21. The transferred balance was the outstanding balance as of January 13, 2023. (Tr. 80-81).

22. Mr. Drew was evicted from the property in February or March 2023 because he did not pay his rent. (Tr. 15, 21; see also Tr. 38).

23. Mr. Mora installed a second meter for the basement in spring 2023. (Tr. 27).

24. Ms. DeJesus returned the "Fix Form" on May 26, 2023, which notified PPL that the second meter was installed at the property. (Tr. 72; PPL Ex. 2; PPL Ex. 7).

25. PPL established service in the name of a new tenant at the rental property effective April 17, 2023. (Tr. 75; PPL Ex. 7).

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about anything done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission.² A person who wants the Commission to do something to resolve their complaint has the burden of proof.³

In this matter, Ms. DeJesus is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that Ms. DeJesus must present facts which support her claim and prove facts that show that PPL violated the Public Utility Code, a regulation or Commission order by a preponderance of the evidence.⁴ The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁵ Relief can only be granted if the Complainant proves facts by a preponderance of the evidence, which show that PPL violated the Public Utility Code or Commission regulations.

Foreign Load

“Foreign load” has been defined in case law as a condition where the utility meter for a dwelling unit is registering usage not exclusive to the dwelling unit or its occupants.⁶

² 66 Pa.C.S. § 701.

³ 66 Pa.C.S. § 332(a).

⁴ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵ *Popowsky*.

⁶ *E.g., I-A Realty v. Pa. Publ. Util. Comm’n*, 63 A.3d 480 (Pa. Cmwlth. 2013), *app. denied* 74 A.3d 1033 (Pa. 2013).

Section 1529.1 of the Public Utility Code requires utilities to transfer a tenant’s balance to the property owner when the property is not “individually metered.” The requirement is mandatory. Neither the utility nor the Commission may exercise any discretion in requiring the transfer of the account to the property owner where there is a foreign load.⁷ This is true even if the foreign load is simply an outlet or other so-called *de minimis* load on a rental unit’s meter that is not part of the rental unit. A balance must also be transferred even if a tenant carries a substantial arrearage which far exceeds any excess consumption that may have been caused by the foreign load itself.⁸ Once the foreign load has been resolved, the account is transferred back to the tenant, but the Commission has held that the arrearage must remain with the landlord.⁹

When applying facts to the legal definitions and requirements, it is useful to keep in mind the purpose of Section 1529.1. Section 1529.1 is included in a subchapter of the Public Utility Code which deals with the obligations of landlords in regard to the utility service of tenants. The bulk of the subchapter addresses a situation where a utility service to a landlord ratepayer is terminated. Detailed notice requirements and procedures are in place to protect the rights of tenants who may lose utility service due to no fault of their own. For example, provisions require a landlord to provide notice to tenants regarding a pending termination of service.¹⁰ A landlord ratepayer must provide a public utility with a list of potentially affected tenants.¹¹ Tenants must be provided with an opportunity to continue service by making payments on behalf of the landlord ratepayer in order to avoid termination.¹²

⁷ E.g., *Riviello v. PPL Elec. Utils. Corp.*, Docket No. F-2017-2636807 (Opinion and Order entered Jan. 17, 2019) (*Riviello*).

⁸ Often, the tenant is not only failing to pay their utility bill, but is failing to pay the rent as well. See *Maguire v. Pa. Elec. Co.*, F-2015-2504132 (cons.) (Opinion and Order entered May 4, 2017).

⁹ *Park v. PPL Elec. Utils. Corp.*, Docket No. F-2012-2308984 (Opinion and Order entered Sept. 26, 2013) (citing *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010)).

¹⁰ 66 Pa.C.S. § 1523.

¹¹ 66 Pa.C.S. § 1524.

¹² 66 Pa.C.S. § 1527.

Along a similar vein, the purpose of Section 1529.1 addressing properties that are not “individually metered,” is to protect one tenant from losing utility service because another customer has service terminated by the utility.¹³ The requirement that the account of a tenant experiencing a foreign load must be transferred to the property owner provides an incentive for the landlord to be aware of potential foreign loads and to correct the wiring, plumbing or piping promptly.¹⁴

PPL’s Foreign Load Investigation

As with many foreign load investigation’s, PPL’s investigation was initiated by a telephone report by the tenant, Mr. Drew. According to PPL’s witness, Mr. Harris, he spoke to Mr. Drew who claimed that he did not have access to the basement of the property and sent him a picture of an exterior door. Mr. Harris telephoned Ms. DeJesus. According to him, Ms. DeJesus admitted that there was an apartment in the basement. He claimed that Ms. DeJesus told him that Mr. Drew did not have access to the basement. In his view, Ms. DeJesus self-reported the foreign wiring and he did not visit the property or do any further investigation. Ms. DeJesus recalled the conversation with Mr. Harris but says that she did not understand what he was talking about and that she was confused. She claims that she thought he was talking about the garage. According to her, Mr. Drew did not have access to the garage, but he did have access to the basement. She further claimed that she telephoned PPL many times but was not able to get an explanation for her questions.

Although Mr. Harris says that he entered notes of his conversation with Ms. DeJesus into a customer contact system, he did not produce his notes.¹⁵ He also admits that he never visited the property.

¹³ *Binelli v. Metro. Edison Co.*, Docket C-2017-2597097 (Opinion and Order entered July 12, 2018).

¹⁴ *Id.*

¹⁵ Tr. 49-50.

The concept of a “foreign load” can be confusing to a person who is not familiar with the term. I find Ms. DeJesus’ testimony that she did not understand what Mr. Harris was telling her in their January conversation credible. While a utility certainly has an obligation to transfer a tenant’s account to a landlord when a foreign load is discovered, PPL could have expended some extra effort in investigating this case and offered Ms. DeJesus more assistance in resolving the meter situation, particularly given the substantial arrearage on Mr. Drew’s electricity account.

However, Ms. DeJesus and Mr. Mora admitted that not only was there a separate living space created in the basement, but that they invited others to live in the space from time to time. Therefore, whether Mr. Drew had physical access to the basement is not the important fact. The important fact is that once the basement apartment (dwelling unit) was created, the space was not exclusively for Mr. Drew’s use.¹⁶ The premise included two dwelling units that were not individually metered. Therefore, the basement required a second meter and PPL was required to transfer Mr. Drew’s account to Ms. DeJesus.¹⁷

Ms. DeJesus argued that she should not be responsible for Mr. Drew’s balance because his rent was reduced to compensate for the inconvenience caused by the construction and occasional occupation of the basement by her family. The Commonwealth Court has held that Section 1529.1 does not permit a tenant to accept responsibility for a foreign load. Rather, the statute is mandatory in its requirement that the tenant’s balance be transferred to the landlord, even where the landlord has compensated tenants for shared utility service.¹⁸ Therefore, her complaint must be dismissed.

¹⁶ Cf. *Langhurst v. Duquesne Light Co.*, Docket No. F-2019-3008260 (Final Order entered Sept. 26, 2019) (where a leased premise includes a storage unit solely for the use of the tenant, responsibility for the outlet and light in the storage unit may be assigned to the tenant and does not constitute a foreign load.).

¹⁷ *Riviello*.

¹⁸ *I-A Realty v. Pa. Publ. Util. Comm’n*, 63 A.3d 480 (Pa. Cmwlth. 2013), *app. denied*, 74 A.3d 1033 (Pa. 2013).

I am not unsympathetic to the arguments made by Ms. DeJesus. The Public Utility Code and the interpretation of its mandates result in a consequence that outstrips the gravity of her failure to install a second meter when the basement apartment was complete. She shares the position of many landlords who are the target of disgruntled tenants who are often not only not paying their utility bills but are not paying their rent either. There is no judicial latitude afforded to the Commission to provide relief to Ms. DeJesus. The statute requires PPL to transfer Mr. Drew's large balance to Ms. DeJesus. Nor can I consider the equities of the situation, namely that Mr. Drew was compensated with a reduction in his rent, that Mr. Drew was not paying his rent, or that Mr. Drew was not paying his PPL bill. I am constrained to allocate Mr. Drew's entire tenant bill, including the arrearage, to Ms. DeJesus.

In sum, I must dismiss Ms. DeJesus' complaint. There were two dwelling units at the property but only one meter. PPL transferred the tenant's balance to Ms. DeJesus until she resolved the foreign load by installing a second meter at the property. Therefore, PPL did not violate the Public Utility Code.

CONCLUSION OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. 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. *Binelli v. Metro. Edison Co.*, Docket No. C-2017-2597097 (Opinion and Order entered July 12, 2018).
4. Section 1529.1 of the Public Utility Code requires a public utility to transfer utility accounts into the name of the property owner upon discovery of a foreign load. 66 Pa.C.S. § 1529.1.

5. A tenant cannot agree to take responsibility for a foreign load. *I-A Realty v. Pa. Publ. Util. Comm'n*, 63 A.3d 480 (Pa. Cmwlth. 2013).

6. When the basement apartment was completed and occupied by others, the rental property had two dwelling units that were not individually metered, and a foreign load was present. 66 Pa.C.S. § 1529.1.

7. The Complainant failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Virginia DeJesus in *Virginia DeJesus v. PPL Electric Utilities Corporation* at Docket No. F-2023-3040665 is dismissed.

2. That the Secretary mark the docket closed.

Date: December 18, 2023

/s/
Mary D. Long
Administrative Law Judge