

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Waterco Springs, LLC	:	
	:	
v.	:	C-2022-3036860
	:	
PPL Electric Utilities Corporation	:	

**EXCEPTIONS OF COMPLAINANT WATERCO SPRINGS, LLC
TO INITIAL DECISION DATED JANUARY 25, 2024**

Pursuant to 52 Pa. Code § 5.533, Complainant Waterco Springs, LLC (“**Waterco**”) hereby respectfully files these Exceptions to the Initial Decision (“**Initial Decision**”) of Presiding Officer Chad L. Allensworth, Administrative Law Judge (the “**Presiding Officer**”) dated January 25, 2024. A true and correct copy of the Initial Decision is attached hereto as **Exhibit “A”**.

I. BACKGROUND AND PROCEDURAL HISTORY

On November 17, 2022, Waterco filed a Formal Complaint (“**Complaint**”) with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (“**PPL**”). The Complaint alleges that Waterco purchased the assets of Signatures Springs LLC at the end of June 2022, and as part of the acquisition, assumed an electricity supply agreement (“**Agreement**”) with Constellation NewEnergy, Inc. (“**CNE**”). The Complaint further alleges, *inter alia*, that CNE requested a new PPL account number for utility billing. The Complaint alleges that thereafter, Waterco contacted PPL to request a new account number and that PPL informed Waterco that Waterco needed to wait until PPL issued a first bill.

Unbeknownst to Waterco, PPL unilaterally terminated the original fixed rate contract with CNE assumed by Waterco. As a result, PPL defaulted Waterco’s account to a variable rate as opposed to the fixed rate set forth in the assumed Agreement. The Complaint alleges that the variable rate charged was the result of an administrative error by PPL.

In its December 8, 2022 answer to the Complaint, PPL disputed advising Waterco that (i) it would receive the same rate for electricity as Waterco's predecessor and (ii) Waterco needed to wait until it received its first bill under Waterco's name to get a PPL account number.

A telephonic hearing was held on October 18, 2023.¹

The critical issue in the case was the information relayed by PPL during a June 30, 2022 phone call ("**Phone Call**"). Waterco's representative, Isaac Aframian, testified that he contacted PPL to effectuate a name change for the Agreement and obtain a PPL account number to provide CNE, and that PPL told him that Waterco needed to wait until PPL issued its first bill to obtain the account number. 10/18/2023 N.T. at 18:3 – 21:16. PPL introduced the testimony of its representative that participated in the Phone Call, Dana Brunner, who testified that while she did not recall the specifics of the Phone Call, she believes that she would have offered Waterco the account number during the Phone Call. 10/18/2023 N.T. at 98:17 – 100:3. Ms. Brunner further testified that even though she did not recall the specifics of the Phone Call, PPL was in possession of a recording ("**Recording**") of the Phone Call that would have clearly resolved the disputed testimony of what was said and that she did not, and was not permitted to, listen to the Recording to confirm what was actually said. 10/18/2023 N.T. at 93:1 – 94:14; 104:13-16. PPL did not offer the Recording into evidence. 10/18/2023 N.T. at 93:1 – 94:14.

In light of the admission that PPL was in possession of a Recording reviewed by a non-testifying supervisor and Ms. Brunner's testimony regarding her inability to recall the specifics of the Phone Call, Waterco objected to and moved to strike the testimony of Ms. Brunner and further argued that Ms. Brunner's testimony should be disregarded under the best evidence rule and an adverse inference be made that PPL had intentionally refused to present the Recording at the

¹ References to the Notes of Testimony therefrom are hereinafter cited with reference to "10/18/2023 N.T."

hearing because it would undermine PPL's position. 10/18/2023 N.T. at 95:10 – 97:21;129:2 – 132:5.

The Presiding Officer issued an Initial Decision on January 25, 2024. The Presiding Officer acknowledged that the content of the Phone Call was a critical issue in the case. Decision at 13-14. The Presiding Officer found, *inter alia*, against Waterco with regard to Waterco's claim that PPL did not timely provide a new account number. Decision at 14, 16. In so ruling, the Presiding Officer determined that Ms. Brunner's testimony was more credible than the testimony of Waterco's witness, Mr. Aframian, and concluded that Ms. Brunner provided the PPL account number to Mr. Aframian in the Phone Call. *Id.* at 14. In so ruling, the Presiding Officer overruled Waterco's objection to the testimony of Ms. Brunner and rejected the request that an adverse inference be drawn from PPL's failure to introduce the Recording.

The Decision makes no reference to the Recording, or PPL's failure to introduce it as evidence. *See generally* Decision.

II. EXCEPTIONS

EXCEPTION NO. 1:

The Presiding Officer erred by not making an adverse inference where PPL failed to introduce as evidence and/or preserve the Recording, leading the Presiding Officer to erroneously credit Ms. Brunner's testimony that she would have provided Waterco with an account number on June 30, 2022, and conclude that Waterco failed to meet its burden of proof.

***See* Decision at 5 (Finding of Fact No. 15), and 16 (Conclusion of Law No. 14).**

The Presiding Officer found that "Ms. Brunner provided Waterco Springs with its new account number on behalf of PPL on June 30, 2022." Decision at 5 (Finding of Fact No. 15). This apparently led the Presiding Officer to conclude that Waterco failed to meet its burden of proof. Decision at 16 (Conclusion of Law No. 14); *see also* Decision at 14 ("I find that Ms. Brunner's

testimony was credible and persuasive in establishing that she provided the PPL account number to Mr. Aframian on June 30, 2022. Thus, Waterco Springs failed to establish a violation for PPL not providing timely information to allow it to enroll with Constellation.”).

However, the Presiding Officer did not reference the existence of the Recording in the Decision. *See generally* Decision. At the hearing, Waterco argued that PPL should have introduced, but did not introduce, the Recording as the best evidence of the Phone Call’s contents, particularly when Ms. Brunner could not independently remember the details of the Phone Call. 10/18/2023 N.T. at 129:15 – 132:5. Waterco argued that PPL’s decision not to introduce the Recording left the Presiding Officer with only one credible witness: Mr. Aframian (Waterco’s witness). *Id.*

Pennsylvania Rule of Evidence 1002 provides that “[a]n original writing, recording, or photograph is required in order to prove its content unless these rules, other rules prescribed by the Supreme Court, or a statute provides otherwise.” Pa.R.E. 1002.

The reasons justifying the rule are, broadly:

- (1) The exact words of many documents, especially operative or dispositive documents, such as deeds, wills or contracts, are so important in determining a party's rights accruing under those documents.
- (2) Secondary evidence of the contents of documents, whether copies or testimony, is susceptible to inaccuracy.
- (3) The rule inhibits fraud because it allows the parties to examine the original documents to detect alterations and erroneous testimony about the contents of the document.
- (4) The appearance of the original may furnish information as to its authenticity.

Pa.R.E. 1002 (Comment). The best evidence rule may apply to recordings as well as writings. *See Anderson v. Com.*, 550 A.2d 1049, 1050–51 (Pa. Commw. Ct. 1988).

While it is generally true that local agencies are not bound by technical rules of evidence at agency hearings, the best evidence rule should have been applied in this case. The testimony of PPL's witnesses at the hearing in this matter revealed that PPL recorded the Phone Call. PPL obviously believed the Recording was material and significant, as Ms. Brunner testified that her supervisor listened to the Recording, and counsel for PPL referenced the Recording in closing. *See* 10/18/2023 N.T. at 104:13-16; 132:8-25. Yet PPL never introduced the Recording into evidence, despite that its contents were at the very heart of the parties' dispute.

PPL's failure to introduce the Recording resulted in the Presiding Officer making a credibility determination to resolve whether PPL provided Waterco with an account number during the Phone Call. *See* Decision at 5 (Findings of Fact Nos. 13-16); *see also* Decision at 13-14. While Ms. Brunner testified that she would have provided an account number as part of her routine practice, she testified that she did not remember the details of the Phone Call. 10/18/2023 N.T. at 95:12-16 ("Honestly, that call was over a year ago. So can I tell you exactly every detail without hearing the call? No. I take many calls every single day. So I don't personally remember all the ins and outs of the call . . ."). Mr. Aframian testified that he was not provided with an account number in the Phone Call testimony, which testimony was corroborated by documentary evidence. *See* 10/18/2023 N.T. at 20:6 – 21:8 (PPL did not provide an account number in the Phone Call; Waterco Springs Exhibit "8" (indicating that PPL informed Mr. Aframian that a new account number would be provided with the first bill). The Presiding Officer concluded that notwithstanding her admission about her inability to recall specifics of the Phone Call, Ms. Brunner more credible.

Notably, the issue of Waterco needing a new account number arose prior to the Phone Call. *See* Waterco Springs Exhibit "8" at 4-6. Mr. Aframian explained that he called PPL for the

purposes of informing PPL of the name change and to get the correct account number to provide to CNE. Waterco Springs Exhibit “8” at 1; 10/18/2023 N.T. at 18:3 – 21:16. If PPL gave Mr. Aframian a new account number in the Phone Call, why would Mr. Aframian not be able to produce an account number to CNE thereafter? *See* Waterco Springs Exhibit “8” at 1.

Regardless, a credibility determination was never necessary.² The Recording was the best evidence of the contents of the Phone Call. The Presiding Officer should have required PPL to produce and introduce the Recording based on the best evidence rule or should have drawn an adverse inference from PPL’s refusal to offer the Recording into evidence. Because PPL did not, and perhaps could not have introduced the Recording due to destruction of the same during the course of litigation (*see* 10/18/2023 N.T. at 133:10-12), an adverse inference should have been drawn that PPL did not provide an account number in the Phone Call. *See Marshall v. Brown’s IA, LLC*, 213 A.3d 263, 272–73 (Pa. Super. 2019) (finding lower court abused discretion in refusing to grant new trial because trial court erred in refusing to give an adverse inference instruction based on appellee’s spoliation of videotape evidence regardless of whether spoliation was negligent, reckless, or intentional); *see also Duquesne Light Co. v. Woodland Hills Sch. Dist.*, 700 A.2d 1038, 1050 (Pa. Commw. Ct. 1997) (“Under Pennsylvania law, a party cannot benefit from its own withholding or spoliation of evidence.”).

² Waterco has also filed a Petition to Reopen the Record and issue a Subpoena to PPL to produce the Recording.

III. CONCLUSION

For all of the reasons set forth above, Waterco respectfully requests that the Initial Decision be reversed and Waterco be awarded the relief requested in its Complaint.

Respectfully submitted,

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: 
Daniel R. Utain, Esquire, Counsel for Waterco Springs, LLC

Date: February 14, 2024

EXHIBIT “A”
(To Exceptions of Complainant Waterco Springs, LLC
to Initial Decision Dated January 25, 2024)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Waterco Springs, LLC	:	
	:	
v.	:	C-2022-3036860
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of Waterco Springs, LLC (“Complainant” or “Waterco Springs”) asserting that PPL Electric Utilities Corporation (“Respondent” or “PPL”) incorrectly billed it for electricity at market rate based on an administrative error following its purchase of a property from a prior electric customer. Complainant did not establish by a preponderance of the evidence that Respondent violated the Public Utility Code, Commission regulations or a Commission order.

HISTORY OF THE PROCEEDING

On November 17, 2022, Complainant filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Respondent.¹ “Other” was marked as the reason for the complaint and alleged that Respondent committed an

¹ Neither Complainant nor Respondent sought to include the electric generation supplier, Constellation NewEnergy, Inc. as an indispensable party in this matter. Additionally, the Formal Complaint did not appear to raise any allegations against Constellation NewEnergy, Inc.

administrative error in billing that resulted in Complainant losing the fixed rate its predecessor company had for electric service. (Complaint ¶¶ 3-4). As relief, Complainant requested that Respondent retroactively bill it for electric service at the fixed rate rather than the variable rate that it was billed. (Complaint ¶ 5).

On December 8, 2022, Respondent filed an Answer to the complaint in which it admitted and denied various allegations in the complaint. Specifically, Respondent admitted that Complainant requested to initiate electric service on June 30, 2022 and Respondent has since provided electric service to Complainant. (Answer ¶ 4). Respondent denied advising Complainant that it would receive the same rate for electricity as its predecessor and denied making Complainant wait until the first bill was issued to receive its PPL account number. (Answer ¶ 4).²

On June 16, 2023, an Initial Call-In Telephone Hearing Notice (“Hearing Notice”) was issued scheduling a telephonic hearing on August 8, 2023 and assigning me as presiding officer. Also, on June 16, 2023, the undersigned issued a Prehearing Order addressing various procedures that would govern the hearing.

On June 23, 2023, Complainant moved to continue the August 8, 2023 hearing due to unavailability of a witness. Respondent consented to the continuance. On June 26, 2023, the undersigned issued an order granting Complainant’s continuance request. Also, on June 26, 2023, the Commission issued a Telephonic Hearing Cancellation/Reschedule Notice canceling the August 8, 2023 hearing and rescheduling the hearing for September 19, 2023.

On August 22, 2023, Respondent moved to continue the September 19, 2023 hearing due to unavailability of a witness. Complainant consented to the continuance. On August 23, 2023, the Commission issued a Cancellation Notice that canceled the September 19, 2023 hearing.

² The matter was referred to the mediation program of the Office of Administrative Law Judge, but no settlement was reached during that process.

On August 31, 2023, the Commission issued a Hearing Notice scheduling a telephonic hearing for October 18, 2023. Also, on August 31, 2023, the undersigned issued a Prehearing Order addressing various procedures that would govern the hearing.

On October 18, 2023, the hearing was held as scheduled. Complainant was represented by Attorney Daniel R. Utain, who presented Isaac Aframian – CFO for Waterco Springs, as its witness. Mr. Aframian sponsored the following ten exhibits that were admitted into the record without objection: Waterco Springs Exhibit 1 – Formal Complaint, Waterco Springs Exhibit 2 – Electricity Supply Agreement, Waterco Springs Exhibit 3 – June 24, 2022 Email Chain, Waterco Springs Exhibit 4 – Request for Name Change, Waterco Springs Exhibit 5 – June 27, 2022 Email Chain, Waterco Springs Exhibit 6 – July 5, 2022 Email Chain, Waterco Springs Exhibit 7 – July 23, 2022 Email Chain, Waterco Springs Exhibit 8 – July 24, 2022 Email Chain, Waterco Springs Exhibit 9 – Constellation Energy Agreement, and Waterco Springs Exhibit 10 – Answer to Complaint.

Respondent was represented at the hearing by Attorney Lindsay A. Berkstresser, who presented Nicholas Peterlin – Key Account Manager for PPL and Dana Brunner – Customer Service Representative for PPL, as its witnesses. The witnesses sponsored three exhibits: PPL Exhibit 1 – Account Activity Statement, PPL Exhibit 2 – Account Contact History and PPL Exhibit 3 – Informal Case View. Complainant objected to the admission of all three PPL exhibits. PPL Exhibits 1 and 2 were admitted over the objection of Complainant. The objection to PPL Exhibit 3 was taken under advisement and will now be sustained in this decision.

The record closed on October 30, 2023, when the 156-page transcript was filed with the Commission.

FINDINGS OF FACT

1. Complainant is Waterco Springs, LLC, with a business address of 22 Spring Water Blvd., Brandonville, PA 17967 (“service property”). (Tr. 8).

2. Respondent is PPL Electric Utilities Corporation.
3. Isaac Aframian is the Chief Financial Officer (“CFO”) for Waterco Springs, which is a manufacturer of bottled water. (Tr. 8).
4. On June 13, 2022, Waterco Springs purchased the assets of Signature Springs, LLC (“Signature Springs”), including the service property and service contracts, and took over operations at the facility. (Tr. 10, 12, 31).
5. Prior to purchasing the assets, Waterco Springs was not part of Signature Springs. (Tr. 31).
6. Constellation NewEnergy, Inc. (“Constellation”) is an electric generation supplier (“EGS”). (Tr. 67; Waterco Springs Exhibit 2).
7. Signature Springs had a contract with Constellation for a fixed electronic generation rate. (Tr. 10–11; Waterco Springs Exhibit 2).
8. On June 24, 2022, Mr. Aframian completed a change-of-name form for the contract with Constellation to change contractually obligated service from Signature Springs to Waterco Springs and sent it to Constellation. (Tr. 11, 13, 15; Waterco Springs Exhibit 4).
9. Constellation needed a PPL account number to change the service contract from Signature Springs to Waterco Springs. (Tr. 23).
10. On June 30, 2022, Mr. Aframian called PPL about switching electric service at the service property effective July 1, 2022. (Tr. 19, 74–75).
11. Dana Brunner has been a PPL employee for almost 24 years as a customer service representative, which involves handling incoming customer calls to assist with questions about billing and usage. (Tr. 66–67).

12. Nicholas Peterlin has been a PPL employee for over 14 years and he has been employed as a Key Account Manager with PPL since March 2022, which involves supporting large customer accounts by being a main point of contact and answering questions. (Tr. 35).

13. It is PPL's normal practice to ask new customers if they want their account number when they call to initiate electric service. (Tr. 74, 90).

14. It is Ms. Brunner's practice to provide the account number to new customers on every call. (Tr. 99–100).

15. Ms. Brunner provided Waterco Springs with its new account number on behalf of PPL on June 30, 2022. (Tr. 75–76, 84, 95).

16. PPL does not have a policy requiring new customers to wait until they receive the first bill in order to get their account number. (Tr. 76).

17. PPL's computer system requires new customers trying to set up an online account to wait until they receive the first bill because of needing to verify billing information that includes: the account number, the amount of the first bill and the due date of the bill. (Tr. 78).

18. PPL started providing electric service to Waterco Springs at the service property July 1, 2022. (Tr. 74–75).

19. The PPL account for Signature Springs "dropped" from Constellation supply on July 1, 2022. (Tr. 22).

20. PPL was the default electric supplier for Waterco Springs from July 2022 to mid-August 2022. (Tr. 36, 86).

21. Customers that use under 25 kWh per month, are not eligible to participate in the “standard offer” and must shop for electricity on their own. (Tr. 114–115).
22. A standard offer is where a specific group of electric generation suppliers give customers a guaranteed discount off PPL’s price. (Tr. 114).
23. Waterco Springs was not eligible for the standard offer. (Tr. 115).
24. PPL billed Waterco Springs for electric service at “market rate” for electric use from July 2022 to mid-August 2022. (Tr. 26, 36, 47).
25. Customers seeking to contract with an EGS for a contract rate must reach out to the EGS and enroll with the EGS by providing their PPL account number. (Tr. 86, 92, 107).
26. PPL cannot transfer an EGS contract to a new customer. (Tr. 92).
27. On August 4, 2022, Waterco Springs submitted a signed contract to Constellation for a fixed electric generation rate. (Tr. 28; Waterco Springs Exhibit 9).
28. After an EGS is selected, the EGS is the party that contacts PPL to advise of the enrollment. (Tr. 55).
29. PPL received an EGS enrollment for Waterco Springs on August 5, 2022 from Constellation. (Tr. 87).
30. Waterco Springs’ enrollment with Constellation as its EGS was completed with PPL on August 10, 2022 and Constellation has remained the EGS. (Tr. 35, 42, 87).
31. Waterco Springs paid the portion of its PPL bills for electric use from July 2022 to mid-August 2022 that it did not contest. (Tr. 29–31).

32. PPL has no control over the rates charged by a competitive EGS. (Tr. 35, 85).

33. PPL policy requires the creation of a new account with a new account number to complete a name-change on an electric service account. (Tr. 62, 88, 90, 92).

34. PPL will not change the name on an existing electric service account. (Tr. 112).

35. PPL tracks customer contacts via an account contact history. (Tr. 69).

36. PPL will only terminate contracts between a customer and their EGS if the customer requests PPL to put in a cancellation for them. (Tr. 86).

DISCUSSION

Ruling on PPL Exhibit 3

PPL Exhibit 3 is a 6-page document titled “Informal Case View” that was sponsored by Ms. Brunner during the October 18, 2023 hearing. The document purports to reflect the BCS decision and findings regarding the Informal Complaint filed by Waterco Springs against PPL. Counsel for Complainant, Attorney Utain, objected to the PPL Exhibit 3 as hearsay within hearsay and for lack of foundation to establish the document as a business record. (Tr. 121). In response, counsel for Respondent, Attorney Berkstresser, argued that PPL Exhibit 3 is a business record and hearsay is regularly admitted in Commission proceedings. (Tr. 122–123).

In regard to PPL Exhibit 3, Ms. Brunner testified that it is a BCS summary that PPL creates. (Tr. 70). Ms. Brunner also testified that she is aware of PPL’s practice in creating the document and that the document was created to show the customer’s position and the

decision of BCS. (Tr. 73). Ms. Brunner was unaware of who created the document and was not involved in the creation of the document. (Tr. 74).

Complainant's objection was taken under advisement during the hearing to allow the undersigned to review the document and rules of evidence more thoroughly. Upon further review, Complainant's objection to PPL Exhibit 3 is sustained and the exhibit is not admitted into evidence.

The Pennsylvania Rules of Evidence provide, in pertinent part, as follows:

(6) Records of a Regularly Conducted Activity. A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if:

- (A) The record was made at or near the time by--or from information transmitted by--someone with knowledge;
- (B) The record was kept in the course of a regularly conducted activity of a "business", which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;
- (C) Making the record was a regular practice of that activity;
- (D) All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
- (E) The opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Pa.R.E. 803(6).

In this case, Ms. Brunner offered limited testimony about PPL Exhibit 3. Specifically, she was unable to establish when it was created and by whom. As such, I find that Respondent failed to present sufficient testimony to establish PPL Exhibit 3 as a "business record" that qualified as an exception to the hearsay rule. Finding no exception to the hearsay rule and the fact that PPL

Exhibit 3 is clearly an out-of-court statement being offered to prove the truth of the matter asserted, I find that PPL Exhibit 3 is excluded based on Complainant's objections.³

Burden of Proof

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 also 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.

Section 332(a) of the Public Utility Code (Code) provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

³ Complainant's counsel also objected to PPL Exhibits 1 and 2. Those objections were overruled at the hearing.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence with some additional evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Issues

Waterco Springs alleged that PPL improperly billed it for electric generation service at a variable rate instead of fixed generation rate from July 2022 to mid-August 2022. Waterco Springs claimed that PPL was at fault because of: (1) failing to transfer the electric generation contract Signature Springs had with Constellation to Waterco Springs when Waterco Springs purchased the assets of Signature Springs and/or (2) failing to provide Waterco Springs with its PPL account number prior to receipt of its first bill thereby preventing earlier enrollment with Constellation. In support of its claims, Complainant presented testimony from Isaac Aframian, CFO for Waterco Springs. (Tr. 8). Mr. Aframian testified and sponsored exhibits stating that the contract Signature Springs had with Constellation was assignable to Waterco Springs and that Mr. Aframian completed the change-of-name form needed to complete this action. (Tr. 10-11, 13, 15; Waterco Springs Exhibits 2, 4). Mr. Aframian further testified that he needed his PPL account number to complete a new enrollment with Constellation, that he was not provided his PPL account number when he first spoke with a PPL representative on June 30, 2022 and that did not receive the PPL account number until receipt of the first bill from PPL. (Tr. 20-21, 23, 26). Complainant subsequently completed a contract with Constellation for a fixed electric generation rate on August 4, 2022. (Waterco Springs Exhibit 9). As a result, Waterco Springs avers that it was overbilled by approximately \$30,000. (Tr. 30-31).

Improper billing, if proven by a preponderance of the evidence, would fall under a quality-of-service issue which is within the Commission's jurisdiction under Section 1501 of the Public Utility Code, which states in pertinent part:

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.

Thus, 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); *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'y Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered Dec. 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).

In opposition, PPL presented testimony from Nicholas Peterlin, a Key Account Manager for PPL and testimony from Dana Brunner, a customer service representative. (Tr. 35, 66-67). The witnesses testified that: (1) PPL cannot transfer or unilaterally cancel a contract that a prior customer has with an EGS, (2) that PPL policy requires a new account number for new customers, (3) that PPL supplied default electric generation service to Waterco Springs starting July 1, 2022 to mid-August 2022 because it did not have an EGS supplier contract for Waterco

Springs during that period, (4) that Waterco Springs was responsible for contacting Constellation to set up an EGS contract, (5) that PPL received an EGS enrollment with Constellation for Waterco Springs on August 5, 2022 and it was completed on August 10, 2022 and (5) PPL provided Mr. Aframian with his PPL account number during the initial June 30, 2022 call when he set up the account.

Analysis

Based on the evidence presented, I find that Waterco Springs has failed to meet its burden of proof because the evidence presented by Waterco Springs in support of its complaint is outweighed by the evidence presented in response by PPL. First, in regard to Waterco Springs' claim that PPL prevented Waterco Springs from assuming the EGS contract that Signature Springs had with Constellation, Waterco Springs failed to cite any authority that authorized or required PPL to take said action. The only support cited to by Waterco Springs for this premise was Mr. Aframian's belief that the contract for a fixed electric generation rate between Signature Springs and Constellation was assignable based on conversations with Constellation staff, the contract itself and the request for name change form. (Tr. 11; Waterco Springs Exhibits 2-8).

It is axiomatic that a complainant cannot establish a case merely by stating their personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Moreover, there is nothing in the Public Utility Code, Commission regulations nor an existing Commission order that required PPL to transfer an existing account for Signature Springs to Waterco Springs as a new customer. Additionally, there is no evidence that PPL was a party to either the EGS contract in question or the conversations that led Mr. Aframian to his belief. To the contrary, both Mr. Peterlin and Ms. Brunner credibly testified that PPL policy prohibited transfer of Signature Springs' existing PPL account along with its EGS contract with Constellation to Waterco Springs as a new customer and that all new PPL customers get a new account number. (Tr. 62, 88, 90, 92, 112).

PPL was required to advise Waterco Springs that if it wanted to contract with Constellation (i.e., an EGS), Waterco Springs had to contact the EGS directly. 52 Pa. Code §

57.172. In this case, both Mr. Peterlin and Ms. Brunner credibly testified that PPL advised Mr. Aframian of this requirement. Thus, Waterco Springs failed to establish a violation for PPL refusing to transfer or change the name on the existing account for Signature Springs to Waterco Springs.

Waterco Springs' second claim was that PPL failed to provide Waterco Springs with its PPL account number in a timely manner thereby preventing Waterco Springs from completing its new enrollment with Constellation in a timely manner. In support of this, Mr. Aframian testified that he spoke with a PPL representative on June 30, 2022 to set up the electric service account for Waterco Springs and PPL did not provide him with the PPL account number for Waterco Springs at that time. (Tr. 20). Mr. Aframian further stated that he was told that he would have to wait for the first PPL bill to be issued in order to receive the account number, which was not received until the beginning of August 2022. (Tr. 21, 26).

In contrast, Ms. Brunner testified that she spoke with Mr. Aframian on June 30, 2022 to set up the Waterco Springs electric account with PPL and she provided Mr. Aframian with the PPL account number on that same date. (Tr. 75–76, 84, 95).

In this case, I find the testimony of Ms. Brunner to be more credible and persuasive than that of Mr. Aframian. In assessing the credibility of witnesses, a presiding officer considers their manner of testifying, apparent candor, intelligence, personal interest and bias or lack of it when determining what weight shall be given to their testimony. *Danovitz. v. Portnoy*, 161 A.2d 146 (Pa. 1960). A trier of fact may consider such factors as a witness' appearance, his/her general bearing, conduct on the stand, demeanor, manner of testifying, such as candor or frankness or clearness of statements, intimation of voice, and positiveness of the witness and his/her uncertainty as to facts. *In re Gaston's Estate*, 62 A.2d 904 (Pa. 1949). It is uncontested that there was a conversation between Mr. Aframian and Ms. Brunner on June 30, 2022. Based on the manner of her testimony, the clearness of her testimony on the issue and the confidence with which she presented her testimony on this issue, I find that Ms. Brunner was more credible than Mr. Aframian. This was further supported by Ms. Brunner's additional testimony that she always provides the account number to all new customers. (Tr. 99–100). Ms.

Brunner also denied that PPL has a policy requiring new customers to wait for their first bill to receive their PPL account number and clarified that only new customers seeking to set up an online account have to wait to receive their first bill because PPL's computer system requires them to input the current amount due and due date of the bill. (Tr. 76, 78). Accordingly, I find that Ms. Brunner's testimony was credible and persuasive in establishing that she provided the PPL account number to Mr. Aframian on June 30, 2022. Thus, Waterco Springs failed to establish a violation for PPL not providing timely information to allow it to enroll with Constellation.

Accordingly, Complainant has failed to sustain its burden of proof and the Formal Complaint shall be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Section 1501 of the Public Utility Code governs any allegations of unreasonable or inadequate service. 66 Pa.C.S. § 1501.
3. Upon being notified by a customer of a request a change from the current electric generation supplier or default service provider to a selected electric generation supplier, the electric distribution company shall notify the customer that the selected electric generation supplier shall be contacted directly by the customer to initiate the change. 52 Pa. Code § 57.172.
4. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
5. 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).

6. The act or failure to act must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

7. "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).

8. Preponderance of the evidence is tantamount to a "more likely than not" inquiry. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

9. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

10. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

11. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

12. A complainant cannot establish a case merely by stating their personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

13. A trier of fact may consider such factors as a witness' appearance, his/her general bearing, conduct on the stand, demeanor, manner of testifying, such as candor or frankness or clearness of statements, intimation of voice, and positiveness of the witness and his/her uncertainty as to facts. *In re Gaston's Estate*, 62 A.2d 904 (Pa. 1949).

14. Complainant failed to meet its burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the objection of Waterco Springs, LLC to PPL Electric Utilities Corporation's Exhibit 3 is sustained and the exhibit is not admitted into the record.

2. That the Formal Complaint of Waterco Springs, LLC in *Waterco Springs, LLC v. PPL Electric Utilities Corporation* at Docket No. C-2022-3036860 is dismissed.

3. That the Secretary of the Commission mark the matter at Docket No. C-2022-3036860 closed.

Date: January 25, 2024

/s/
Chad L. Allensworth
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Waterco Springs, LLC	:	
	:	
v.	:	C-2022-3036860
	:	
PPL Electric Utilities Corporation	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing “Exceptions of Complainant Waterco Springs, LLC to Initial Decision Dated January 25, 2024” were served on the date stated below, on the following via electronic mail, to the addressees stated below, at the email addresses stated below:

Administrative Law Judge Chad L. Allensworth
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Date: February 14, 2024