

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ed Frey	:	
	:	
v.	:	C-2023-3042130
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint filed by Ed Frey against PPL Electric Utilities Corporation. Complainant failed to satisfy his burden of demonstrating that Respondent violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff, or that Respondent’s default service rates are unreasonable.

HISTORY OF THE PROCEEDING

On August 10, 2023, Ed Frey (Mr. Frey or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL, Respondent, or Company). The Formal Complaint was served on PPL on August 10, 2023. In his Formal Complaint, Mr. Frey alleges that PPL’s default supplier rates are higher than its geographical peers, costing PPL customers hundreds of dollars annually and leading to higher costs for alternate suppliers. As relief, Mr. Frey requests that PPL make various changes regarding how its default supplier rates are set, including that PPL shop for rates below or equal to its geographical peers, the Metropolitan Edison Company (Met-Ed) and PECO

Energy Company (PECO). Mr. Frey also requests that PPL stop sending letters to its captive customers to justify their default shopping methods, and that PPL provide justification that it ensures its costs to customers are affordable.

On August 30, 2023, PPL filed an answer to Mr. Frey's Formal Complaint. In its answer, PPL denied that it has procured default service supply in violation of the Commission's Order approving PPL's Default Service Program and Procurement Plan (DSP V Plan), issued on December 17, 2020 at Docket No. P-2020-3019356 (December 17, 2020 Order). PPL denied that it is otherwise violating the Public Utility Code, the Commission's order or regulations, or the Company's Commission-approved tariff. PPL also denied that its default service rate should be evaluated based on other Pennsylvania electric distribution companies. Instead, PPL states that its default service rate is calculated and takes effect consistent with the Commission-approved DSP V Plan, the Public Utility Code, the Commission's regulations, and PPL's Commission-approved tariff. PPL also denied that it can control the rates charged by electric generation suppliers within its service territory, or that PPL's default service rates lead to higher rates for alternate suppliers. PPL denies that its customers are captive, and PPL asserts that its communications that it does not profit from its default service rate are truthful.

On September 15, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for November 1, 2023 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on September 18, 2023, setting forth various rules that would govern the November 1, 2023 evidentiary hearing.

The hearing convened as scheduled on November 1, 2023. The Complainant appeared *pro se* and testified. The following four exhibits offered by Complainant were admitted into the record:

1. Frey Exhibit 1 - Excerpts of a Rate Comparison Report prepared by the Commission's Bureau of Technical Utility Services (TUS) (Rate Comparison Report) dated April 15, 2023; and a table and graph prepared by Mr. Frey, reflecting a summary of total electric costs for nine Pennsylvania electric

distribution companies (EDCs) as presented in Rate Comparison Reports from 2018 to 2023.

2. Frey Exhibit 2 - Tables and graphs prepared by Mr. Frey, reflecting data derived from Rate Comparison Reports from 2018 to 2023, including a comparison of default service costs for nine Pennsylvania EDCs.
3. Frey Exhibit 5 - Excerpts from the Rate Comparison Report regarding PPL and an Electric Power Outlook for Pennsylvania 2021-2026 dated August 2022 and prepared by TUS; and a table prepared by Mr. Frey, comparing the default service rates of PPL customers to other Pennsylvania EDCs.

Counsel for PPL, Devin Ryan, Esquire, appeared and presented the testimony of Katelyn Arnold, Manager of Regulatory Strategy and Compliance at PPL, and Bethany Johnson, Senior Director of Regulatory at PPL. The following six exhibits offered by PPL were admitted into the record:

1. PPL Exhibit 5 – PPL customer notice of the default rate price to compare effective June 1, 2022.
2. PPL Exhibit 6 - PPL customer notice of the default rate price to compare effective June 1, 2023.
3. PPL Exhibit 7 - PPL customer newsletter including the default rate price to compare effective June 1, 2023.
4. PPL Exhibit 8 - PPL’s tariff for its Generation Supply Charge-1.
5. PPL Exhibit 9 - PPL’s tariff for its Transmission Service Charge.
6. PPL Exhibit 10 - The Commission’s December 17, 2020 Order approving PPL’s DSP V Plan.

The record consists of a 79-page transcript and the above-referenced exhibits. The record closed on December 4, 2023 when the transcript was filed. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The complainant in this case is Ed Frey.

2. The respondent in this case is PPL Electric Utilities Corporation.
3. Mr. Frey is a PPL customer. Tr. 37.
4. PPL had higher residential default service rates 42 out of 48 times when compared to eight other Pennsylvania EDCs on an annual basis from 2018 to 2023. Tr. 11-16; Frey Exhibits 1, 2.
5. PPL had lower residential default service rates 6 out of 48 times when compared to eight other Pennsylvania EDCs on an annual basis from 2018 to 2023. Tr. 11-16; Frey Exhibits 1, 2.
6. PPL procures default service supply pursuant to the Commission's December 17, 2020 Order. Tr. 45-52; Exhibit 10.
7. PPL's default service rates are calculated pursuant to the Company's Commission-approved tariff. Tr. 57-63; PPL Exhibits 8, 9.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). “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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701.

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, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982). Moreover, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960).

It is well established that a utility may charge its customers in accordance with its lawful tariffed rates. 66 Pa.C.S. § 1302. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth. 1981). Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979) (*Zucker*). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996). Additionally, a utility must comply with Commission orders. 66 Pa.C.S. § 501(c).

Mr. Frey alleges that PPL's customers pay the highest default supplier rate compared to the other Pennsylvania EDCs. Tr. 13. Mr. Frey requests that PPL benchmark the procedures that its geographic electric utility peers (i.e., Met-Ed and PECO) use to acquire lower cost default supplier rates and apply those practices for future default supplier rates offered to PPL customers. Tr. 15-16. Mr. Frey asserts that PPL's default supply rate shopping practices cost PPL customers several hundred dollars over their Met-Ed and PECO peers. Tr. 16. As a

summation of his analyses, Mr. Frey asserts that PPL's default supply rate shopping practices cost PPL customers hundreds of millions of dollars annually. Tr. 23-25; Exhibit 5.

PPL witness Arnold asserted that PPL procures its electric generation supply for default service customers pursuant to its default service plan. Tr. 45. PPL witness Arnold stated that the Company's default service plan was approved by the Commission on December 17, 2020. Tr. 45; Exhibit 10. PPL witness Arnold also testified in detail how PPL procures default service supply pursuant to the Commission's December 17, 2020 Order. Tr. 46-52. Ms. Arnold explained that PPL retains an independent third-party manager to acquire default energy supply at the lowest cost. Tr. 49-51. Ms. Arnold also testified that other EDCs in Pennsylvania use independent third-party managers to administer their procurement and select their suppliers, including PECO. Tr. 51. Ms. Arnold asserted it was not appropriate to compare PPL's default service rates to other EDC default service rates because each company is executing a different PUC approved default service plan. Tr. 52. PPL witness Johnson testified that PPL's default service rates are calculated pursuant to the Company's Commission-approved tariff. Tr. 57-63; PPL Exhibits 8, 9.

Counsel for PPL did demonstrate that some of Mr. Frey's analyses were flawed. For instance, I agree that the figure in Mr. Frey's Exhibit 5 alleging PPL's practices cost customers hundreds of millions of dollars annually did not reflect the difference in both the rates and amount of electricity used by commercial or industrial customers versus residential customers. Tr. 41. Nonetheless, I find that Mr. Frey's testimony and exhibits do demonstrate that, as a general matter and in the historical period captured by Mr. Frey, PPL's residential default service rates are typically higher than other Pennsylvania EDCs' default service rates. Specifically, Frey Exhibits 1 and 2 display data and analysis derived from TUS Rate Comparison Reports to support Mr. Frey's assertions. However, I do not find that this alone provides sufficient basis to find that he met his very heavy burden of proof to demonstrate that PPL's existing tariff provisions related to default service rates are unreasonable, or that PPL is otherwise violating the Public Utility Code, a Commission order or regulation or a Commission-approved tariff.

First, the Company's witnesses testified that PPL is procuring its default service rates through a process approved by Commission order and pursuant to its Commission-approved tariff. Although Mr. Frey requests that PPL adopt practices of its geographic peers (i.e., PECO and Met-Ed) to improve PPL's default service rates, his criticism of PPL's practices appear primarily based on his comparison of EDCs default service rate costs, rather than familiarity with how PPL procures default electric supply. For instance, Mr. Frey was unfamiliar with PPL's default service plan or with how PPL procures default electric supply. Tr. 34-35. PPL witness Arnold explained how PPL is following its Commission-approved DSP V Plan. Tr. 45-52. PPL witness Arnold also provided a summary of the process for how PPL sets its default service rates and why PPL's default service rates differ from other EDCs:

Each company is executing a different PUC approved default service plan. That means they hold solicitations at different times, and on different frequencies, they procure energy contracts of differing lengths. Initially, each utility has different costs that make up the components of other default service rates.

Tr. 52.

PPL witness Johnson also testified that, although PPL may monitor other utilities' prices, the Company doesn't necessarily consider that in terms of setting their price because of the calculations as set forth in its tariff. Tr. 70-71. Although Mr. Frey may wish that PPL implement a different process in acquiring default supply, he should also be aware that PPL is required to follow its tariff and Commission approved DSP V Plan. 66 Pa.C.S. §§ 501(c), 1303. There is no evidence and Mr. Frey did not allege that PPL is not implementing its default service plan as approved by the Commission in its December 17, 2020 Order, or as reflected in its Commission-approved tariff.

Second, even if PPL's residential default service rates are typically higher than other Pennsylvania EDCs' default service rates, Commission decisions must be supported by substantial evidence, and combined with his heavy burden in this proceeding, I find that Mr. Frey's analyses are insufficient evidence that PPL's default service rates are unreasonable. As noted above, tariff provisions previously approved by the Commission are *prima facie*

reasonable. *Zucker*. There is no basis to finding an EDC's tariff is unreasonable solely because the EDC may have higher default service rates than other EDCs over a certain period of time. Additionally, Mr. Frey's analyses also do not show that PPL's default service rates are exclusively higher than other EDCs default service rates. Specifically, Mr. Frey's analyses demonstrated six instances from 2018 to 2023 when PPL's default service rates were less than other EDCs. Frey Exhibit 2. Accordingly, Mr. Frey's Formal Complaint is dismissed.

CONCLUSIONS OF LAW

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

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

3. 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).

4. The offense 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.

5. "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).

6. 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).

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

8. "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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961).

9. A utility may charge its customers in accordance with its lawful tariffed rates. 66 Pa.C.S. § 1302.

10. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

11. Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979).

12. A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

13. A utility must comply with Commission orders. 66 Pa.C.S. § 501(c).

14. Complainant failed to satisfy his burden to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

15. Complainant failed to satisfy his burden to demonstrate that PPL's tariff provisions related to its default service rates are unreasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Ed Frey in *Ed Frey v. PPL Electric Utilities Corporation*, Docket Number C-2023-3042130, is hereby dismissed.
2. That this matter is marked closed.

Date: March 4, 2024

/s/
John M. Coogan
Administrative Law Judge