

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andrew Seifert	:	
	:	
v.	:	C-2023-3044487
	:	
PPL Electric Utilities Corporation	:	
Titan Gas, LLC d/b/a CleanSky Energy	:	

INITIAL DECISION

Before  
Arlene Ashton  
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Andrew Seifert for failure to prove that PPL Electric Utilities Corporation or Titan Gas, LLC d/b/a CleanSky Energy violated the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. Mr. Seifert alleged, among other things, that PPL allowed CleanSky Energy to take over his account without his permission.

HISTORY OF THE PROCEEDING

On November 29, 2023, Andrew Seifert (Mr. Seifert or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the PPL Electric Utilities Corporation (PPL). In his Complaint, Mr. Seifert indicated the utility is either threatening to shut off his service or has already shut off his service. He also claims there are incorrect charges on his bill because he was inappropriately enrolled as an electric generation supplier (EGS) customer with Titan Gas, LLC d/b/a CleanSky Energy

(CleanSky). In his words, “PPL allowed CleanSky Energy to take over my accounts without permission between 7-21-22 to 4-10-23 costing me over \$3000 over that time frame.”

Complaint ¶ 5. Additionally, on the Complaint form, Mr. Seifert checked a box indicating he was having reliability, safety or quality problems with his electric service.

On December 19, 2023, PPL filed an Answer and New Matter (Answer). The Answer was accompanied by a Notice to Plead that advised the Complainant that he could file a reply to the New Matter included therein within 20 days after the date of service. The Complainant did not file a response to the Answer.

On December 19, 2023, PPL also filed a Preliminary Objection in which it argued that the Complaint should be dismissed because the Complaint failed to join a necessary party i.e., Titan Gas, LLC d/b/a CleanSky Energy.<sup>1</sup> The Preliminary Objection was accompanied by a Notice to Plead that advised the Complainant that he could file an answer to the preliminary objection within ten days after the date of service. The Complainant did not file a response to the preliminary objection.

On January 23, 2024, a Motion Judge Assignment Notice was issued assigning me as the Presiding Officer in this proceeding.

On January 30, 2023, I issued an order denying PPL’s Preliminary Objection and joining CleanSky as an indispensable party to the proceeding.

On February 20, 2023, CleanSky filed an Answer to the Complaint.

On February 27, 2023, a Hearing Notice was issued, scheduling a hearing for April 25, 2024.

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<sup>1</sup> CleanSky is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within PPL Electric’s service territory. *See Application of Titan Gas LLC dba Titan Gas and Power for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2016-2530633 (Order entered May 19, 2016).

On March 1, 2024, I issued a Prehearing Order advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to the proceeding.

The hearing convened as scheduled on April 25, 2024. Mr. Seifert was not present at the start of the hearing. Nicholas Stobbe, Esq. counsel for PPL was present, together with a witness and was ready to proceed with the hearing. Counsel to CleanSky Lauren Burge, Esq. and a witness for CleanSky were also present and prepared to proceed with the hearing. A brief recess was taken until 10:16 a.m. to allow Mr. Seifert additional time to appear for the hearing; however, he did not appear.

The day after the hearing, I received but did not respond to a call from Mr. Seifert. I asked my legal assistant to contact him and ascertain why he was trying to reach me. Mr. Seifert informed my legal assistant that he did not participate in the hearing held in this matter on Thursday, April 25, 2024, because he had been unable to locate the call-in information necessary to participate in the hearing due to a recent fire at his home. Mr. Seifert stated that he wished to “continue” the hearing so that he could participate in the resolution of this matter; and that utility counsel did not object to rescheduling the hearing.

In light of Mr. Seifert’s status as a *pro se* complainant, I construed Mr. Seifert’s April 26, 2024 telephonic request as a Motion for Continuance.<sup>2</sup> Counsel to PPL and CleanSky were informed of Mr. Seifert’s request but expressed no objection to the request

On May 8, 2024, a Hearing Notice<sup>3</sup> was issued advising the parties that a Rescheduled Hearing would take place on June 13, 2024, at 10:00 a.m.

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<sup>2</sup> The presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.52 Pa. Code § 1.2(a).

<sup>3</sup> The notice was inadvertently mislabeled as a Cancelled/Rescheduled Initial Telephonic Hearing Notice but was properly served on all parties.

The June 13, 2024, hearing convened as scheduled. The Complainant appeared *pro se* and testified. The Complainant offered no exhibits. PPL appeared and was represented by Nicholas A. Stobbe, Esq., who presented the testimony of Kelly Bell, a PPL Customer Service Representative. PPL offered two exhibits, both of which were admitted into the record. (PPL Exhibits 1-2). CleanSky appeared and was represented by Lauren M. Burge, Esq., who presented the testimony of Andy Beauchamp, Chief Regulatory and Compliance Officer of CleanSky. CleanSky offered eight exhibits, all of which were admitted into the record. (CleanSky Exhibits 1-8).

The record consists of an 87-page transcript and ten exhibits. The record closed on July 3, 2024, upon my receipt of the hearing transcript. For the reasons discussed below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is Andrew Seifert.
2. The first Respondent in this case is PPL Electric Utilities Corporation.
3. The second Respondent in this case is Titan Gas, LLC d/b/a CleanSky Energy.
4. The service address is 301 South Main Street, Forest City, Pennsylvania, 18421 (Service Address). Tr. 21.
5. PPL's Standard Offer Program (SOP) allows PPL customers to choose among EGS entities willing to supply electricity to PPL customers at a 7% discount from the PPL rate for a period of 12 months, with no cancellation or early termination fee. Tr. 31.
6. Mr. Seifert accepted the SOP on July 16, 2021. Tr. 31; PPL Exhibit 1,2.

7. Mr. Seifert did not specify an EGS supplier when he accepted the SOP; therefore, CleanSky was assigned as his EGS through the SOP. Tr. 30-31.

8. Mr. Seifert cancelled his CleanSky service and returned to PPL service on June 23, 2023. Tr. 37; PPL Exhibit 2.

9. PPL is not privy to interactions between its customers and EGS entities. Tr. 39.

10. CleanSky sent notices to Mr. Seifert via email and U.S. Mail confirming his selection of CleanSky as his ESG, summarizing the 12-month CleanSky energy plan selected by Mr. Seifert, the date service would begin, and advising him of his right to rescind his enrollment without fees or penalties within seven days from receiving a copy of the agreement. Tr. 33, 36; CleanSky Exhibit 1, 3.

11. CleanSky sent notices to Mr. Seifert via email and U.S. Mail advising that his CleanSky contract would expire on July 26, 2022, giving him the option to continue receiving service from CleanSky, switch to another supplier or return to PPL, the default service provider. Tr. 62-63; CleanSky Exhibit 4, 5.

12. On June 20, 2022, CleanSky sent Mr. Seifert an email advising him that if he did not renew his arrangement with CleanSky under a fixed rate plan or if he took no action, he would be put on a variable rate plan upon the expiration of his current arrangement with CleanSky. Tr. 63-64; CleanSky included the following attachments relating to CleanSky's variable rate plan: a contract summary, customer disclosure statement, consumer bill of rights and terms and conditions of service. Tr. 64

13. On July 13, 2022, CleanSky sent a letter to Mr. Seifert via U.S. Mail reiterating the information provided in CleanSky's June 20, 2022 email. Tr. 64-65; CleanSky Exhibit 7.

14. Mr. Seifert did not respond to any of the emails or letters sent to him by CleanSky relating to the July 26, 2022 expiration of his initial 12-month fixed price CleanSky contract. Tr. 62-65.

## DISCUSSION

### *Legal Standard*

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. Mr. Sieffert has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a) because he is asking the Commission to issue an order to reduce or eliminate certain charges reflected on his PPL bill arising out of CleanSky ESG charges.

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of evidence is evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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.

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 623 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa.C.S. §704. 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. 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. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon 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 the burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 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).

#### *Enrollment and Disenrollment with CleanSky*

The core of Mr. Seifert's Complaint is that he was improperly enrolled with CleanSky as his EGS. As relief, Mr. Seifert requests that "surcharges" on his bill be removed from his account balance and that he be charged for service at a rate consistent with past billing by PPL. Tr. 22-23.

The Commission has adopted regulations that govern enrollment and disenrollment in alternative energy suppliers. For example, Commission regulations require that EGS customers be informed of and provided a three-business-day right of rescission after receipt of the disclosure statement. 52 Pa. Code §§ 54.5(d), 111.7(b)(3). Also relevant here is the Commission's regulation providing that an EGS does not need a signature to complete a transaction involving telephone contact by an agent, so long as the transaction is verified. 52 Pa. Code § 111.7. In addition, Commission regulations establish a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first-class postage attached shall be received by the customer three days after it is deposited in the mail found at 52 Pa. Code § 111.11(c).

At the hearing, Mr. Seifert testified that he had no recollection of making a request by telephone or on-line to receive service through PPL's standard offer program or from CleanSky. Tr. 26-27. In addition, he testified that he was not aware that CleanSky was his EGS until March 2023. Tr. 27. Mr. Seifert explained that he only received bills from PPL and that charges for energy supplied by CleanSky "shouldn't be on a PPL bill. That should be on a CleanSky Energy bill, so people know who they're going through." Tr. 26. He also stated that PPL did not send him a notice advising him that CleanSky would be his energy supplier and that "[i]f I knew that from the beginning . . . I would have shut it right down right then and there." *Id.*

Kelly Bell, a PPL Customer Service Representative provided clear and credible testimony concerning PPL's standard offer program (SOP), which Mr. Seifert used to select an alternative EGS. She described the SOP as follows:

[the] standard offer program or SOP . . . is a group of suppliers that are willing to offer our customers an automatic seven [percent] discount off of our rate. Now that discount is guaranteed for a year, so it's only guaranteed for 12 months. But there's no cancellation fees, and customers cancel at any time.

Tr. 30-31.

Ms. Bell testified that Mr. Seifert enrolled in the SOP online on July 16, 2021. Tr. 36-37. She went on to explain that because Mr. Seifert did not designate a preferred EGS provider when requesting enrollment in the SOP, a supplier was assigned to Mr. Seifert. Tr. 31, 34, 37; PPL Exhibit 1. Further, she stated that in general, PPL is not privy to the interactions between a PPL customer and their energy supplier, and that PPL has no control over the rates charged by energy suppliers. Tr. 39-40; PPL Exhibit 1, 2.

CleanSky's witness Mr. Beauchamp also provided testimony regarding Mr. Seifert's enrollment with CleanSky. Referring to documentary evidence presented by CleanSky, Mr. Beauchamp testified that Mr. Seifert was "enrolled with CleanSky through PPL's standard offer program" and was provided with "standard confirmation of enrollment with CleanSky

energy as a supplier.” Tr. 58-60; *See* CleanSky Exhibit 1, 2, 3.

The record also includes correspondence sent by CleanSky to Mr. Seifert via email and U.S. Mail on multiple occasions confirming his enrollment in its 12-month fixed price plan including a contract summary and disclosure statement. CleanSky Exhibit 1, 2, 3. For its part, PPL also provided documentary evidence reflecting Mr. Seifert’s enrollment with CleanSky in July 2021.

CleanSky also provided testimony and documentary evidence of its communication with Mr. Seifert via email and U.S. Mail concerning the expiration of his 12-month fixed price plan on July 26, 2022, and its conversion to a variable rate plan after that date. Tr. 62-65; CleanSky Exhibit 4, 5, 6, 7. There is no evidence in the record that any of the messages or letters sent to Mr. Seifert by CleanSky concerning his enrollment with CleanSky or transfer to a variable rate plan were not received.

Based on the above, I conclude that Mr. Seifert did not satisfy his burden to demonstrate that at any time he was improperly enrolled in service with CleanSky.

Although Mr. Seifert contends that he did not select CleanSky as his EGS and should not be held responsible for EGS services rendered to him by CleanSky, there is no dispute that Mr. Seifert received CleanSky’s generation services while he was enrolled with CleanSky.

The record in this matter also supports the conclusion that whether on a fixed rate plan or a variable rate plan, CleanSky charged Mr. Seifert based on his usage, and PPL reflected these charges on Mr. Seifert’s bill. Tr. 33-38, 65; PPL Exhibit 1. Thus, Mr. Seifert failed to establish that any of the charges for service billed to him by PPL or CleanSky were improper.

Therefore, no violation of the Code, or Commission regulation or order have been established regarding Mr. Seifert’s billing or enrollment and disenrollment with CleanSky. The Complaint will be dismissed.

## CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the complainant. 66 Pa. C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

5. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45 (1950).

6. 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.

7. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 623 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa.C.S. §704.

8. To establish substantial evidence, 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. 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. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Upon 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 would be required to provide 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).

10. 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).

11. EGS customers must be informed of and provided a three-business-day right of rescission after receipt of a disclosure statement. 52 Pa. Code §§ 54.5(d), 111.7(b)(3).

12. There is a rebuttable presumption that an EGS disclosure statement correctly addressed to a customer with sufficient first-class postage attached shall be received by the customer three days after it is deposited in the United States mail. 52 Pa. Code § 111.11(c).

13. Complainant failed to sustain the burden of demonstrating that PPL Electric Utilities Corporation violated the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa.C.S. § 332(a).

14. Complainant failed to sustain the burden of demonstrating that Titan Gas, LLC d/b/a CleanSky Energy violated the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Andrew Seifert against PPL Electric Utilities Corporation and Titan Gas, LLC d/b/a CleanSky Energy at Docket No. C-2023-3044487, is denied;
2. That the Secretary's Bureau shall mark Docket No. C-2023-3044487, as closed.

Date: September 27, 2024

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/s/  
Arlene Ashton  
Administrative Law Judge