

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barry Kaplan	:	
	:	
v.	:	F-2024-3050324
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision denies a Formal Complaint that alleges overbilling, improper termination of service, and service quality issues of an electric utility because the Complainant failed to meet his burden of proving, by a preponderance of the evidence, that the electric utility violated the Public Utility Code, the Commission’s regulations, or an order of the Commission.

HISTORY OF THE PROCEEDING

On July 18, 2024, Barry Kaplan (Mr. Kaplan or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission)

against PPL Electric Utilities Corporation (PPL or Company).¹ Mr. Kaplan's Formal Complaint was served on PPL on August 1, 2024. In his Formal Complaint, Mr. Kaplan states that the utility is threatening to shut off his service or has already shut off his service; there are incorrect charges on his bill; he is having a reliability, safety or quality problem with his utility service; his service was shut off without notice; and he had wires down and they were never connected. As relief, Mr. Kaplan requests a new refrigerator and payment for food.

On August 21, 2024, PPL filed an answer to Mr. Kaplan's Formal Complaint. PPL admitted that Complainant's service was terminated on May 1, 2024. PPL denies that termination of Complainant's service was in violation of the Public Utility Code, the Commission's regulations, or the Company's Commission-approved tariff. PPL also denies that Mr. Kaplan's electric service bills contain incorrect charges and that the Company has not provided the Complainant with reasonable service. PPL admits that on May 29, 2024, wires located at Mr. Kaplan's service address were downed when branches fell and pulled on the lines. However, PPL denies the downed wires were PPL electric facilities.

Also on August 21, 2024, PPL filed preliminary objections to Mr. Kaplan's Formal Complaint. In its preliminary objections, which included a notice to plead, PPL argued that the Commission does not have the power to award monetary damages. Therefore, PPL asserts Mr. Kaplan's request for monetary damages, i.e., a new refrigerator and payment for food, is impertinent matter and should be stricken from the Formal Complaint, and Complainant should be prohibited from introducing evidence at a hearing regarding alleged damages.

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3991065, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On August 29, 2024, the Commission issued a motion judge assignment notice, assigning me to this proceeding.

No response to the preliminary objections were received.

On September 4, 2024, I issued an order granting PPL's preliminary objections, striking the request for monetary damages from Mr. Kaplan's Formal Complaint and prohibiting Mr. Kaplan from introducing evidence regarding alleged damages at a hearing.

Also on September 4, 2024, the Commission issued an initial telephonic hearing notice setting a call-in telephonic hearing for this matter for October 21, 2024. In anticipation of that hearing, I issued a prehearing order on September 4, 2024, setting forth various rules that would govern the October 21, 2024 hearing.

On September 30, 2024, I received a fax from Mr. Kaplan, requesting that the hearing scheduled for October 21, 2024, be continued due to medical issues. PPL did not oppose the request for a continuance. On October 2, 2024, I issued a continuance order. Also on October 2, 2024, the Commission issued a notice, rescheduling the hearing scheduled for October 21, 2024, to January 7, 2025.

The initial hearing was convened on January 7, 2025, as scheduled. Mr. Kaplan appeared on his own behalf. Mr. Kaplan did not move for admission of any exhibits into the record. Megan Rulli, Esquire appeared at the hearing on behalf of PPL,

along with one witness for PPL: Tami Roland, Senior Customer Service Representative for PPL. The following four exhibits were admitted into the record on behalf of PPL:

1. PPL Exhibit 1 – Account Activity Statement for Mr. Kaplan’s PPL account (PA mailing address);
2. PPL Exhibit 2 – Account Contact History for Mr. Kaplan’s PPL account;
3. PPL Exhibit 4 – PPL Service Termination Notice;
4. PPL Exhibit 5 – Account Activity Statement for Mr. Kaplan’s PPL account (NY mailing address).

The record in this case consists of the above-referenced exhibits and a transcript of 64 pages. The record closed on January 20, 2025, when the transcript was filed. For the reasons discussed below, the Formal Complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Barry Kaplan.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. The service address at issue in this proceeding is 4146 Chestnut Hill Drive, Lake Ariel, PA 18436.
4. PPL issued a termination notice on April 15, 2024. Tr. 30; PPL Exhibit 2.
5. As of the date of the termination notice, Mr. Kaplan had an overdue balance of \$806.21. Tr. 30; PPL Exhibit 2.

6. PPL attempted to contact Mr. Kaplan by telephone on April 19, 2024, and April 22, 2024, at 10:04 a.m. and 5:33 pm., respectively, but there was no answer. Tr. 30; PPL Exhibit 2.

7. Mr. Kaplan's PPL service was terminated on May 1, 2024. Tr. 28; PPL Exhibit 1.

8. Service was terminated because PPL did not receive payment in full nor did Complainant make a payment plan to prevent the termination. Tr. 30; PPL Exhibit 2.

9. PPL left notice at the service address when service was terminated. Tr. 31; PPL Exhibit 2.

10. On May 10, 2024, PPL issued a bill reflecting charges from April 11, 2024, to May 10, 2024 (May 10 bill). Tr. 28; PPL Exhibit 1.

11. On May 29, 2024, PPL issued a corrected bill, reflecting service from April 11, 2024, to May 1, 2024. Tr. 28-29; PPL Exhibit 1.

12. Mr. Kaplan made no payments on the May 10 bill. Tr. 29; PPL Exhibit 1.

13. Mr. Kaplan did not contact PPL before May 29, 2024, regarding his bills or the termination notice. PPL Exhibit 2.

14. On May 29, 2024, Mr. Kaplan contacted PPL to provide an update to his phone number. Tr. 31-32; PPL Exhibit 2.

15. On June 11, 2024, Mr. Kaplan contacted PPL to provide an update to his mailing address. Tr. 33; PPL Exhibit 2.

16. The downed wires reported by Mr. Kaplan were Bell telephone lines. Tr. 37; PPL Exhibit 2.

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. In this proceeding, Mr. Kaplan filed a Complaint against PPL. Therefore, Mr. Kaplan bears the burden of proof in this proceeding.

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) (*Milkie*); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Any decision of the Commission must be supported by substantial evidence. 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). Further, mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Mr. Kaplan's Formal Complaint contains several allegations that he testified to at the evidentiary hearing. First, Mr. Kaplan alleges that PPL overcharged him. Tr. 8. Second, Mr. Kaplan questions why his service was shut off when he asserts PPL was paid. Tr. 8. Third, Mr. Kaplan alleges that PPL's wires were downed. Tr. 10. Additionally, although the request for monetary damages was stricken from the Complaint, Mr. Kaplan seeks imposition of a fine on PPL and a letter of apology. Tr. 11.

I find that Mr. Kaplan did not meet his burden in proving his allegations related to overbilling, termination of service, or downed wires. First, in cases of alleged high billing, the Commission applies the *Waldron* rule. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980). Mr. Kaplan did not provide further detail regarding his overbilling allegations at the hearing. However, PPL witness Roland indicated that the Company erred by issuing a bill reflecting charges from April 11, 2024, to May 10, 2024, when PPL had terminated Mr. Kaplan's service on May 1, 2024. Tr. 28; PPL Exhibit 1. PPL cancelled this bill and reissued a bill reflecting service from April 11, 2024, to May 1, 2024. Tr. 28-29; PPL Exhibit 1. Ms. Roland further testified that Mr. Kaplan made no payments on the bill reflecting charges from April 11, 2024, to May 10, 2024. Tr. 29; PPL Exhibit 1. Therefore, although Mr. Kaplan was initially overbilled for service from

April 11, 2024, to May 10, 2024, PPL corrected this error, and I find no other basis to examine Mr. Kaplan's Complaint as it relates to alleged overbilling.

Regarding termination of service, Commission regulations provide in relevant part:

A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91–56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . [n]on-payment of an undisputed delinquent account.

52 Pa. Code § 56.81(1).

Regarding general termination notice procedures, Commission regulations provide in relevant part that:

Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

52 Pa. Code § 56.91(a).

Regarding personal contact prior to termination, Commission regulations provide in relevant part that:

a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer's consent, to provide

notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. If personal contact by one method is not possible, the public utility is obligated to attempt another method.

52 Pa. Code § 56.93(a).

Personal contact includes, among other options, phone contact. For phone contact to be deemed completed, Commission regulations require that the calls be attempted:

on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

52 Pa. Code § 56.93(a)(1).

Regarding contact following termination, Commission regulations provide that notice shall be conspicuously posted or delivered to a responsible adult person or occupant at the residence of the customer and at the affected premises. 52 Pa. Code § 56.96.

Ms. Roland testified that PPL issued a termination notice on April 15, 2024, when Mr. Kaplan had an overdue balance of \$806.21. Tr. 30; PPL Exhibit 2. The Company further made telephone calls to Mr. Kaplan on April 19, 2024, and April 22, 2024, at 10:04 a.m. and 5:33 p.m., respectively, but there was no answer. *Id.* Service was terminated because PPL did not receive payment in full nor did Complainant make a payment plan to prevent the termination. *Id.* Additionally, Ms. Roland testified that the Company left notice at the service address when service was terminated. Tr. 31; PPL Exhibit 2.

Mr. Kaplan testified to difficulties in getting mail at the service address and also alleged that he tried calling PPL but he could not get through, or that when he did speak to a PPL customer service representative, they were not helpful. Tr. 9, 13. I do not find that these assertions substantiate Mr. Kaplan's claims of improper termination of service. Mr. Kaplan did not allege that PPL was responsible for his poor mail service, nor did Mr. Kaplan dispute that PPL attempted to contact him twice by phone before termination. Although it was necessary to update Mr. Kaplan's mailing address and phone number after termination of service, Ms. Roland explained that Mr. Kaplan did not contact PPL until after termination of service to provide the updates. Tr. 31-33; PPL Exhibit 2. Additionally, PPL's evidence does not show that Mr. Kaplan contacted the Company before May 29, 2024, regarding his bills or the termination notice. PPL Exhibit 2. Therefore, I do not find that Mr. Kaplan demonstrated that the notices and attempted telephone calls detailed by Ms. Roland did not comply with 52 Pa. Code §§ 56.91, 56.93, or 56.96.

Finally, regarding Mr. Kaplan's claims of downed wires, Ms. Roland testified that the downed wires were Bell telephone lines. Tr. 37; PPL Exhibit 2. Mr. Kaplan did not provide any testimony at the hearing supporting the claim that the wires belonged to PPL.

In summary, Mr. Kaplan failed to provide substantial evidence required to support his claims. As mentioned above, mere bald assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *see also Norman v. Phila. Gas Works*, Docket No. C-2018-2640719, at 30 (Opinion and Order entered Oct. 7, 2021). Therefore, Mr. Kaplan's Complaint is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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. "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).
4. Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.
5. "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); *Murphy v. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).
6. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa.C.S. § 701.
7. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

