**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Bobitka :

 :

 v. : C-2013-2352756

 :

PPL Electric Utilities Corporation :

**INITIAL Decision**

Before

Ember S. Jandebeur

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On February 27, 2013, Michael Bobitka (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (Respondent or PPL) alleging that he was incorrectly being charged a commercial rate and that he should be charged at the residential rate. This case is an untimely appeal from a prior informal Bureau of Consumer Services (BCS) decision at Case No. 3050666. On April 3, 2013, the Respondent filed an Answer denying that the Complainant is incorrectly charged.

By Hearing Notice dated April 5, 2013, the parties were notified that a Telephonic Hearing in this case was scheduled for the morning of May 15, 2013. A Prehearing Order was issued on April 9, 2013, stating the date and time of the scheduled hearing and advising the parties that the case could be dismissed if they failed to obtain a continuance and failed to appear for the hearing. The Prehearing Order also advised the parties of applicable procedural rules.

The hearing convened as scheduled. The Complainant appeared *pro se*, the Respondent was represented by counsel. The Complainant proffered his Formal Complaint as an exhibit; it was admitted into the record. The Respondent proffered two exhibits; both were entered into the record. The record closed on June 14, 2013.

FINDINGS OF FACT

1. The Complainant is a current customer of the Respondent’s and receives electric service at 504 Wooddale Road, Marshalls Creek, Pennsylvania 18335.

1. The Respondent is a jurisdictional utility providing electric service in Pennsylvania.
2. The Complainant originally had a house and the garage, and the service was at the residential rate. Tr. at 27.
3. The house collapsed and was not habitable. Tr. at 7.
4. The Complainant has made over his garage into a living space. Tr. at 7.
5. The garage does not have a functioning bathroom or kitchen. They are not connected. Tr. at 9.
6. There is no running water to the garage where the Complainant lives. Tr. at 16.
7. There is a well on the property but there are no lines connecting it to the garage. Tr. at 16.
8. There are no flushable toilets in the garage. Tr. at 17.
9. Marilyn Nunez, a customer service representative, testified on behalf of the Respondent. Tr. at 18.
10. On March 21, 2012, the Respondent spoke with the Complainant about the garage and the rate that the Complainant was paying. Tr. at 23.
11. On March 23, 2012, the Respondent tried to set up an appointment with the Complainant to conduct a rate check to confirm the garage was a dwelling. Tr. at 24-25.
12. On November 25, 2012 and November 26, 2012, the Respondent and the Complainant discussed the garage and access to conduct a rate check. Tr. at 25-26.
13. On December 6, 2012, Kevin George, a PPL employee, went to the Complainant’s property and explained that without water and sewer service he does not qualify for the residential rate. Tr. at 26-27.
14. The Complainant’s electric service rate is called GS-1, for general service. The Complainant has been on the GS-1 rate since December 19, 2011. Tr. at 21.
15. The residential service rate is available to residential dwellings. Tr. at 22.
16. A dwelling is defined as a living space consisting of at least permanent provisions for shelter, dining, sleeping and cooking, with provisions for permanent electric, water and sanitation services. Tr. at 22.
17. The Respondent is willing to put the Complainant on the residential rate when the garage meets the definition of a dwelling. Tr. at 28.
18. The Complainant believes that by him being a resident in the garage “trumps” the Respondent’s tariff. Tr. at 31.

DISCUSSION

Burden of Proof:

Section 332(a) of the Public Utility Code, [66 Pa. C.S. § 332(a)](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=3&_butInline=1&_butinfo=66%20PACODE%20332&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=cb17ec69e230c7619c8bcdc9002e288f), provides that the party seeking relief from the Commission has the burden of proof. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding.

“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*, 364 Pa. 54, 70 A.2d 854 (1950).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=4&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b364%20Pa.%2054%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=80bd42820a055317af98ca0121ce181a)

 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, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a 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. [*Replogle v. Pennsylvania Electric Company,* 54 Pa. PUC 528 (1980),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%20528%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=8e9b44fa2e271a9e231b97bdcfd3251d) and [*Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%2098%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=1448b9480cd7b69d87fa0b3a68f908ad)

 If Respondent submits evidence of “co-equal” weight to refute Complainant’s evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent’s evidence. [*Morrissey v. PA Dept. of Highways,* 424 Pa. 87, 225 A.2d 895 (1967),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=7&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b424%20Pa.%2087%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=27432e77422dd0ba6521cf4e67013ed4) and [*Burleson v. Pa. P.U.C*., 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=4cd0729466bfd1d39c0fd713cc26b525) aff’d. [501 Pa. 443, 461 A.2d 1234.](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=9&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b501%20Pa.%20443%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=28aeeafc2a370113292dc79dfa134b36)

 The decision of the Commission must be supported by substantial evidence. See, e.g., Section 704 of the Administrative Agency Law, [2 Pa. C.S. § 704](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=10&_butInline=1&_butinfo=2%20PACODE%20704&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=e7a924bc9a2d8da2187d70ea5b41d8bb). “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 & Western Ry. Co. v. Pa. P.U.C*., 489 Pa. 109, 413 A.2d 1037 (1980);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=11&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b489%20Pa.%20109%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=71ad7d7d43f91e4c535e8ea71ac62adb) [*Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b194%20Pa.%20Super.%20278%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=68dba5dca7025d27a9423554a1c6f72b) and [*Murphy v. Comm., Dept. of Public Welfare, White Haven Center,* 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b85%20Pa.%20Commw.%2023%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=065374b59b018301e33819591229d308)

 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.

Residential Rate:

The Complainant owns a one acre piece of property in East Stroudsburg.[[1]](#footnote-1) At one time there was a home and a garage on the property. The home collapsed and the Complainant moved into the garage and is in the process of making the garage livable. Currently, there is no water or sewage into the garage.

The Complainant asserts that because he lives there and uses the garage as his residence, he is entitled to be charged at the residential rate.

The Respondent asserts that their tariff defines a dwelling as “a living space consisting of at least permanent provisions for shelter, dining, sleeping and cooking, with provisions for electric water and sanitation service.” Tr. at 22, Tariff Supplement No. 125 at page 20B.[[2]](#footnote-2) Respondent further asserts that because there is no water and sewer service at the garage that the Complainant must be charged at the general service, or GS-1 rate.

The provisions of a Commission approved tariff have the force of law and are binding on both the utility and its customer. *Stiteler v. Bell Telephone Co. of Pennsylvania,* 379 A.2d 339 (Pa. Commw. 1977), *Brockway Glass Co. v. PA Public Utility Comm’n*, 437 A.2d 1067 (Pa. Commw. 1981). Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm’n*, 594 A.2d 816 (Pa. Commw. 1991), *alloc. den*. 605 A.2d 335 (Pa. 1992).

The Public Utility Code (the Code) requires that “every rate made, demanded or received by any public utility . . . shall be just and reasonable and in conformity with regulations and orders of the Commission.” 66 Pa. C.S. § 1301. The Code further mandates that no utility shall demand or receive a rate that is greater or less than that specified in its tariffs. (Emphasis added.) 66 Pa. C.S. § 1303. A utility cannot unreasonably discriminate for or against a particular customer by establishing a special rate for them. (Emphasis added.) 66 Pa. C.S. § 1304.

In summation, Respondent can only charge the rates specified in its tariff on file with the Commission. The Complainant at this time does not meet the definition of a dwelling as required by the tariff provisions for the residential rate. The Respondent commented that they are sympathetic to Complainant’s plight, but that at this time they cannot charge him under the residential rate, and they are correct. They cannot discriminate by making exceptions. The Complainant will be entitled to the residential rate when the garage meets the definition of a dwelling.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this Complaint. 66 Pa. C.S. § 701.
2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. § 332(a).
3. As a matter of general principle, 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 Telephone Company of Pennsylvania*, 72 Pa. Pub. Util. Comm’n 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. Pub. Util. Comm’n 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992).
4. The Respondent’s tariff defines a dwelling as “a living space consisting of at least permanent provisions for shelter, dining, sleeping and cooking, with provisions for electric water and sanitation service.” Tariff Supplement No. 125 at page 20B.
5. The provisions of a Commission approved tariff have the force of law and are binding on both the utility and its customer. *Stiteler v. Bell Telephone Co. of Pennsylvania,* 379 A.2d 339 (Pa. Commw. 1977), *Brockway Glass Co. v. PA Public Utility Comm’n*, 437 A.2d 1067 (Pa. Commw. 1981).
6. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. PA Public Utility Comm’n*, 594 A.2d 816 (Pa. Commw. 1991), *alloc. den*. 605 A.2d 335 (Pa. 1992).
7. The Complainant’s garage does not meet the Respondent’s tariff definition of a dwelling.
8. The Complainant failed to prove that he is entitled to the residential rate.
9. The Respondent is correctly charging the Complainant at the GS-1 rate until his garage meets the definition of a dwelling.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Michael Bobitka at Docket No. C-2013-2352756 is denied and dismissed.
2. That the Secretary’s Bureau shall mark Docket No. C-2013-2352756 closed.

Date: July 2, 2013 /s/

 Ember S. Jandebeur

 Administrative Law Judge

1. The mailing address is P.O. Box 591, Marshalls Creek, Pennsylvania 18335. [↑](#footnote-ref-1)
2. Judicial notice was taken of the tariff. [↑](#footnote-ref-2)