

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Dawn Smith v. Pennsylvania
Electric Company**

Public Meeting held November 8, 2012
2292814-ALJ
Docket No. C-2012-2292814

MOTION OF COMMISSIONER WAYNE E. GARDNER

For the reasons set forth below, I recommend that the Initial Decision dismissing Ms. Smith's Complaint be reversed and that this matter be returned to the Office of Administrative Law Judge for a hearing on the merits of the Complaint.

On March 6, 2012, Dawn Smith, a landlord, filed a Formal Complaint alleging that Pennsylvania Electric Company (Penelec) was responsible for a fire in the basement of her rental house. She indicated that the fire was caused by a broken line and a faulty transformer. She requested damages for the repair of her basement and furnace, an inspection of her wiring, and compensation for a variety of household electronics that were allegedly destroyed. In response, Penelec filed an Answer and New Matter denying responsibility for the fire.

Concurrent with its Answer, Penelec filed Preliminary Objections requesting that the Complaint be dismissed because it failed to state a claim upon which relief may be granted. The company argued that because the Commission cannot award damages, the Complaint was legally insufficient.

In the Initial Decision, the Administrative Law Judge (ALJ) addressed Penelec's contention that the Complaint is legally insufficient. He properly found that with respect to the request for damages, Penelec was correct, but, despite the claim for damages, the Commission retains subject matter jurisdiction on any issue related to a public utility's duty concerning the reasonableness, adequacy, or safety of public utility services. However, the ALJ dismissed the Complaint, holding that the Commission could not hear a quality of service issue brought by a landlord. In so holding, the ALJ relied on *Rohrbaugh v. Pa. PUC*, 556 Pa. 199, 727 A.2d 1080 (1999) and stated, "the Pennsylvania Supreme Court has held that a utility's statutory duty to provide reasonable service under Section 1501 of the Public Utility Code... does not extend to a customer's landlord." Initial Decision at 6.

I do not believe that *Rohrbaugh* stands for that proposition nor can the Court's holding be so broadly construed. In *Rohrbaugh*, the narrow issue contemplated by the Court was whether a utility violated its duty to landlord complainants under 66 Pa. C.S. § 1501 by disconnecting electric service at the ratepayer tenant's request without notifying the landlord. There, the landlord complainants alleged that, because the electricity was disconnected without their knowledge, water pipes in the residence broke, causing damage throughout. They argued that the utility had a duty to notify them before disconnecting service. The Court reviewed the Commission's regulations at 52 Pa. Code § 56.72 and found that the Commission's validly enacted regulation that permitted a utility to terminate service upon request by a ratepayer, with no requirement to notify a landlord, was unambiguous. The Court did not hold that a utility

never has a statutory duty to a landlord under 66 Pa. C.S. § 1501. Rather, the Court limited its scope of review to determining whether the utility had complied with one Commission regulation. The facts alleged by Ms. Smith in the instant matter do not implicate the same section of our regulations as did the *Rohrbaugh* case. Ms. Smith has alleged that damage was caused to her property due to Penelec's faulty facilities, not because her tenant requested disconnection of service. Because the decision in *Rohrbaugh* is not implicated in the instant case, Ms. Smith's Complaint cannot be dismissed based on its holding.

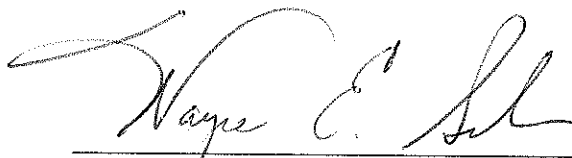
Although not addressed in the Initial Decision, Penelec averred that Ms. Smith lacked standing. Penelec argued that because she was not the ratepayer, she did not have standing to bring this complaint. Standing requires that a party have an interest in the matter that is substantial, direct, and immediate. *William Penn Parking Garage, Inc. et al. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). Ms. Smith's interest in this matter is substantial, direct, and immediate. She owns the property allegedly damaged by Penelec; she is responsible for the property and all repairs. Therefore, she has standing to bring this complaint.

Because Ms. Smith has standing to bring this cause of action before the Commission and the *Rohrbaugh* holding does not apply, this case should be remanded to the Office of Administrative Law Judge for a hearing on the merits of the Complaint.

THEREFORE, I MOVE THAT:

1. This matter be remanded to the Office of Administrative Law Judge for further action consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

November 8, 2012
Date



Wayne E. Gardner, Commissioner