

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph F. John	:	
	:	
v.	:	C-2016-2528343
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

A customer filed a formal complaint against his electric distribution company wherein he alleged that the company disconnected and removed his electric meter without first informing him of its intentions. He requests that the company be required to reconnect his electric service at no charge to him. This Initial Decision dismisses the complaint because the Complainant has failed to prove that the utility violated any statute, regulation or order that the Commission has jurisdiction to administer.

HISTORY OF THE PROCEEDING

On February 4, 2016, Joseph F. John (Complainant or Mr. John) filed a formal complaint against West Penn Power Company (Respondent or West Penn), at Docket No. C-2016-2528343, wherein he alleged that West Penn disconnected and removed the electric meter from a rental property owned by him without his knowledge. He requests that West Penn be required to reinstall the meter and initiate service at no charge to him.

On February 29, 2016, West Penn filed an answer and new matter to the complaint. In its answer, West Penn averred that service to the property at issue had not been active since November of 2012. West Penn admitted that it removed the meter on July 9, 2015, due to inactivity. It avers that it refuses to re-initiate electric service to the property until an electrical inspection of the property is performed. The company avers that it is authorized under its tariff to require an inspection if there is a reasonable doubt about the safety of the electrical equipment or wiring at the property, and that service having been inactive since November of 2012 provides such a reasonable doubt.

In its new matter, West Penn averred that the subject of the dispute lends itself to resolution through the Commission's mediation process.

Mediation was unsuccessful and, by notice dated April 12, 2016, an initial telephonic hearing was scheduled for Thursday, June 9, 2016. I was assigned to preside over this proceeding. I issued a prehearing order on April 4, 2016, in which I set forth certain procedural requirements associated with participation in the hearing.

The telephonic hearing was held as scheduled on June 9, 2016. The Complainant appeared and represented himself. Respondent was represented by Margaret A. Morris, Esquire, who presented the testimony of two company witnesses and seven exhibits, all of which were admitted into the record.

The record in this proceeding, which consists of a transcript of 89 pages and the seven West Penn exhibits, was closed on July 1, 2016, upon my receipt of the transcript.

The proceeding is now ready for disposition. As explained below, the complaint will be dismissed because the Complainant has neither alleged nor proven that the utility violated any statute, regulation or order over which the Commission has jurisdiction.

FINDINGS OF FACT

1. Complainant is Joseph F. John.
2. The Respondent is West Penn Power Company, a jurisdictional Pennsylvania electric distribution company.
3. The Complainant appeared at the hearing and testified on behalf of himself.
4. West Penn presented the testimony of Tammy Taylor, a Senior Customer Service Compliance Specialist, and Thomas Rozycki, a Supervisor of Operation Support. (Tr. 25, 57).
5. West Penn Ex. 2 is a provision from the company's tariff that addresses applicant/customer obligations associated with wiring, apparatus and inspections.
6. West Penn Ex. 3 contains pages from the Respondent's Customer Guide for Electric Service in PA.
7. West Penn Ex. 4 is a copy of the Respondent's Continuance of Service Contract for Pennsylvania customers.
8. West Penn Ex. 5 contains summaries of customer contacts associated with the property at issue in this proceeding.
9. West Penn Ex. 6 contains summaries of customer contacts associated with other accounts in Mr. John's name.
10. West Penn Ex. 7 is a copy of an inspection report for an inspection performed at the property at issue in this proceeding on December 7, 2015.

11. West Penn Ex. 8 is a copy of the Commission's Bureau of Consumer Services decision on an informal complaint filed by Mr. John on August 28, 2015, at BCS Case No. 3379052.

12. Complainant owns a rental property at 2 South Liberty Street, Masontown, PA. (Tr. 8).

13. Service to this property was last active from August 6, 2012 to November 6, 2012. (Tr. 28-29; West Penn Ex. 5).

14. The electric meter that serves the property was removed by West Penn on July 9, 2015. (Tr. 30; West Penn Ex. 5).

15. The electric meter was removed by West Penn on July 9, 2015, because service to the property had been inactive since November of 2012. (Tr. 71).

16. Under West Penn's tariff, the company may require a property owner to obtain an electrical inspection by a qualified electrical inspector if there is a reasonable doubt as to the safety of the electrical wiring and other facilities at the property. (Tr. 60; West Penn Ex. 2).

17. West Penn may require an electrical inspection of a property as a precondition to initiating service if the property has been vacant for more than twelve months. (Tr. 59).

18. The property at issue here has been vacant since November of 2012. (Tr. 29; West Penn Ex. 5).

19. On August 25, 2015, Mr. John contacted West Penn to request that electric service be initiated. (Tr. 31).

20. Mr. John was informed that a new meter would not be installed and service would not be restored until he had an inspection performed by an authorized electrical inspector. (Tr. 31).

21. The Complainant has not had an electrical inspection performed at the property. (Tr. 18, 32).

22. Prior to the meter being removed in July of 2015, the meter had been in place and energized since the previous service was disconnected on November 6, 2012. (Tr. 73).

23. From the time the previous service was disconnected in November of 2012 until the meter was removed in July of 2015, West Penn considers the service to have been inactive since the service was not in a customer's name and no one was being billed for service. (Tr. 31, 42-42; West Penn Ex. 5).

24. West Penn has a Continuance of Service agreement available to property owners that would prevent service to a rental property from being disconnected in situations where a tenant requests that the service be disconnected. (Tr. 35-36; West Penn Ex. 4).

25. If an owner executes a Continuance of Service agreement with West Penn and a tenant living in the property requests that service be disconnected, the company would notify the property owner of the request, switch the service into his/her name and maintain service to the property. (Tr. 35-36; West Penn Ex. 4).

26. The Complainant does not have an executed Continuance of Service agreement with West Penn. (Tr. 21).

DISCUSSION

The Complainant alleges that West Penn improperly removed the electric meter at his rental property at 2 South Liberty Street, Masontown, PA without his knowledge and is

requiring that he obtain a passing inspection from an authorized electrical inspector before it will install a new meter and initiate service. Complainant requests that West Penn be required to install a new electric meter and initiate service at the service address at no cost to him. (Tr. 9).

The Complainant carries the burden of showing that the 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. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 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 (Pa.Cmwlth.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). That is, 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, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w.*, *PA Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth.1982); *Edan Transportation Corp. v. PA Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth.1993), 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 and Western Ry. v. PA Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth.1984).

Finally, the Complainant, in order to prevail, must demonstrate that the offense complained of constitutes a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. As explained below, the Complainant has failed to do so in this case.

Mr. John testified that West Penn removed the meter from his rental property at 2 South Liberty Street without any warning and without his knowledge. (Tr. 8). He testified that the electric service at the property had been active before the meter's removal, but he did not know if or to whom the service was being billed. (Tr. 8). He stated that he was informed

following an electrical inspection at another property owned by him that he would have to replace all of the wiring and install a new service panel at that property, at a cost of over \$4,000, before the electric company would restore service. (Tr. 10-11). He acknowledged that he has not had an electrical inspection performed at the South Liberty Street property. (Tr. 11). He is concerned that the wiring in this property may also need to be replaced. (Tr. 18). He does not believe that West Penn should have removed the meter without first informing him, and he wants the company to install a new meter and restore his service at no cost to him. (Tr. 9, 17).

Mr. John was unable to remember the last time a tenant occupied the property. (Tr. 21-22).

West Penn witness Tammy Taylor testified that the electric service was last active at the property from August 6, 2012 to November 6, 2012. (Tr. 28; West Penn Ex. 5). She testified that the service at that time was in the name of the property's tenant, and not in Mr. John's name. (Tr. 29). She explained that the service had not been active at the property since November 6, 2012. (Tr. 31). Ms. Taylor explained that West Penn considers service to be active when it is in a customer's name and it is being billed to that customer. (Tr. 42). She testified that the electric meter at the property was removed by West Penn on July 9, 2015. (Tr. 30; West Penn Ex. 5).

Ms. Taylor stated that West Penn was contacted by Mr. John on August 25, 2015, at which time he requested that service be established in his name at the property. (Tr. 31; West Penn Ex. 5). She testified that Mr. John was informed during that contact that service to the property would not be restored until an electrical inspection was performed, since the service had been inactive for over twelve months. (Tr. 31; West Penn Ex. 5). She stated that service had been inactive and there had been no customer name on the account since November of 2012. (Tr. 33).

Ms. Taylor explained that the company has available to property owners a Continuance of Service contract. She testified that execution of this agreement by a property owner for a given property would result in the owner being notified whenever a tenant in that property requested that service be disconnected. This would prevent service to a property from being disconnected, without the landlord's knowledge, at the request of the tenant. (Tr. 35-36;

West Penn Ex. 4). Mr. John acknowledged that he refused to execute a Continuance of Service agreement. (Tr. 21).

West Penn witness Thomas Rozycki testified to the reasons why the company refused to install and energize a new meter at the property without Mr. John first obtaining an electrical inspection. He explained that Rule 7 of the company's provides, "[i]f, on existing installations, there is a reasonable doubt as to the safety of existing electrical equipment or wiring, the Company shall require, as a condition to furnishing service, that the service be inspected and approved by a qualified inspector in accordance with the National Electrical Code." (West Penn Ex. 2). He testified that the company requires an inspection whenever the property has been vacant for over twelve months. (Tr. 59). He testified that the company has this requirement to be sure there are no safety concerns with the wiring or other facilities, including such conditions as dry rot or damage from animals, before energizing the facilities. (Tr. 59-60).

Although the Complainant's desire to have been notified by West Penn prior to the company removing the meter at his rental property may be understandable, he has neither alleged nor proven that West Penn has violated any statute, regulation or order that the Commission has jurisdiction to administer in this instance. Mr. John has provided no legal authority that would require an electric distribution company to provide such prior notification to a property owner who is not residing in the property. In fact, there is no such requirement in the Public Utility Code or the Commission's regulations.

The company's witnesses explained that the company takes its obligations to provide safe service very seriously and requires inspections of a customer's facilities before re-energizing service whenever the service has been inactive for more than twelve months. (Tr. 59). I find the company's actions in this instance to have been reasonable. The property had been vacant since November of 2012. There was no customer name associated with the property at the time the meter was removed, nor was any customer being billed for service to the property. Mr. John's name was not associated in West Penn's records with any service to the property. I

believe that, under these circumstances, West Penn was justified in removing the meter without first notifying Mr. John of its intentions.

As noted above, West Penn does have a program to assist landlords in managing their rental properties. By executing a Continuance of Service agreement, a landlord would be notified and service would be maintained whenever a tenant requested the disconnection of service. (Tr. 35-36). This program would prevent the unexpected termination of service to a rental property without the landlord's knowledge. In Mr. John's case, he would have been notified back in November of 2012 that service to his tenants was being disconnected and he could have transferred the service to his name and kept it active. He chose not to enter into this agreement with West Penn. Despite his refusal to execute an agreement, the program nonetheless remains available to him and other landlords to assist in managing and protecting their rental properties.

Since the Complainant has failed to either allege or prove that Columbia violated any statute, regulation or order that the Commission has jurisdiction to administer, his formal Complaint will be dismissed.

CONCLUSIONS OF LAW

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

2. The Complainant has the burden of showing that the 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. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

3. In order to meet the burden of proof, a Complainant must prove his allegations by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992).

4. A preponderance of the evidence means evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth.1982); *Edan Transportation Corp. v. PA Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704.

6. In order to meet the substantial evidence standard, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa.Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth.1984).

7. In order to prevail, a Complainant must prove that the Respondent violated a statute, regulation or order that the Commission has jurisdiction to administer. 66 Pa.C.S. § 701.

8. The Complainant failed to prove that the Respondent violated a statute, regulation or order that the Commission has jurisdiction to administer.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed in the matter of Joseph F. John v. West Penn Power Company, at Docket No. C-2016-2528343, is dismissed due to the failure of the

Complainant to prove that the Respondent violated any statute, regulation or order that the Commission has jurisdiction to administer.

2. That the Secretary mark the proceeding at Docket No. C-2016-2528343 closed.

Dated: August 2, 2016

_____/s/
Steven K. Haas
Administrative Law Judge