

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael L. Smith

v.

PECO Energy Company

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F-2016-2579580

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

An individual filed a complaint against his electric utility alleging that the utility was acting unreasonably by refusing to establish an account for residential service in his name unless he satisfied an outstanding balance for the account. This decision denies the complaint because the utility acted in accordance with applicable regulations by requiring the individual to satisfy the outstanding balance as a condition to establishing the account in his name where information provided by the individual to the utility indicated that he may have resided at the residence during the time that the balance accrued.

HISTORY OF THE PROCEEDING

On December 8, 2016, Michael L. Smith (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision issued November 4, 2016 at BCS No. 3475521 dismissing the Complainant's informal complaint.

The complaint alleges that the Respondent is attempting to make the Complainant responsible for an outstanding balance on the account for 200 Sugarman Road, Coatesville, Chester County. According to the complaint, these charges predate the Complainant's residence at 200 Sugarman Road. According to the complaint, the Complainant moved from 200 Sugarman Road in 2014 after his wife passed away. The complaint asserts that the Complainant moved back to 200 Sugarman Road in August 2016 to help his daughter. The complaint requests that the Commission find that the Complainant only be responsible for charges for 200 Sugarman Road from August 2016 to the present.

The Respondent filed an answer on December 20, 2016. The answer admits that the Respondent provides electric service to 200 Sugarman Road. The answer explains that the Complainant is attempting to have the electric service account for 200 Sugarman Road placed in his name. The answer alleges that the Respondent's records show that the electric service account for 200 Sugarman Road is currently in the name of Dana Winkey. Ms. Winkey has not requested that the Respondent discontinue service to 200 Sugarman Road.

The answer states that the Complainant applied for service at 200 Sugarman Road on July 21, 2016. The Respondent sent the Complainant a denial notice advising the Complainant that he may be responsible for an outstanding balance on the account. The Respondent requested that the Complainant provide two forms of identification and a lease agreement.

According to the answer, the Complainant provided a copy of a driver's license issued April 1, 2014 showing the Complainant's address as 200 Sugarman Road. In addition, the Complainant sent the Respondent a copy of a lease agreement for 200 Sugarman Road.

The answer states that on September 8, 2016, the Respondent sent the Complainant correspondence advising him that he was responsible for the outstanding balance on the account for 200 Sugarman Road. The Respondent therefore denied the Complainant's application for service unless the Complainant paid the outstanding balance.

The Respondent asserts that Dana Winkey and the Complainant owe an outstanding balance of \$4,923.21 on the account for 200 Sugarman Road because they benefitted from the service. The answer requests that the Commission dismiss the Complainant's complaint.

By hearing notice dated January 12, 2017, the Commission scheduled a telephonic hearing for this matter on February 24, 2017 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated January 23, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on February 24, 2017. The Complainant appeared pro se and presented testimony in support of his complaint. Shawane L. Lee, Esquire represented the Respondent, which presented one witness who sponsored ten exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 37 pages. The record closed on March 20, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant is Michael L. Smith. N.T. 6.
2. The Respondent is PECO Energy Company. N.T. 7.
3. The Complainant currently resides at 200 Sugarman Road, Coatesville and has resided there since August 2016. N.T. 6.
4. From 2004 to 2014 the Complainant resided at 200 Sugarman Road with his wife. N.T. 7.

5. The electric service account for 200 Sugarman Road was in the name of the Complainant's wife during the period from 2004 to 2014. N.T. 7.

6. The Complainant's wife died in 2014 and he moved from 200 Sugarman Road. N.T. 8-9.

7. The Complainant's step daughter Dana Winkey resided at 200 Sugarman Road and was responsible for the electric service account at that address starting in 2014. N.T. 7-8.

8. Dana Winkey moved from 200 Sugarman Road in August 2016. N.T. 10.

9. In July 2016, the Complainant attempted to have the electric service account for 200 Sugarman Road placed in his name. N.T. 8-9, PECO Ex. 2.

10. The Respondent informed him that he was responsible for a balance of approximately \$2,700 that had accumulated from 2014 to 2016. N.T. 8-12.

11. The Respondent refused to place the account for 200 Sugarman Road in his name until he paid this outstanding balance. N.T. 8-12.

12. In August 2016, the Complainant, Dana Winkey, Myah Smith and Myah Smith's son all resided at 200 Sugarman Road. N.T. 17.

13. The Complainant, Myah Smith and Myah Smith's son continued to reside at 200 Sugarman Road after Dana Winkey moved out. N.T. 18.

14. Myah Smith owns the property at 200 Sugarman Road and leased it to the Complainant. N.T. 19.

15. When the Complainant and his wife moved to 200 Sugarman Road in 2004, the Complainant's wife had title to the property placed in Myah Smith's name. N.T. 19.

16. When Dana Winkey moved from 200 Sugarman Road in 2016 she never spoke to the Complainant about discontinuing electric service at that address. N.T. 20.

17. The Complainant has not made any payments on the account for 200 Sugarman Road since 2016. N.T. 20-21.

18. At the time that the Complainant applied for service at 200 Sugarman Road, the account for that address was in the name of Dana Winkey. N.T. 24, PECO Ex. 1.

19. As of the date of the hearing, Dana Winkey has not contacted the Respondent to discontinue service to 200 Sugarman Road. N.T. 24-25.

20. When the Complainant applied for service, the Respondent reviewed its records, and issued a denial of service letter dated July 21, 2016. N.T. 25, PECO Ex. 2.

21. The letter explained that the Complainant may be responsible for the outstanding balance due at 200 Sugarman Road. N.T. 25, PECO Ex. 2.

22. The letter requested that the Complainant provide a verification of his identity and a copy of the lease for the property. N.T. 25, PECO Ex. 2.

23. In response to the July 21, 2016 letter, the Complainant provided a photocopy of his driver's license. N.T. 25.

24. The Respondent sent a letter dated August 23, 2016, requesting that the Complainant provide a clear copy of his driver's license. N.T. 25, PECO Ex. 3.

25. The Complainant sent the Respondent a clean copy of his driver's license. N.T. 26, PECO Ex. 4.

26. The Complainant's license had an issue date of April 1, 2014 and showed the Complainant's address as 200 Sugarman Road. N.T. 26, PECO Ex. 4.

27. In addition, the Complainant provided the Respondent with a copy of his lease for 200 Sugarman Road. N.T. 26, PECO Exs. 5 and 6.

28. The lease dated June 16, 2016 was for a term of one year. N.T. 27, PECO Ex. 5.

29. The lease shows that Myah Smith, daughter of the Complainant, is the owner of 200 Sugarman Road. N.T. 27, PECO Exs. 5 and 6.

30. The Respondent issued a letter dated September 8, 2016 indicating that the Complainant could have resided at 200 Sugarman Road from 2014 to 2016 and would be responsible for the charges accrued during that time period. N.T. 28, PECO Ex. 7.

31. The September 8, 2016 letter indicated that the Complainant could provide proof that he resided elsewhere. N.T. 28-29, PECO Ex. 7.

32. The Complainant subsequently informed the Respondent orally that he had lived elsewhere but never provided any documentation to support this assertion. N.T. 29.

33. The account for 200 Sugarman Road indicates that the current balance on the account is \$5,509.21. N.T. 30, PECO Ex. 1.

34. The account for 200 Sugarman Road indicates that Dana Winkey was enrolled in the Respondent's customer assistance program (CAP) on February 2014 and removed in December 2015 because her income was too high to qualify for the CAP. N.T. 30, PECO Ex. 1.

35. The outstanding account balance contains \$728.24 in CAP arrears. N.T. 30.

36. The Complainant filed an informal complaint with BCS on September 9, 2016. N.T. 32, PECO Ex. 8.

37. BCS issued a decision on November 4, 2016 dismissing the Complainant's informal complaint. N.T. 33, PECO Ex. 9.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish his case 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., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

In this case, the Complainant contends that the Respondent provided unreasonable service by refusing to establish service in his name for the residence at 200 Sugarman Road unless he paid the outstanding account balance for that address. I will address the Complainant's contentions after providing some background information taken from the evidence presented by the Complainant and Respondent.

The Complainant testified that he currently resides at 200 Sugarman Road and has resided there since August 2016. N.T. 6. From 2014 to 2016 the Complainant resided at 236 Lincoln Highway, Coatesville with his brother in law. N.T. 7. From 2004 to 2014 the Complainant resided at 200 Sugarman Road with his wife. N.T. 7. The electric service account for 200 Sugarman Road was in the name of the Complainant's wife during the period from 2004 to 2014. N.T. 7. During that time period, his wife was responsible for paying the bills and according to the Complainant, the electric service account for 200 Sugarman Road was current when he moved out in 2014. N.T. 10.

The Complainant stated that his wife died in 2014 and he moved from 200 Sugarman Road. N.T. 8-9. According to the Complainant, his step daughter Dana Winkey

resided at 200 Sugarman Road and was responsible for the electric service account at that address starting in 2014.

The Complainant testified that he moved back to 200 Sugarman Road in August 2016. N.T. 10. According to the Complainant, Ms. Winkey moved from 200 Sugarman Road in August 2016. N.T. 10. The Complainant does not know where she moved to and has not had contact with her since she moved. N.T. 10-11.

When the Complainant moved back to 200 Sugarman Road, he attempted to have the electric service account for 200 Sugarman Road place in his name. N.T. 8-9. The Respondent informed him that he was responsible for a balance of approximately \$2,700 that had accumulated from 2014 to 2016. N.T. 8-12. The Complainant testified that the Respondent refused to place the account for 200 Sugarman Road in his name until he paid this outstanding balance. N.T. 8-12.

On cross examination, the Complainant indicated that he never took any steps to change the address of 200 Sugarman Road on his driver's license after he moved from that address. N.T. 14. In addition, the bills for his cell phone went to 200 Sugarman Road because he is on his step daughter's cell phone plan and she pays the bill. N.T. 14. He also stated that he listed 200 Sugarman Road as his address on his tax returns for the period from 2014 to 2016. N.T. 15-16.

The Complainant indicated that he moved to 200 Sugarman Road to help his step daughter, Dana Winkey and his daughter Myah Smith. N.T. 17. In August 2016, after he moved back to 200 Sugarman Road, he, Dana Winkey, Myah Smith and Myah Smith's son all resided at 200 Sugarman Road. N.T. 17. He, Myah Smith and Myah Smith's son continued to reside at 200 Sugarman Road after Dana Winkey moved out. N.T. 18.

The Complainant testified that Myah Smith owns the property at 200 Sugarman Road and leased it to him. N.T. 19. According to the Complainant, when he and his wife moved to 200 Sugarman Road in 2004, the Complainant's wife had title to the property placed in Myah

Smith's name because she had a good credit rating and the Complainant and his wife did not. N.T. 19.

The Complainant testified that when Dana Winkey moved from 200 Sugarman Road in 2016 she never spoke to the Complainant about discontinuing electric service at that address. N.T. 20. The Complainant admitted that he had not made any payments on the account for 200 Sugarman Road since he moved to that address in 2016. N.T. 20-21. He indicated that he tried to make payments on the account but that the Respondent refused to accept them. N.T. 20-21.

In response to the Complainant's evidence, the Respondent presented the testimony of Elsa Leung, a regulatory assessor. N.T. 23. Ms. Leung's testimony corroborated some of the Complainant's testimony. The Respondent's records indicated dates of events that differed from some of the time frames recalled by the Complainant. Where the evidence differs as to when certain events occurred, I will give more weight to the Respondent's records since the Complainant could only testify to approximately when certain events occurred.

Ms. Leung explained that when an applicant applies for service, the Respondent will request that the applicant provide a photo ID or government-issued ID and a copy of the lease for the location. N.T. 23. The Respondent's tariff at Section 5.1 states that the Respondent may require this identification in order to determine liability for a past due balance at the location where an applicant has applied for service. N.T. 23-24, PECO Ex. 10.

Ms. Leung stated that when the Complainant applied for service at 200 Sugarman Road, the Respondent noted that the account for that address had a large outstanding balance. N.T. 24, PECO Ex. 1. At the time that the Complainant applied for service at 200 Sugarman Road, the account for that address was in the name of Dana Winkey. N.T. 24, PECO Ex. 1. As of the date of the hearing, Dana Winkey has not contacted the Respondent to discontinue service to 200 Sugarman Road. N.T. 24-25.

When the Complainant applied for service, the Respondent reviewed its records, and issued a denial of service letter dated July 21, 2016. N.T. 25, PECO Ex. 2. The letter explained that the Complainant may be responsible for the outstanding balance due at 200 Sugarman Road. N.T. 25, PECO Ex. 2. The letter requested that the Complainant provide a verification of his identity and a copy of the lease for the property. N.T. 25, PECO Ex. 2.

In response to the July 21, 2016 letter, the Complainant provided a photocopy of his driver's license. N.T. 25. However, the photocopy was not clear. N.T. 25. The Respondent sent a letter dated August 23, 2016, requesting that the Complainant provide a clear copy of his driver's license. N.T. 25, PECO Ex. 3.

The Complainant sent the Respondent a clean copy of his driver's license. N.T. 26, PECO Ex. 4. The Complainant's license had an issue date of April 1, 2014 and showed the Complainant's address as 200 Sugarman Road. N.T. 26, PECO Ex. 4.

In addition, the Complainant provided the Respondent with a copy of his lease for 200 Sugarman Road. N.T. 26, PECO Exs. 5 and 6. The lease dated June 16, 2016 was for a term of one year. N.T. 27, PECO Ex. 5. The lease shows that Myah Smith, daughter of the Complainant, is the owner of 200 Sugarman Road. PECO Exs. 5 and 6. The Respondent searched public records and verified that Myah Smith owned the property at 200 Sugarman Road. N.T. 27.

The Respondent also searched public records to determine whether the Complainant was associated with the property at 200 Sugarman Road for the period from 2014 to 2016. N.T. 28. The records indicated that the Complainant was associated with the property at 200 Sugarman Road from 2014 to 2016. N.T. 28.

After reviewing the documents the Complainant provided and the public records concerning the Complainant, the Respondent concluded that the Complainant could have resided at 200 Sugarman Road from 2014 to 2016 and could have benefitted from the electric service provided to that address during that time period. N.T. 28. After reviewing these documents, the

Respondent issued a letter dated September 8, 2016, indicating that the Complainant could have resided at 200 Sugarman Road from 2014 to 2016 and would be responsible for the charges accrued during that time period. N.T. 28, PECO Ex. 7.

Ms. Leung testified that if the Complainant resided elsewhere from 2014 to 2016, the September 8, 2016 letter indicated that the Complainant could provide proof that he resided elsewhere. N.T. 28-29, PECO Ex. 7. Ms. Leung stated that the Complainant subsequently informed the Respondent orally that he had lived elsewhere but never provided any documentation to support this assertion. N.T. 29.

Ms. Leung asserted that, contrary to the Complainant's testimony, the Respondent would accept any payments received from the Complainant for the account for 200 Sugarman Road. N.T. 29. Ms. Leung theorized that the Complainant may have been confused because the Respondent had informed the Complainant that he would have to pay the entire balance for 200 Sugarman Road before the account would be transferred into his name. N.T. 29.

The account for 200 Sugarman Road indicates that the current balance on the account is \$5,509.21. N.T. 30, PECO Ex. 1. The account for 200 Sugarman Road indicates that Dana Winkey was enrolled in the Respondent's customer assistance program (CAP) on February 2014 and removed in December 2015 because her income was too high to qualify for the CAP. N.T. 30, PECO Ex. 1. The outstanding account balance contains \$728.24 in CAP arrears. N.T. 30. The Respondent indicated that in order for the Complainant to obtain service for 200 Sugarman Road, he must pay the total outstanding account balance. N.T. 31.

According to the Respondent's records, the account for 200 Sugarman Road was more or less current until 2015. N.T. 31, PECO Ex. 1. On June 15, 2015 there was a payment arrangement on a balance of \$1,114.00. N.T. 31, PECO Ex. 1. Since June 15, 2015, there was a payment made in July 2015, two payments in September 2015, a payment in March 2016 and a payment in July 2016. N.T. 31-32, PECO Ex. 1.

In response to the Respondent's position, the Complainant filed an informal complaint with BCS on September 9, 2016. N.T. 32, PECO Ex. 8.

BCS issued a decision on November 4, 2016 dismissing the Complainant's informal complaint. N.T. 33, PECO Ex. 9.

Having provided a brief summary of the testimony of the Complainant and the Respondent, I will now address the Complainant's argument that the Respondent provided unreasonable service by refusing to establish service in his name for the residence at 200 Sugarman Road unless he pays the outstanding account balance for that address. After reviewing the evidence, I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent provided unreasonable service or otherwise violated the Public Utility Code or Commission regulations.

The Commission's regulation at 52 Pa.Code § 56.35, governing payment of an outstanding balance by an applicant provides as follows:

§ 56.35. Payment of outstanding balance.

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the utility was not aware of because of fraud or theft on the part of the applicant.

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

(3) Any outstanding residential account with the public utility may be amortized in accordance with § 56.191 (relating to payment and timing).

(c) This section does not affect the creditor rights and remedies of a public utility otherwise permitted by law.

Here, the Respondent concluded that the Complainant resided at 200 Sugarman Road and benefitted from that service during the period from 2014 to 2016. The Respondent reached this determination, pursuant to 52 Pa.Code § 56.35(b)(2), by requiring that the Complainant provide a copy of his driver's license and lease, consistent with its tariff provision 5.1. Pursuant to 52 Pa.Code § 56.35(b)(2), the Respondent included in its tariff the methods used to determine the Complainant's liability.

A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n, 912 A.2d 386 (Pa.Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa.C.S. §1302; 52 Pa.Code § 53.25; Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa.Cmwlth. 2002). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa.Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa.Cmwlth. 2002).

Here, the Commission approved the Respondent's tariff provision 5.1 and the Respondent used the methods outlined in the tariff provision to determine that the Complainant could be responsible for the outstanding balance at 200 Sugarman Road. PECO Ex. 10. Tariff provisions previously approved by the Commission are prima facie reasonable. Zucker v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa.Cmwlth. 1981). The Respondent therefore behaved reasonably by requiring the Complainant to provide his driver's license and lease.

Furthermore, the Respondent behaved reasonably by concluding that Complainant resided at 200 Sugarman Road during the time period from 2104 t0 2016. The Complainant's driver's license issued in April 2014 showed the Complainant's address as 200 Sugarman Road. Based on the address shown on the license, the Respondent reasonably concluded that the Complainant lived at 200 Sugarman Road during the period from 2014 to 2016. The Complainant never provided the Respondent with any documentary evidence that he resided elsewhere from 2014 to 2016.

At the hearing, the Complainant again asserted that he did not reside at 200 Sugarman Road during the period from 2014 to 2016. However, on cross examination, the Complainant acknowledged that the tax returns he filed during the time period from 2104 to 2016 showed his address as 200 Sugarman Road. He also admitted that he never changed his address during the period from 2014 to 2016 but continued receiving mail at 200 Sugarman Road. I therefore conclude that the Respondent acted reasonably in concluding that the Complainant resided at 200 Sugarman Road from 2014 to 2016, benefitted from the service provided and was therefore responsible for the charges incurred during that time period.

The Complainant has failed to establish by a preponderance of the evidence that that the Respondent provided unreasonable service or otherwise violated the Public Utility Code or Commission regulations by requiring him to pay the outstanding balance for the account at 200 Sugarman Road for the period from 2014 to 2106. Since the Complainant failed to establish the allegations set forth in his complaint, I will deny the complaint and enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).
3. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa.Code § 56.35(a).
4. A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. 52 Pa.Code § 56.35(b)(2).
5. The Respondent included in its tariff the methods used to determine the Complainant's liability. 52 Pa.Code § 56.35(b)(2).
6. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n, 912 A.2d 386 (Pa.Cmwlth. 2006).
7. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa.Cmwlth. 1995).
8. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa.Cmwlth. 2002).

