

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Starry, Jr.

v.

American Power & Gas of
Pennsylvania, LLC and PPL Electric
Utilities Corporation

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C-2016-2568320

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against his electric utility and electric generation supplier (EGS) alleging that the electric utility improperly enrolled him as a customer with the EGS and asserting that the EGS overcharged him for the electricity which he was supplied. This decision dismisses the complaint because the customer has failed to show that the electric utility failed to follow Pennsylvania Public Utility Commission (Commission) regulations in processing the customer's enrollment.

HISTORY OF THE PROCEEDING

On September 26, 2016, John Starry, Jr. (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against American Power & Gas of Pennsylvania (American) and PPL Electric Utilities Corporation (PPL). The complaint essentially alleged that PPL had improperly switched the Complainant's supplier to American

and as a result the Complainant's electric bill and been incorrectly charged by double his usual bill amount.

On October 12, 2016 American filed a certificate of satisfaction with the Commission's Secretary's Bureau asserting that an agreement had been reached with the Complainant resolving the portion of the complaint relating to American. American further confirmed that the Complainant had also been provided a copy of the correspondence and had been advised of his right to object to the certificate of satisfaction within 10 days by communicating said objections to the Secretary's Bureau.

The Complainant had no correspondence or communication with the Secretary's Bureau indicating he disagreed or objected to the entry of the certificate of satisfaction.

PPL filed an answer to the formal complaint on November 14, 2016.¹ The answer admits or denies the various averments of the complaint. In particular, PPL denied that any incorrect charges had been placed on the Complainant's bill and averred that the Complainant was properly switched to American as an electric supplier on December 13, 2013 after receiving an enrollment notice for the Complainant and sending the Complainant an enrollment notification letter. In addition, PPL asserted that once it received a cancellation notice on March 17, 2014 from American indicating that the Complainant was cancelling his agreement to have American as his supplier, the Complainant was switched back to PPL and a confirmation letter was again sent to the Complainant advising him of this switch.

By notice dated December 27, 2016, the Commission scheduled this matter for an initial telephonic hearing on February 7, 2017 and assigned the case to the undersigned. A prehearing order dated December 28, 2016 was issued addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

¹ The complaint was not served on PPL by the Secretary's Bureau until October 25, 2016 as the result of a clerical processing error within that Bureau.

The telephonic hearing was conducted on February 7, 2017, at 10:00 a.m. as scheduled. The Complainant appeared pro se and presented testimony. Kimberly Krupka, Esquire represented PPL, which presented one witness who sponsored three exhibits that were admitted into the evidentiary record. Christina Hrvatin, a customer service manager with American, participated in the hearing with an observer.² The initial hearing resulted in a transcript of 35 pages. The record closed on February 21, 2017, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, the complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is John Starry, Jr. N.T. 4.
2. The first respondent in this case is American Power & Gas of Pennsylvania. N.T. 6.
3. The second respondent in this case is PPL Utilities Corporation. N.T. 5.
4. The Complainant resides at 56 Mahanoy Avenue, Tamaqua, Pennsylvania. N.T. 4.
5. PPL received an enrollment form which notified PPL that the Complainant had chosen American as his electric generation supplier (EGS). N.T. 18.
6. Upon receiving an enrollment, PPL sends a letter to the customer confirming the enrollment with the chosen supplier. N.T. 19.
7. PPL sent the Complainant such a letter on September 30, 2013. N.T. 22.

² At the time of hearing Ms. Hrvatin was mistakenly identified as counsel for American. Commission regulations require corporations such as American to be represented by counsel in proceedings before the Commission. While identifying Ms. Hrvatin as counsel was an error, it was harmless error. American provided no testimony or evidence during the hearing and but for reiterating American's attempts and willingness to work with Complainant to resolve his complaint, essentially assumed the role as an observer during the hearing.

8. The letter indicated that PPL had been notified that the Complainant had selected American as his electric generation supplier. N.T. 22-23.

9. The letter stated that unless the Complainant made contact and informed PPL that he did not agree to this enrollment, American would begin supplying electricity to the Complainant on or after October 15, 2013. N.T. 18-19, 22-23.

10. The Complainant did not make contact with PPL to object to the switch in his electric generation supplier and was switched to American as of October 15, 2013. N.T. 23.

11. In March 2014, the Complainant contacted PPL regarding his electric bill and electric supplier. PPL Ex. 1, 2.

12. In March 2014, the Complainant cancelled his enrollment with American as his electric supplier and enrolled with a new supplier. PPL Ex. 1, 2.

13. American filed a certificate of satisfaction with the Secretary's Bureau on October 12, 2016 asserting that a settlement of the complaint against American had been reached with the Complainant.

14. The Complainant never contacted the Secretary's Bureau to indicate that he disagreed or objected to the entry of the certificate of satisfaction.

15. As of February 7, 2017, the Complainant has an outstanding balance with PPL in the amount of \$3,511.93. N.T. 23.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that either PPL or American 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. Cmwlth. 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 either PPL or American. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Here the Complainant alleges that PPL improperly switched his electric generation supplier to American in October of 2013 and that American overcharged him for his electric utility. The Complainant's complaint against each Respondent will be addressed individually.

The Complaint Against American

American Power & Gas of Pennsylvania is an electric generation supplier (EGS). The Commission has limited jurisdiction over EGSs. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

American, as an EGS, is not a public utility subject to Commission regulation, except in limited circumstances. Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n, 870 A.2d 901 (Pa. 2005) (Delmarva). In Delmarva, the Pennsylvania Supreme Court held that the definition of "public utility" at 66 Pa.C.S. § 102 does not include EGSs except for the limited purposes set forth in 66 Pa.C.S. § 2809, regarding licensing requirements and 66 Pa.C.S. § 2810, regarding revenue neutral reconciliation. The Pennsylvania Supreme Court noted that the Commission could forbear from regulating EGSs, pursuant to 66 Pa.C.S. § 2809(e), if it

determined that the requirements of 66 Pa.C.S. § 2809 were unnecessary due to competition among the EGSs.

On December 22, 2014, Act 155 of 2014 became effective. Among other changes to the Public Utility Code, Act 155 added a provision at 66 Pa.C.S. § 2809(g) authorizing the Commission to establish fees to be charged for Commission activities related to the oversight of EGSs.

Here, after the Complainant filed his formal complaint on September 26, 2016, American submitted a certificate of satisfaction to the Secretary's Bureau on October 12, 2016. American certified that an agreement had been reached with the Complainant resolving the portion of the complaint relating to American. American further confirmed that the Complainant had also been provided a copy of the correspondence and had been advised of his right to object to the certificate of satisfaction within 10 days by communicating said objections to the Secretary's Bureau. The procedures by which certificates of satisfaction are governed can be found in the Commission's regulations at 52 Pa.Code § 5.24.

§ 5.24. Satisfaction of formal complaints.

(a) If the respondent satisfies a formal complaint either before or after a hearing, the complainant shall file with the Commission a certified statement to that effect. The certified statement must set forth that the complaint is satisfied and that the complaint docket should be marked closed. The presiding officer is not required to render a decision upon submission of the certified statement concerning the satisfaction of a complaint unless the parties request one for good cause.

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

(1) That the complainant has acknowledged satisfaction to the respondent.

(2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including

a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. **Unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed.** (emphasis added.)

There is no indication that the Complainant was ever in contact with the Secretary's Bureau to voice his disagreement or objection with this certificate. As such, the certificate of satisfaction became final and the portions of the complaint relating to American were thereby settled or resolved. There is therefore no complaint remaining against American that must be addressed.

The Complaint Against PPL

The Complainant has alleged that PPL improperly switched his electric generation supplier to American without his knowledge or consent and he was therefore overcharged for his electric service.

The Commission's regulation at 52 Pa.Code § 57.173(2) directs PPL to confirm the Complainant's selection of American as his EGS. The current regulation at 52 Pa.Code § 57.173 states as follows:

§ 57.173. Customer contacts the EGS to request a change in electric supply service.

When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer's EDC:

(1) The selected EGS shall notify the EDC of the customer's EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.

(2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed change of EGS or change to default

service. The notice must include the date service with the new selected EGS or default service provider will begin. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS or default service provider.

The current regulation at 52 Pa.Code § 57.173(2) does not require an electric distribution company (EDC), such as PPL to provide a customer with any time period within which to confirm his or her switch to an EGS. The current version of 52 Pa.Code § 57.173 became effective on June 14, 2014, after the events that are the subject of this complaint occurred. The Commission modified the regulations at 52 Pa.Code §§57.171-57.180 by rulemaking order at Rulemaking to Amend the provisions of 52 Pa.Code, Chapter 57 Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier, Docket No. L-2014-2409383 (Order entered April 3, 2014) (Rulemaking Order).

Prior to the Commission modifying it in the Rulemaking Order, 52 Pa.Code § 57.173(2) required an EDC to provide a customer with a ten day time period within which to confirm his or her switch to an EGS. However, as noted in the Rulemaking Order, the Commission in its order in Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier, Docket No. M-2012-2270442 (Order entered October 25, 2012) (Interim Guideline Order), waived the ten day time period established by 52 Pa.Code § 57.173(2) and required an EDC to provide a customer with a five day time period within which to confirm his or her switch to an EGS.

PPL's September 30, 2013 letter complies with the Interim Guideline Order. It provided the Complainant a 15 day period within which to object to the switching of his supplier to American as of October 15, 2013. When the Complainant did not respond within this period, PPL was obligated by Commission regulation and order to process the Complainant's EGS selection.

Based on the evidence presented, the Complainant has failed to demonstrate by a preponderance of the evidence that PPL improperly enrolled the Complainant as a customer of American, in violation of the Public Utility Code, Commission regulations and orders. To the contrary, the evidence shows that PPL provided the Complainant with the Commission-required

five day period within which to rescind his enrollment with American as his new electric generation supplier. The Complainant's simple blanket assertion that such a switch was done without his knowledge or consent, when PPL has established that such notice was provided to the Complainant as required by the Commission's regulations, is insufficient to meet his burden.

The Complainant has failed to establish that PPL enrolled him as a customer of American without his knowledge or consent. It is therefore concluded that the Complainant has failed to demonstrate by a preponderance of the evidence that PPL has violated the Public Utility Code or Commission regulations. The complaint will therefore be denied.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa.C.S. §332(a).

4. American, as an EGS, is not a public utility subject to Commission regulation, except in limited circumstances. Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n, 870 A.2d 901 (Pa. 2005).

5. The Complainant's complaint against American was resolved pursuant to the certificate of satisfaction filed by American with the Secretary's Bureau on October 12, 2016, which was never objected to by the Complainant. 52 Pa.Code § 5.24(c).

6. PPL properly complied with the regulations and procedures governing the switching of the Complainant both to, and from, American as the Complainant's EGS. 52 Pa.Code § 57.173(2).

