

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

C'Ana Navarro

v.

PECO Energy Company
(Complainant Appellant)

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F-2017-2610789

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision sustains the complaint appeal filed by PECO Energy Company at Docket No. F-2017-2610789 and vacates the Pennsylvania Public Utility Commission's (Commission's) Bureau of Consumer Services' decision at BCS Case # 3527701, which ordered the public utility to place electric service in C'Ana Navarro's name.

HISTORY OF THE PROCEEDING

On May 18, 2017, C'Ana Navarro filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) against PECO Energy Company (PECO or the Company). The informal complaint averred that PECO had requested her to pay the previous tenant's bill and to submit a copy of the lease before placing electricity service in her name. On June 1, 2017, BCS issued a decision granting C'Ana Navarro's informal complaint upon finding that she was not responsible for any charges accrued at the Service Address prior to March 31, 2017, when she turned 18 years old. BCS ordered PECO to establish service in Ms. Navarro's name within 72 hours from the date of the decision.

On June 7, 2017, PECO filed a formal complaint challenging the BCS decision. Specifically, PECO alleged that the BCS decision was erroneous because it disregarded evidence suggesting that C'Ana Navarro's application for service was an effort for the lease holder, April Navarro, to avoid responsibility for the accrued balance of \$7,079.05. As relief, PECO requested that the Commission overturn the decision issued by BCS on June 1, 2017, at BCS Case # 3527701.

Ms. Navarro did not file an Answer.

A Hearing Notice dated August 8, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, October 5, 2017, at 10:00 a.m.

A Prehearing Order was issued on September 13, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled. Neither C'Ana Navarro nor counsel for her appeared at the hearing. The hearing convened at approximately 10:28 a.m. after I confirmed that C'Ana Navarro had not called, or otherwise shown good cause not to appear at the scheduled hearing. Shawane Lee, Esq. appeared representing PECO Energy Company and presented the testimony of Renee Tarpley, who is a senior regulatory assessor with PECO in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored 10 exhibits, which were admitted into the record in this matter.

The record closed on November 6, 2017, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. The complainant-appellant is PECO Energy Company, a jurisdictional public utility.

2. C'Ana Navarro resides at 342 Mount Pleasant Street, Coatesville, PA 19320 (Service Address). Tr. 11.

3. C'Ana Navarro resides at the Service Address with her mother, April Navarro. Tr. 11-12, PECO Exhibit 6.

4. During the period January 2009 to May 2010, April Navarro was the ratepayer of record with PECO for electricity service at 475 Old Wilmington Road, Coatesville, PA 19320 where she resided with her then minor daughter, C'Ana Navarro. Tr. 12-13, PECO Exhibit 1.

5. April Navarro's electricity account for the 475 Old Wilmington Road address was finalized by PECO on August 16, 2010, with an outstanding balance of \$9,365.05. *Id.*

6. PECO sold April Navarro's final balance of \$9,365.05 to a collection agency. *Id.*

7. On October 2, 2014, Kelsey Walton applied to become the ratepayer of record for electricity service at the Service Address. Tr. 13, PECO Exhibit 2.

8. On June 17, 2015, Kelsey Walton entered into a payment arrangement with PECO, upon reporting that her monthly household income was \$2,016.00 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 16-year-old C'Ana Navarro. Tr. 14-15, PECO Exhibit 4.

9. On June 17, 2015, PECO verified the household information provided by Kelsey Walton in order to determine her eligibility for enrollment in PECO's Customer Assistance Program (CAP). Tr. 15, PECO Exhibit 4.

10. On April 11, 2016, Kelsey Walton entered into another payment arrangement with PECO, upon reporting that her monthly household income was \$2,634.00 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 17-year-old C'Ana Navarro. Tr. 16, PECO Exhibit 4.

11. On October 24, 2016, Kelsey Walton entered into another payment arrangement with PECO, upon reporting that her monthly household income was \$3,291.43 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 17-year-old C'Ana Navarro. Tr. 16, PECO Exhibit 4.

12. On November 14, 2016, PECO terminated service at the Service Address due to nonpayment. Tr. 17.

13. As of the day of the hearing, Kelsey Walton's outstanding balance with PECO for electric service at the Service Address was \$7,458.44. Tr. 17, PECO Exhibit 2.

14. C'Ana Navarro turned 18 years old on March 31, 2017. Tr. 20, PECO Exhibit 5.

15. On or about April 19, 2017, C'Ana Navarro applied to have electric service at the Service Address placed under her name. Tr. 17-20.

16. As part of the application process, PECO asked C'Ana Navarro to submit one identifying document along with a copy of the lease for the Service Address. Tr. 18-19.

17. On April 19, 2017, C'Ana Navarro submitted to PECO a copy of her Pennsylvania Identification Card which was issued on November 17, 2016, and listed the Service Address as her address. Tr. 19-20, PECO Exhibit 5.

18. Also on April 19, 2017, C'Ana Navarro submitted to PECO a copy of a lease for the Service Address listing both April Navarro and C'Ana Navarro as tenants. Tr. 21-22, PECO Exhibit 6.

19. The terms of the lease began January 16, 2017. Tr. 21-23, PECO Exhibit 6.

20. The lease was dated April 16, 2017, and was signed by both April Navarro and C'Ana Navarro. Tr. 24, PECO Exhibit 6.

21. Suspecting that the residents at the Service Address were engaged in a "name game"¹ and that the lease was invalid, PECO denied C'Ana Navarro's application to place electric service at the Service Address under her name. Tr. 24.

22. On May 18, 2017, C'Ana Navarro filed an informal complaint with the Commission's BCS at BCS Case # 3527701, alleging that PECO had requested her to pay the previous tenant's bill and to submit a copy of the lease before placing electricity service in her name. Tr. 8-10, PECO Exhibit 7.

23. On June 1, 2017, BCS issued a decision at BCS Case # 3527701, granting Ms. Navarro's informal complaint upon finding that she is not responsible for any charges accrued at the Service Address prior to March 31, 2017, when she turned 18 years old, and ordering PECO to establish service in Ms. Navarro's name within 72 hours from the date of the decision. Tr. 10, PECO Exhibit 7.

24. On June 1, 2017, PECO placed electric service for the Service Address in C'Ana Navarro's name. Tr. 29-30, PECO Exhibit 3.

¹ The "name game" is a form of abuse of the administrative system where "a member of the family steps in when a bill gets too high and takes over the [utility] account, thereby [unlawfully] relieving the family of the payment of the first bill, and then starts afresh." See *Agnes Manu v. Philadelphia Gas Works*, Docket No. F-2010-2191737, (Final Order entered July 24, 2012).

25. As of the day of the hearing, C'Ana Navarro had made no payments towards her new account with PECO, accumulating an outstanding balance of \$536.12. Tr. 31, PECO Exhibit 3.

DISCUSSION

Before considering the merits of PECO's appeal of the BCS decision, C'Ana Navarro's failure to appear at the hearing must be addressed. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the parties are accorded notice and the opportunity to appear and be heard.

A Hearing Notice dated August 8, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, October 5, 2017, at 10:00 a.m. A Prehearing Order was issued on September 13, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

None of the documents mailed to Ms. Navarro was returned to the Commission by the United States Postal Service as undeliverable. Accordingly, there is a presumption in the law that C'Ana Navarro received the Hearing Notice and Prehearing Order. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Superior Ct. 1997); and *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (1982).

No communication was received by the undersigned presiding officer from C'Ana Navarro in either an oral or written form requesting a continuance or providing an explanation for her failure to participate at the hearing. Additionally, the Commission's file in this case does not contain any communication from her requesting a continuance of the scheduled hearing.

Once timely notice of a hearing and the opportunity to be heard have been provided, it is then the responsibility of each party to be present and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993). After due notice, C'Ana Navarro elected not to participate in the hearing. Accordingly, her due process rights have been fully protected.

In the present case, PECO is challenging a decision made by BCS. Section 56.403 of the Commission's regulations permits a utility to challenge a BCS decision. 52 Pa.Code § 56.403. Section 56.403(f) provides that the burden of proof remains with the party who filed the formal complaint. 52 Pa.Code § 56.403(f). Therefore, it is PECO's burden to prove by the preponderance of the evidence that it is entitled to the relief requested. *See Hackett v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2012-2308429 (Initial Decision dated August 16, 2013, Final Order entered October 16, 2013) (interpreting identical language in 52 Pa.Code § 56.173). Review of a decision by BCS is *de novo*. 52 Pa.Code § 56.403(a).

At the hearing, PECO's witness, Renee Tarpley, testified that C'Ana Navarro resides at the Service Address with her mother, April Navarro. Tr. 11-12. During the period from January 2009 to May 2010, April Navarro was the ratepayer of record with PECO for electricity service at 475 Old Wilmington Road, Coatesville, PA 19320 where she resided with her then minor daughter, C'Ana Navarro. Tr. 12-13, PECO Exhibit 1. On August 16, 2010, PECO finalized April Navarro's electricity account for the 475 Old Wilmington Road address. April Navarro's outstanding balance with PECO at the time was \$9,365.05. *Id.* PECO sold April Navarro's final balance to a collection agency. *Id.*

On October 2, 2014, Kelsey Walton applied to become the ratepayer of record for electricity service at the Service Address. Tr. 13, PECO Exhibit 2. On June 17, 2015, Kelsey Walton entered into a payment arrangement with PECO, upon reporting that her monthly household income was \$2,016.00 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 16-year-old C'Ana Navarro. Tr. 14-15, PECO Exhibit 4. This information was verified by PECO in order to determine Kelsey Walton's eligibility for enrollment in PECO's CAP program. Tr. 15, PECO Exhibit 4.

On April 11, 2016, Kelsey Walton entered into another payment arrangement with PECO, upon reporting that her monthly household income was \$2,634.00 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 17-year-old C'Ana Navarro. Tr. 16, PECO Exhibit 4. On October 24, 2016, Kelsey Walton entered into a third payment arrangement with PECO, this time reporting that her monthly household income was \$3,291.43 and that she resided at the Service Address along with another adult, April Navarro, and a child, then 17-year-old C'Ana Navarro. Tr. 16, PECO Exhibit 4.

On November 14, 2016, PECO terminated service at the Service Address due to nonpayment. Tr. 17. As of the day of the hearing, Kelsey Walton's outstanding balance with PECO for electric service at the Service Address was \$7,458.44. Tr. 17, PECO Exhibit 2.

C'Ana Navarro turned 18 years old on March 31, 2017. Tr. 20, PECO Exhibit 5.

On or about April 19, 2017, C'Ana Navarro applied to have electric service at the Service Address placed under her name. Tr. 17-20. As part of the application process, PECO asked C'Ana Navarro to submit one identifying document along with a copy of the lease for the Service Address. Tr. 18-19. On April 19, 2017, C'Ana Navarro submitted to PECO a copy of her Pennsylvania Identification Card. Tr. 19-20, PECO Exhibit 5. The Identification Card was issued on November 17, 2016, and listed the Service Address as her address. *Id.*

Also on April 19, 2017, C'Ana Navarro submitted to PECO a copy of a lease for the Service Address listing both April Navarro and C'Ana Navarro as tenants. Tr. 21-22, PECO Exhibit 6. Pursuant to the language of the lease, its terms commenced on January 16, 2017. Tr. 21-23, PECO Exhibit 6. Even though the terms of the lease commenced on January 16, 2017, the lease was dated April 16, 2017, and was signed by both April Navarro and C'Ana Navarro. Tr. 24, PECO Exhibit 6.

Because C'Ana Navarro would have been a minor at the time the lease for the Service Address commenced, PECO suspected that the lease was fraudulent and invalid. Tr. 23-24. PECO contacted the landlord named in the lease, who denied that a new lease was entered

into on April 16, 2017, but confirmed that April Navarro resided at the Service Address. Tr. 24. Suspecting that the residents at the Service Address were engaged in a name game, PECO denied C'Ana Navarro's application to place electric service at the Service Address under her name. *Id.*

Following BCS' resolution of C'Ana Navarro's informal complaint at BCS Case # 3527701, PECO immediately placed electricity service for the Service Address in C'Ana Navarro's name. Tr. 29-30. However, as of the day of the hearing, C'Ana Navarro had made no payments towards her new account with PECO, and thus had accumulated an outstanding balance of \$536.12. Tr. 31.

PECO requested review of the BCS decision at BCS Case # 3527701 arguing that it violated the provisions of PECO's Commission-approved tariff. In particular, PECO pointed out that Rule 5.1 of PECO Tariff Electric Pa. PUC No. 5, original Page No. 13, which became effective January 1, 2016, states that "the Company may at its discretion determine liability for a past due balance by: 1) use of Company records that contain information previously provided to the Company; 2) information contained in a valid mortgage, lease, deed or renter's license; 3) use of commercially available public records databases; 4) government and property ownership records." Tr. 25-26, PECO Exhibit 10. In the present case, PECO used the information that was submitted for Kelsey Walton's account for the Service Address, as well as the lease submitted by C'Ana Navarro on April 16, 2017, to determine that April Navarro had benefited from the service at the Service Address in the past when the account was in Kelsey Walton's name, and continues to benefit from the service in the present while the service remains in C'Ana Navarro's name, and is therefore liable for the balance accrued in those accounts. Tr. 26-29. This, in addition to April Navarro's prior account history at the 475 Old Wilmington Road address, convinced the Company that she and her daughter, C'Ana Navarro, are engaged in the name game in order to allow April Navarro to evade responsibility for the balance accrued in connection with service at the Service Address. Tr. 29.

In addition, PECO pointed out that Rule 4.3 of PECO Tariff Electric Pa. PUC No. 5, original Page No. 12, which became effective on January 1, 2016, provides in pertinent part that "the Company ... may reject applications for service: ...for bad credit or for other good and

sufficient reasons.” Tr. 28-29, PECO Exhibit 9. PECO argued that the Company was within its rights to reject service to C’Ana Navarro due to bad credit and “for good and sufficient reasons,” i.e. engaging in the name game with April Navarro. Tr. 29. Consequently, PECO maintained that its original denial of C’Ana Navarro’s application was correct as it complied with the provisions of its Commission-approved tariff.

A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossmann v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa.Cmwlt. 1997). The Pennsylvania Public Utility Code (the Code), defines an applicant as “A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.” 66 Pa.C.S. § 1403. (Emphasis added). In addition, the Code defines creditworthiness as “an assessment of an applicant's or customer's ability to meet bill payment obligations for utility service.” *Id.*

Furthermore, the Commission’s regulations allow a public utility to require, as a condition of the furnishing of residential service to an applicant, 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. 52 Pa.Code § 56.35 (b)(1). Additionally, 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).

After carefully reviewing the evidence collected at the evidentiary hearing, I find that C’Ana Navarro was engaged in the name game in order to allow her mother, April Navarro, and potentially Kelsey Walton, to evade responsibility for the balance accrued at the Service Address. The timeline of the events that led to C’Ana Navarro’s application for electricity service at the Service Address supports this finding. In particular, PECO terminated service at

the Service Address on November 14, 2016, due to nonpayment. On November 17, 2016, C’Ana Navarro obtained a PA Identification Card listing the Service Address as her address. She turned 18 years old on March 31, 2017, and a mere 20 days later, she applied to have electric service at the Service Address placed under her name. Tr. 17-20. It is also very telling that C’Ana Navarro made no payments whatsoever towards her new account with PECO during the four months that she had service in her name (June 1, 2017 – October 5, 2017).

It is important to note that in the present case PECO is not holding C’Ana Navarro responsible for the balance accrued at the Service Address while she was a minor. Instead, PECO is holding April Navarro, and potentially Kelsey Walton, responsible for that balance and is denying C’Ana Navarro’s application for service because April Navarro continues to reside at the Service Address with her. I find that PECO complied with the provisions of its Commission-approved tariff when it denied service to C’Ana Navarro.

In view of the above, PECO is permitted to deny C’Ana Navarro’s application for service at the Service Address. Within 15 days of the date the Commission enters its Order in this case, but not earlier than April 1, 2018, PECO shall terminate the electricity service at the Service Address and finalize the account that BCS ordered PECO to establish for C’Ana Navarro.²

CONCLUSIONS OF LAW

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

² Pursuant to the winter moratorium provisions at 52 Pa.Code § 56.100(b), an electric distribution utility, like PECO, may not terminate service to customers with household incomes at or below 250% of the Federal poverty level during the period of December 1 through March 31. Because C’Ana Navarro did not appear at the scheduled hearing, the record contains no information regarding her current household income. However, the record indicates that the household income of the residents at the Service Address, including C’Ana Navarro, was below 250% of the Federal Poverty level in 2015 and 2016. See FoF ## 8-11.

2. The party filing the Complaint bears the burden of proving that it is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; and *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa.Cmwlt. 1997).

4. An applicant is a natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. 66 Pa.C.S. § 1403.

5. Creditworthiness is defined as “an assessment of an applicant's or customer's ability to meet bill payment obligations for utility service.” 66 Pa.C.S. § 1403.

6. A public utility may require, as a condition of the furnishing of residential service to an applicant, 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. 52 Pa.Code § 56.35 (b)(1).

7. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint appeal of PECO Energy Company in the case of C’Ana Navarro v. PECO Energy Company, docketed with the Pennsylvania Public Utility Commission at Docket No. F-2017-2610789 is hereby sustained.
2. That the decision of the Bureau of Consumer Services at BCS Case # 3527701 sustaining C’Ana Navarro’s informal complaint is vacated.
3. That within 15 days of the date the Commission enters its Order in this case, but not earlier than April 1, 2018, PECO Energy Company shall terminate the electricity service at 342 Mount Pleasant Street, Coatesville, PA 19320 and finalize the account established in C’Ana Navarro’s name.
4. That upon completion of the provisions of this Order, the Secretary’s Bureau should mark this matter closed.

Date: February 2, 2018

/s/
Eranda Vero
Administrative Law Judge