

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Metzger	:	
	:	
v.	:	C-2019-3007571
	:	
Pike County Light and Power Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric utility regarding her inability to choose an electric supplier. This decision denies the complaint as the customer has failed to demonstrate that the utility has violated the Public Utility Code, a Commission order, regulation or Commission-approved tariff.

HISTORY OF THE PROCEEDING

On January 24, 2019, Dawn Metzger (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pike County Light and Power Company (Respondent) at Docket No. C-2019-3007571. Complainant indicated that she was interested in choosing Direct Energy as her electric supplier, rather than the Respondent, but was unable to due to issues with Respondent’s infrastructure. The Complainant requested that the Commission issue an order directing Respondent to make the necessary improvements to its systems so that she would be able to choose another electric supplier.

On February 19, 2019, Respondent filed an answer to the complaint and new matter. In its answer, Respondent either admitted or denied the various averments of the complaint. While Respondent admitted that currently no electric generation suppliers have offers within the Respondent's territory, Respondent specifically denied that it had prevented the Complainant from switching to a new electric supplier or otherwise put up barriers to prevent suppliers from making such offerings to Respondent's customers.

In its new matter, Respondent noted that in previous default service proceedings it had obtained an ongoing waiver from the Commission relating to Electronic Data Interchange (EDI) processes. While the Respondent was required to participate in collaboration with other parties to address EDI issues moving forward, the Commission was not requiring Respondent to implement EDI at the present time. Respondent therefore argued that it was meeting all its applicable regulatory requirements and could not be found in violation of a law, regulation or Commission order.

On February 26, 2019 Complainant filed a response to Respondent's new matter. Complainant admitted or denied the averments found therein. Complainant argued that Respondent had violated the law because it had not allowed other suppliers to participate within its territory and had denied customers the ability to choose their electric supplier.

On March 12, 2019, the Commission issued a telephonic hearing notice assigning this matter to me and scheduling it for hearing on April 18, 2019. A prehearing order was issued on March 14, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing was conducted as scheduled on April 18, 2019. The Complainant appeared *pro se* and sponsored one exhibit consisting of several documents which were collectively admitted into the record without objection. Attorney Whitney Snyder represented the Respondent, which presented one witness who sponsored seven exhibits that were admitted into the record without objection. The initial hearing resulted in a transcript of 47 pages.

The record closed on April 18, 2019, at the conclusion of the initial hearing. For the reasons set forth below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Dawn Metzger.
2. The Respondent is Pike County Light and Power Company.
3. The Complainant resides at 178 Christian Hill Road, Milford, PA.
4. The Respondent is the Complainant's default service provider for electricity.
5. For approximately five years the Complainant's electric supplier was Constellation. N.T. 11.
6. In September 2018 the Complainant's supplier contract with Constellation ended. N.T. 11.
7. In September 2018 the Complainant received information from Constellation that it was no longer going to be an electric supplier in her area. N.T. 11-12.
8. The Complainant's electric supplier defaulted to the Respondent in September 2018. N.T. 7.
9. The Complainant contacted Direct Energy to enroll as a customer for her electric supply. N.T. 8-9, 12.

10. The Complainant was initially told that Direct Energy was happy to enroll her as a customer but that there was a delay in her enrollment which would be resolved in 30 days. N.T. 8-9.

11. Direct Energy is not currently enrolling new customers within the Respondent's service territory. N.T. 20.

12. No electric supplier is offering enrollment to new customers within the Respondent's service territory. N.T. 7.

13. Whether an electric supplier decides to offer enrollment to new customers within a service territory is a business decision made by the supplier. N.T. 21.

14. On March 10, 2016, the Commission issued an opinion and order in Docket No. P-2015-2490141 granting the Respondent's petition for approval of its default service implementation plan for the period of June 1, 2016 through May 31, 2018. N.T. 23; PCLP Ex. No. 1.

15. The Commission's opinion and order also granted the Respondent a waiver of the electronic data interchange rules established in *Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers*, Docket No. M-00960890F0015 (Order entered May 10, 2012). N.T. 23; PCLP Ex. No. 1.

16. On November 13, 2017, Respondent filed a petition with the Commission at Docket No. P-2017-2633745 seeking approval to extend its default service program and waiver of the electronic data interchange rules. N.T. 24-25.

17. No action was taken by the Commission on this petition and it was therefore approved by operation of law. N.T. 25.

18. The Commission extended by non-action Respondent's default service plan and waiver of EDI requirements through 2019. N.T. 26.

19. On January 17, 2019 the Commission issued an order in Docket No. P-2018-3002709 adopting a recommended decision dated November 30, 2018 which recommended approval of a settlement relating to the Respondent's default service plan and waiver of the Commission's regulations relating to EDI requirements. N.T. 27; PCLP Ex. No. 5a.

20. The Respondent is required as part of that settlement to enter into a collaborative, which includes Direct Energy, to work on the sharing of information and implementation of information standards. N.T. 28; PCLP Ex. No. 5b.

21. The Respondent has been working through this collaborative with Direct Energy and has conducted two meetings as required by the Commission. N.T. 29-30.

22. On September 28, 2018, Respondent filed a petition in Docket No. P-2018-3005165, seeking a waiver of the Commission's regulations relating to EDI and customer switching. PCLP Ex. No. 6.

23. By order entered February 19, 2019, the Commission granted Respondent's petition for a waiver of the Commission's EDI requirements. N.T. 29; PCLP Ex. No. 6.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent has violated the Public Utility Code, a Commission order, regulation or Commission-approved tariff and is therefore responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The

Complainant must establish her 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 her 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, 364 Pa. 45, 70 A.2d 854 (1950).

The Complainant has argued that the Respondent has failed to comply with the Public Utility Code and the Commission's regulations by blocking her ability to enroll with the electric supplier of her choice.

In September 2018 the Complainant's contract with Constellation, her electric supplier, ended. N.T. 11. At that time the Complainant received information from Constellation that it was no longer going to be an electric supplier in her area. N.T. 11-12. The Complainant's electric supplier defaulted to the Respondent. N.T. 7. The Complainant wished to shop for a new electric supplier and contacted Direct Energy to enroll as a customer for her electric supply. N.T. 8-9, 12. The Complainant was initially told that Direct Energy was happy to enroll her as a customer but that there was a delay in her enrollment which would be resolved in 30 days. N.T. 8-9. It was later determined that Direct Energy was not currently enrolling new customers within the Respondent's service territory. N.T. 20. In fact, since the Complainant began shopping for a new electric supplier in September 2018, no electric supplier has been offering enrollment to new customers within the Respondent's service territory. N.T. 7.

The Respondent does not refute that the Complainant has been unable to enroll with an alternate electric supplier. Respondent has, however, provided testimony and evidence to show that it has not prevented suppliers from either offering services or enrolling customers in its service territory. It is solely a business decision on behalf of a supplier whether it chooses to enroll customers in any given service area. N.T. 21. In addition, the evidence presented by the Respondent shows that the Commission has granted the Respondent a waiver of the EDI requirements under the Commission's regulations. N.T. 29; PCLP Ex. No. 6. The requirements relate to the manner and types of customer information which may be exchanged between a default service provider such as the Respondent and an electric supplier such as Direct Energy

when a customer wishes to switch suppliers. In addition, the Respondent continues to comply with the Commission's order relating to the formation of a collaborative with Direct Energy to develop an information sharing strategy. N.T. 29-30.

In Docket No. P-2018-3005165, the Commission found that Respondent qualified for a waiver from the EDI and customer switching time requirements of 52 Pa. Code § 57.174 and all of the EDI requirements of the Commission's June 19, 1998 order, *Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers* at Docket No. M-00960890F0015 as well as all other EDI requirements contained in subsequent Commission order at Docket No. M-00960890. PCLP Ex. No. 6. In the order issued by the Commission in that docket, the Commission found that it was in the public interest to waive the requirement for Respondent to implement and use the established EDI standards to execute a customer's change in electric supply services. The Commission found it significant that Respondent was a small electric distribution company with only 4,764 customers and that the cost estimate to implement EDI of approximately \$345,000.00 along with an ongoing annual cost estimate of approximately \$37,500.00 would be a significant burden to Respondent's customers.

It is undisputed that the Complainant is unable to choose an alternate electric supplier. However, this is the result of no suppliers currently offering to enroll new customers within the Respondent's territory – not the result of any obstruction by the Respondent. Whether an electric supplier such as Direct Energy chooses to enroll customers in a given service territory is a business decision made solely by that supplier.

There is no doubt that Direct Energy's business decision is based at least in-part on the Respondent's ability to convey and exchange customer information electronically should a customer such as the Complainant wish to enroll with Direct Energy as a supplier. However, Respondent has demonstrated that not only has it obtained a continuing waiver of all of the Commission's regulations relating to EDI, it is also complying with the Commission's order to continue to engage in a collaborative with Direct Energy to develop an information sharing strategy for customer enrollment purposes. While the Complainant may wish to shop for an

electric supplier but has been unable to do so, she has failed to show that such an inability is the result of the Respondent violating the Public Utility Code, a Commission order, regulation or Commission-approved tariff. The complaint is therefore dismissed.

CONCLUSIONS OF LAW

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

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

3. The Respondent has obtained a waiver of the Commission's Electronic Data Interchange and customer switching time requirements. 52 Pa. Code § 57.174; Order at Docket No. P-2018-3005165.

4. Complainant has failed to demonstrate that Respondent has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Dawn Metzger against Pike County Light and Power Company at Docket No. C-2019-3007571 is hereby dismissed.

