

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

600 Scranton, LLC	:	
	:	
v.	:	C-2019-3014952
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

For the reasons stated herein, this Decision denies the Petition to Intervene filed by AKSD Discount Stores a/k/a P&R Discounts at this docket. A separate Order is being issued at this docket with respect to the scope of this proceeding.

**HISTORY OF THE PROCEEDINGS**

On December 13, 2019, 600 Scranton LLC (600 Scranton or Complainant) filed a Complaint against PPL Electric Utilities Corporation (PPL or Respondent) alleging that PPL had misbilled Complainant and had failed to provide notice before service was terminated in December, 2019. Complainant requested the following relief:

1. Order PPL to honor the request of 600 Scranton for an Audit of the Electric Service on the Sugarmans Premises for the purpose of reducing consumption and demand pursuant to Act 129;
2. Order PPL to replace the primary Meter for the 600 Scranton Electric Service which is inaccurate and at the End of its Service Life with a Smart Meter pursuant to Act 129;

3. Order PPL to honor the demand of 600 Scranton LLC for installation of separate Smart Meters providing service to the remaining two unmetered Tenants (Kost Tire, P&R Discount Foods) pursuant to Act 129; and
4. An appropriate remedy for the unauthorized assignment of Rate LP-4 RTP and violation of the Default Provider Requirements, that being a recalculation of the Rate charged to 600 Scranton for the period July 1, 2017 to the present from LP-4 RTP to the PPL Basic Rate LP-4.

Complaint, p. 36.

On January 2, 2020, PPL filed an Answer to the Complaint admitting in part and denying in part the assertions therein. PPL denied that it had violated any provision of the Public Utility Code or the regulations of the Commission. PPL specifically denied that at any point in time did PPL bill Complainant for service at any rate other than the rate Complainant is legally obligated to pay. PPL denied that it had charged Complainant a rate without proper notice and authorization. PPL asserted that all rates billed were as set forth in PPL's published tariff. PPL denied that it had engaged in any activities which prevented Complainant from implementing energy efficiency and conservation measures. PPL denied any failure to notify Complainant of a prospective termination of services. Answer of PPL at ¶ 4.

On January 9, 2020, a Hearing Notice was issued setting a telephonic hearing in this case for February 20, 2020.

On January 17, 2020, Complainant filed a Motion requesting that the hearing on February 20, 2020, be converted to a Prehearing Conference to facilitate discovery, among other matters. PPL did not file an Answer to that Motion.

On February 6, 2020, AKSD Discount Stores a/k/a P&R Discounts (AKSD or Petitioner) filed a Petition to Intervene in this matter pursuant to 52 Pa. Code § 5.71 *et seq.*

On February 14, 2020, Complainant filed an Answer to AKSD's Petition to Intervene in which Complainant asked that the Petition be denied as factually inaccurate and legally insufficient.

On February 20, 2020, a telephonic on the record initial Prehearing Conference took place originating from the Commission's office in Harrisburg, Pennsylvania. Thomas Jones, Jr., Esquire appeared on behalf of the Complainant. Also participating was David Kurtz, acting General Manager of 600 Scranton. Kimberly G. Krupka, Esquire, appeared on behalf of PPL. Nyles R. Wren, Esquire, appeared on behalf of AKSD. A transcript of 49 pages was produced and filed by the court reporting service on March 3, 2020.

#### FINDINGS OF FACT

1. On December 13, 2019, 600 Scranton LLC filed a Complaint against PPL Electric Utilities Corporation alleging that PPL had misbilled Complainant and had failed to provide notice before service was terminated in December, 2019.

2. On February 6, 2020, AKSD Discount Stores a/k/a P&R Discounts, a seller of perishable goods (fresh food), filed a Petition to Intervene in this matter pursuant to 52 Pa. Code § 5.71 *et seq.* Tr. 7.

3. On February 14, 2020, Complainant 600 Scranton, LLC, filed an Answer to AKSD's Petition to Intervene in which Complainant asked that the Petition be denied as factually inaccurate and legally insufficient.

4. On February 20, 2020, a telephonic, on the record initial Prehearing Conference, took place originating from the Commission's office in Harrisburg, Pennsylvania during which argument was presented relative to the Petition to Intervene.

5. AKSD is a lessee of 600 Scranton, LLC. Tr. 17-18.

6. AKSD, which is not separately metered, pays 600 Scranton, LLC, for electric service. Tr. 20, 33.

7. 600 Scranton, LLC, bills AKSD a share of the cost of electric service at the site it leases to AKSD and other businesses. Tr. 17-18.

8. Service to the leased premises where AKSD is located was off from December 12-16, 2019, due to a billing dispute between PPL and 600 Scranton, LLC. Tr. 9-10.

9. 600 Scranton, LLC, is the customer of record with usage recorded from a single meter, so the electric bill is in the name of 600 Scranton, LLC. Tr. 28; 33-34.

10. AKSD does not receive a bill from PPL. Tr. 17-18.

11. AKSD received no termination notice from PPL. Tr. 17.

12. AKSD describes its interest in this case as twofold: (1) AKSD would like to receive notice of any prospective termination of service; and, (2) that any prospective, separate metering of AKSD's usage remain in the name of 600 Scranton. Tr. 17-19.

13. There has been litigation before a Court of Common Pleas with respect to lease issues between AKSD and 600 Scranton, LLC, at least one of which involves AKSD's responsibility for paying 600 Scranton, LLC, for electric service. Tr. 20-21; 31; 38-39.

### DISCUSSION

The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76 The provision at 52 Pa. Code § 5.72 governs which persons or entities are eligible to intervene in a proceeding and states as follows:

#### **§ 5.72. Eligibility to intervene.**

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth*. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a) (1)-(3).

52 Pa. Code § 5.72.

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pa. Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

Petitioner AKSD contends that it has an interest which may be directly affected by the outcome of this proceeding and which is not adequately represented by existing participants, and as to which the Petitioner may be bound by the action of the Commission in this proceeding. 52 Pa. Code § 5.72(2). Petitioner AKSD avers that it is a lessee on a part of Complainant's property and that Petitioner pays Complainant an electric bill monthly as part of the lease requirements. Petitioner avers that its business is not separately metered and that it received no notice of the possibility of an interruption of service.<sup>1</sup> AKSD argues that as it is a seller of perishable goods, an interruption of service could cause significant damage to its business.

AKSD describes its interest in this case as twofold: (1) AKSD would like to receive notice of any prospective termination of service; and, (2) that any separate metering of AKSD's usage remain in the name of 600 Scranton. AKSD stated that this is, essentially, why it is seeking to intervene in this matter.<sup>2</sup> Neither of these requests are within the authority of the Commission to grant, and thus they cannot serve as a basis for intervention. As attorney Krupka

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<sup>1</sup> Tr. 17-18.

<sup>2</sup> Tr. 19.

explained, PPL is not required by law to provide a termination notice to any party but the account holder, in this case 600 Scranton. As such, the Commission cannot order PPL to provide termination notices to AKSD. Furthermore, any responsibility or duty on the part of 600 Scranton to warn AKSD of a possible termination of service is beyond the scope of the Public Utility Code and the regulations of the Commission.

With regard to AKSD's second request, PPL may only bill the party whose name is on the account, and the electric meter must be in the name of the account holder.<sup>3</sup> This does not preclude AKSD from having separately metered electric service, but that is a matter between the parties which is beyond the Commission's authority to order.

AKSD's interest centers around the billing for electricity use that it receives as a lessee from its lessor 600 Scranton. That billing arrangement is intrinsic to the lease between AKSD and 600 Scranton, and the Commission has no authority to consider a dispute based on the terms of that lease, nor can the Commission determine the liability of AKSD with respect to its payment to 600 Scranton.<sup>4</sup> While a resolution of the issue of any amount owed to PPL by 600 Scranton might impact AKSD, that resolution a matter of tariff interpretation between the utility and its customer as agreed to by those parties or as determined by the Commission. Any impact on AKSD will be governed by its lease with 600 Scranton which the Commission has no authority to interpret. In sum, AKSD has not established an interest which may be directly affected in this proceeding and which is not adequately represented by existing participants, *and as to which the petitioner may be bound by the action of the Commission in the proceeding.* Again, the Commission does not have the authority to take action with respect to the provisions of the lease between AKSD and 600 Scranton.

With respect to the loss incurred by AKSD during the December, 2019 outage, AKSD acknowledged that it is not seeking damages in this proceeding, but mentioned the loss

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<sup>3</sup> Tr. 22.

<sup>4</sup> It appears that there has been litigation before a Court of Common pleas with respect to lease issues between AKSD and 600 Scranton. While a determination by the Commission of a public utility issue within the jurisdiction of the Commission posed by 600 Scranton *might* have some relevancy to such litigation, the Commission is not a forum for collateral litigation.

associated with the outage, “. . . to give viability to our request to intervene because of the great loss we did have. The loss we anticipate will be adjusted in a different court at a different time.”<sup>5</sup> The amount of loss allegedly sustained by AKSD is admitted by AKSD to be outside the jurisdiction of the Commission. Therefore, the loss and the amount of loss allegedly sustained does not provide a basis for intervention.

With respect to notice of any termination, PPL has a duty to inform 600 Scranton of any prospective termination of service. PPL has no legal duty to inform 600 Scranton’s lessees of a pending termination of service. The duty of 600 Scranton, if any, to warn AKSD of a prospective termination of service is outside of the jurisdiction of the Commission and so is not a basis for granting intervention.

If AKSD is concerned that it might suddenly be made responsible for an electric bill by PPL without notice, then I believe that concern was adequately addressed by counsel for PPL at the Prehearing Conference. Attorney Krupka stated, correctly, that only AKSD can ask to have service put in its name. It will not be done by PPL at the request of any third party.<sup>6</sup>

I note that Complainant 600 Scranton opposes the requested intervention. On February 14, 2020, Complainant 600 Scranton filed an Answer to AKSD’s Petition to Intervene in which Complainant asked that the Petition be denied as factually inaccurate and legally insufficient, stating in part: “There is absolutely no possible way Petitioner has an interest in a Complaint involving Billing issues between Complainant and Respondent [PPL] exclusively, and there is no possibility at all [that] the Administrative Law Judge in this Case will take any action or make any Ruling binding on the Petitioner.” Answer to AKSD’s Petition to Intervene, ¶ 5. I agree. While an administrative law decision may have some bearing on civil litigation, this case is not analogous to, say, the interest of a landowner whose property is about to be affected by the utility placing a structure on that property, nor is this a rate case in which the utility has requested the approval of rates not yet authorized by its tariff but which may be passed

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<sup>5</sup> Tr. 18-19.

<sup>6</sup> Tr. 28-29. Further, AKSD maintains that, “. . . [I]f the court were to outline the fact that only on the request of P&R (AKSD) would there be any possibility of a charge or setting up a meter in P&R’s favor, that would be an acceptable concluding of . . . intervention.” Tr. at 41. I believe that PPL was clear on this issue: only AKSD can ask to have service put in its name. It will not be done by PPL at the request of any third party. Tr. at 40-42.

on to ratepayers. The rates, terms and conditions of service at issue, here, have already been decided by the Commission and made part of PPL's filed tariff. Those will not change as a result of this proceeding.

In sum, AKSD's issues are entirely with 600 Scranton and are controlled by the terms of the lease between those entities. The Commission has no jurisdiction to address those issues. The Public Utility Code is concerned with the Commission's regulation of public utilities. While it is certainly possible for a private entity to bring a complaint against a utility under Section 1501 of the Code, AKSD has not shown that it has any issues with PPL, and so there are no issues within the authority of the Commission to decide. The party (or parties) that will be bound by an action of the Commission in this case will be PPL, 600 Scranton, or both. The Commission does not have the authority to direct AKSD to do anything. AKSD has not shown that it has an interest in the proceeding which may be directly affected and which is not adequately represented by existing participants, *and* as to which the Petitioner may be bound by the action of the Commission. 52 Pa. Code § 5.72(a)(2) (emphasis added). The Petition to Intervene is denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Complainant and Respondent in this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Practice and Procedure permit Petitions to Intervene. 52 Pa. Code §§ 5.71-5.76.

3. The provision at 52 Pa. Code § 5.72 governs which persons or entities are eligible to intervene in a proceeding. 52 Pa. Code § 5.72.

4. Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pa. Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlt. 1972).

5. To demonstrate eligibility to intervene, a petitioner must show that it has an interest in the proceeding which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission. 52 Pa. Code § 5.72(a)(2).

6. Petitioner AKSD Discount Stores has not shown that it has an interest in the proceeding which may be directly affected and which is not adequately represented by existing participants, *and* as to which the Petitioner may be bound by the action of the Commission

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by AKSD Discount Stores a/k/a P&R Discounts at this docket is denied.

Date: March 10, 2020

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/s/  
Dennis J. Buckley  
Administrative Law Judge