

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------|---|----------------|
| John A. DeSisti | : | |
| | : | |
| v. | : | C-2020-3022457 |
| | : | |
| Pennsylvania Electric Company | : | |

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint against his electric distribution company alleging that the cost quoted by the utility to relocate five meters on the Complainant’s property and convert the service from overhead to underground was excessive and unreasonable. The Complainant requests that the utility lower the cost. This initial decision dismisses the complaint, finding that the Complainant failed to carry his burden of proving that the Respondent violated the Public Utility Code, a Commission regulation or order, or the utility’s tariff.

HISTORY OF THE PROCEEDING

On October 8, 2020, the Complainant, John DeSisti, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec) at Docket No. C-2020-3022457. In his complaint, Mr. DeSisti stated that he contacted Penelec to arrange for the relocation of five electric meters located on his property. He alleges that the company’s quote to perform the work was excessive and unreasonable. He avers

that he received much lower quotes from other contractors. Mr. DeSisti requests that the company lower its quote.

On November 5, 2020, Penelec filed an answer and new matter in response to Mr. DeSisti's complaint. In its answer, Penelec denied that the charges it quoted to perform the requested work were unreasonable or unlawful. Penelec averred that the rates it quoted are in full compliance with its Commission-approved tariff. In its new matter, Penelec requested that the matter be referred to the Commission's mediation process. The parties' attempt to resolve the matter informally was ultimately unsuccessful.

By Call-In Telephone Hearing Notice dated November 17, 2020, the Commission scheduled a telephonic hearing in this proceeding for January 5, 2021 and assigned me as the Presiding Officer.

The hearing was held as scheduled on January 5, 2021. Mr. DeSisti appeared and testified on behalf of himself. He offered three exhibits that were admitted into the record. Penelec appeared and was represented by Margaret A. Morris, Esquire. Ms. Morris presented the testimony of one witness and offered three exhibits, all of which were admitted into the record. The record consists of a 50-page transcript, three Complainant exhibits and three Respondent exhibits. The record closed on March 17, 2021, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant in this proceeding is John DeSisti.
2. The Respondent in this proceeding is Pennsylvania Electric Company.
3. The service address to which service to the Complainant is provided by Penelec is 416-418 Desmond Street, Sayre, PA. Tr. 8-9.

4. Mr. DeSisti currently has five indoor meters through which service to his property is provided by Penelec. Tr. 18, 26.

5. Mr. DeSisti currently has overhead service to his property. Tr. 16, 26.

6. On July 15, 2020, Mr. DeSisti contacted Penelec to discuss the relocation of the five meters on his property from a basement to a location on the outside of the building and to change the service to the property from overhead to underground. Tr. 26.

7. Penelec provided Mr. DeSisti with a cost estimate of \$2,186.64 to complete the work. Tr. 15, 36.

8. Penelec requires customers to provide trenching and installation of conduit at their expense in order to change the service from overhead to underground. (Tr. 27-28).

9. In compliance with Penelec's requirements, Mr. DeSisti completed the trenching and installed a three (3) inch conduit from the base of the pole to his house. Tr. 12-13.

10. Mr. DeSisti also installed a meter base for the new meters on the outside of his property. Tr. 12.

11. All of the work performed by Mr. DeSisti passed necessary inspections. Tr. 13.

12. Mr. DeSisti received estimates from electrical contractors to perform additional work necessary to install new underground service to his property. Tr. 9-11; DeSisti Ex. Nos. 1-3.

13. Mr. DeSisti received a materials estimate from Cooper Electric in the amount of \$548.27 for additional wire and conduit necessary to complete the work at his property. Tr. 9-10; DeSisti Ex. 1.

14. Mr. DeSisti received an estimate from J.M. Gates, LLC in the amount of \$1,205.00 for material and labor to install additional conduit and wire at his property. Tr. 10; DeSisti Ex. 2.

15. Mr. DeSisti received an estimate from Laurel Hill Builders, LLC in the amount of \$1,200.27 for materials and labor to install additional conduit and wire at his property. Tr. 10; DeSisti Ex. 2.

16. The three estimates received by Mr. DeSisti provided the cost to install additional conduit and wiring as part of the project to provide new underground service to his property. Tr. 13; DeSisti Ex. Nos. 1-3.

17. The change from overhead to underground service is being made at Mr. DeSisti's request. Tr. 16, 26.

18. Mr. DeSisti is upgrading the service to his property from 200-amp service to 400-amp service. Tr. 17.

19. The relocation of the five meters from inside the property to outside is being done at Mr. DeSisti's request. Tr. 18, 26.

20. In order to complete the overall project, the following work will need to be performed: removal of existing overhead service from the pole to Mr. DeSisti's building; installing and pulling the new wire through the customer-installed conduit; installing riser equipment, conduit straps, a weatherhead device and additional conduit at the pole; and connecting the new wire at both the pole and the meters. Tr. 27.

21. The estimates received by Mr. DeSisti do not include costs for certain necessary materials and installation tasks, such as the cost of the weatherhead and conduit straps and the cost for the labor to remove the existing overhead service. Tr. 38, 41; DeSisti Ex. Nos. 1-3.

22. The service wire running from the pole to Mr. DeSisti's property is owned by Penelec and only Penelec personnel are permitted to work on these facilities. Tr. 27-28.

23. Penelec's quote of \$2,186.64 includes all material and labor costs necessary to fully complete the work necessary to relocate the meters to the outside of Mr. DeSisti's property, remove the existing overhead service, and install new 400-amp underground service to the new meters. Tr. 27-28, 36; Penelec Ex. 3.

24. Pursuant to Penelec's tariff, relocation to or upgrades of company-owned facilities undertaken at the customer's request must be paid by the customer. Tr. 29; Penelec Ex. 2.

25. Penelec's quote to perform the work includes only its direct material and labor costs. Tr. 29-30.

26. Penelec's quote to perform the work does not include any profit to the company. Tr. 39-40.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. Here, Mr. DeSisti alleges that the quote provided to him by Penelec to relocate five meters located on his property and change his service from overhead to underground is excessive and unreasonable. He requests that the quote be lowered. Therefore, as the proponent of a rule or order in this proceeding, Mr. DeSisti has the burden of proof in this proceeding pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, a Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the complaint in violation of the Public Utility Code, a Commission regulation or order, or the company's own Commission-approved tariff. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196

(1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his/her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Additionally, a utility's Commission-approved tariff has the force and effect of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 32 Pa. Cmwlth. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

As discussed above, Mr. DeSisti contacted Penelec to request that the five meters located in the basement of his property be relocated to the outside of the building and that the service to the building be converted from overhead to underground. Tr. 26. He received a quote from Penelec to perform this work in the amount of \$2,186.64. Tr. 13, 26. He testified that he contacted outside contractors and obtained several quotes, one for just materials and two that included costs for both materials and labor, to install additional conduit and a new wire from the pole to his building. Tr. 9-12; DeSisti Ex. Nos. 1-3. He testified that he already performed the trenching and installed some of the conduit necessary to run the new service underground from the pole to his building. Tr. 9.

He testified that the quotes from the outside contractors were considerably lower than the quote provided to him by Penelec. Tr. 9. He received a material quote from Cooper Electric in the amount of \$548.27. This quote included the costs for wire and additional conduit. Tr. 9-10; DeSisti Ex. 1. He testified he received two additional quotes that included costs for material and labor necessary to install additional conduit and run new wire from the pole to the location of the meters on the outside of the building. Tr. 10-12; DeSisti Ex. Nos. 2-3. Mr. DeSisti stated it was his belief that the material estimates he received from the outside contractors included all of the materials that would be necessary to complete the job. Tr. 18. He did acknowledge, however, that the quotes he obtained did not include costs related to the removal of the existing overhead facilities. Tr. 18. Mr. DeSisti argues that the quote he received from Penelec is excessive and unreasonable, and he would like Penelec to provide him with a lower quote. Tr. 9, 13.

Penelec presented the testimony of Justyn Kinsley. Mr. Kinsley has been a Distribution Tech Supervisor with Penelec for three years. Tr. 23. Before his current job, Mr. Kinsley was a Distribution Technician with the company for twelve years. Tr. 24. He testified that Penelec was contacted by Mr. DeSisti on July 15, 2020 to discuss having his meters relocated from inside his building to the outside and to replace his overhead service wire to underground. Tr. 26. Penelec provided a total cost estimate to him in the amount of \$2,186.64. Tr. 36. Mr. Kinsley testified that, pursuant to Penelec's tariff, relocation to or upgrades of

company-owned facilities undertaken at the customer's request must be paid by the customer. Tr. 29; Penelec Ex. 2.

Mr. Kinsley described during his testimony the materials and labor activities that are involved in completing the project and the costs associated with each. Tr. 27; Penelec Ex. 3. He stated that the customer was responsible for trenching and placing the conduit for installation of the new underground service. Tr. 28. Mr. DeSisti did, in fact, complete the trenching and install much of the necessary conduit. Tr. 9. Mr. Kinsley explained the scope of the work that was included in Penelec's cost estimate. He testified that Penelec's quote included costs for riser, conduit strap and weatherhead equipment. Tr. 27, 38. He stated that these costs were not included in the quotes obtained by Mr. DeSisti. Tr. 38. Mr. Kinsley further testified that the quotes obtained by Mr. DeSisti did not include a labor charge for the removal of the existing overhead facilities. Tr. 27, 41. Mr. Kinsley explained that the existing overhead facilities are owned by Penelec and only Penelec personnel are permitted to work on its facilities. Tr. 39-40. Mr. Kinsley testified that the quotes obtained by Mr. DeSisti do not include costs for certain materials and labor activities that are a necessary part of the project. As a result, he stated that Penelec's quote is not comparable to those presented by Mr. DeSisti. Tr. 41.

Finally, Mr. Kinsley testified that the material and labor costs included as part of Penelec's quote include only its direct material and labor costs and that Penelec will make no profit from the project. Tr. 40.

Upon consideration of the evidence presented by the parties, I find that Mr. DeSisti has failed to meet his burden of proving that Penelec violated the Public Utility Code, a Commission regulation or order, or the company's own Commission-approved tariff. Mr. DeSisti presented evidence of quotes from outside contractors to do certain work associated with the relocation of his meters to the outside of his property and to change his service from overhead to underground. These quotes were considerably less than the quote provided by Penelec to complete the work sought by Mr. DeSisti. He believes, therefore, that Penelec's quote is excessive and unreasonable and requests that Penelec lower its quote.

Penelec's witness presented compelling evidence proving that the quotes presented by Mr. DeSisti did not include all of the material and labor that would be necessary to complete the project. As noted above, he testified that Penelec's quote included costs for riser, conduit strap and weatherhead equipment, and that these costs were necessary but not included in the quotes obtained by Mr. DeSisti. Tr. 27, 38. Mr. Kinsley further testified that the quotes obtained by Mr. DeSisti did not include a labor charge for the removal of the existing overhead facilities. Tr. 27, 41. Mr. Kinsley explained that the existing overhead facilities are owned by Penelec and only Penelec personnel are permitted to work on its facilities. Tr. 39-40.

I am persuaded by Penelec's credible evidence that the quotes obtained by Mr. DeSisti do not, in fact, include costs for certain materials and labor activities that are a necessary part of the project and that, as a result, the quotes presented by him are not comparable to the quote given by Penelec. Penelec's quote includes additional materials not included in Mr. DeSisti's quotes. Further, Mr. DeSisti's quotes do not, as noted, include a labor charge for the removal of the existing overhead facilities, a charge that is included in Penelec's quote and can only be performed by Penelec personnel. I cannot conclude, therefore, that Penelec's quote, as compared to those presented by Mr. DeSisti, is excessive or unreasonable. Accordingly, I will deny the complaint.

As the party seeking affirmative relief from the Commission, Mr. DeSisti bears the burden of proof. 66 Pa.C.S. § 332(a). For the reasons set forth above, I find that Mr. DeSisti failed to prove that Penelec violated the Public Utility Code, a Commission regulation or order, or the company's own Commission-approved tariff. Accordingly, the complaint is denied.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order in this proceeding, Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. A utility's Commission-approved tariff has the force and effect of law and is binding on the utility and its customers. *Stiteler v. Bell Tel. Co. of Pa.*, 32 Pa. Cmwlth. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981); *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

6. Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of John A. DeSisti against Pennsylvania Electric Company at Docket No. C-2020-3022457 is hereby denied.

2. That the proceeding at Docket No. C-2020-3022457 be marked closed.

Date: May 19, 2021

/s/
Steven K. Haas
Administrative Law Judge