

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Stephens	:	
	:	
v.	:	C-2023-3041880
	:	
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint because Complainant failed to meet the burden of proving Pennsylvania Electric Company violated the Public Utility Code and the Commission’s statutes, regulations, or orders when Pennsylvania Electric Company communicated its requirements to initiate electric service to Complainant’s property.

HISTORY OF THE PROCEEDING

On July 18, 2023, Thomas Stephens (Mr. Stephens or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) the Formal Complaint (Complaint) against Pennsylvania Electric Company (Respondent or Company) alleging that he wanted electric lines extended to his property so that he could have electric service to his property. Specifically, Complainant stated he wanted Respondent to visit his property and receive a quote without spending \$4,000. He also indicated he was unable to obtain easements from neighboring properties. Complainant stated he would like to receive a quote from Respondent and a reasonable way of paying for it.

On August 14, 2023, Respondent filed an Answer and New Matter generally denying the allegations in the Complaint. Respondent admitted that Complainant applied for new service to 13100 Hill Road, Wattsburg, Pennsylvania (property, service address or service location) and denied the Company did not properly calculate the Complainant's cost and advise him of the required right of way (ROW) to provide the requested service to the service location. In its New Matter, Respondent averred Complainant is responsible to pay for the cost of providing new service under Tariff Rule 4 and responsible to acquire the required ROW for any Company facility under Tariff Rule 3.

On August 23, 2023, Complainant filed a response to the Answer and New Matter.

On August 28, 2023, Chief Administrative Law Judge Charles E. Rainey, Jr, issued an Interim Order Setting Resolution Conference referring this matter to mediation. The parties were unable to resolve the matter in mediation.

On January 2, 2024, the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Hearing Notice, which scheduled an initial hearing to be conducted on February 14, 2024, with Administrative Law Judge Jeffrey A. Watson (the ALJ or presiding officer). On January 2, 2024, the ALJ issued a Prehearing Order which outlined various procedural matters.

The presiding officer convened the initial hearing as scheduled on February 14, 2024. Complainant appeared and testified, *pro se*. He offered no exhibits. Respondent was represented by Margaret A. Morris, Esquire. Attorney Morris presented the testimony of one witness, Noah Vroman, and offered five exhibits which were admitted as Respondent 1 through 5. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

Upon receipt of the transcript of the hearing, consisting of 98 pages with five exhibits, on March 18, 2024, the hearing record closed.

FINDINGS OF FACT

1. Complainant, Thomas Stephens resides at 13100 Hill Road, Wattsburg, Pennsylvania. Tr. 9.
2. Respondent, Pennsylvania Electric Company, is a jurisdictional public utility contacted by Complainant to provide electric service at the property. Tr. 10, 45.
3. Complainant bought the property four years ago and requested that Respondent visit the property and provide a quote for the cost to obtain electric service. Tr. 10.
4. Complainant had an understanding that the Company would provide service to the property and Complainant would be responsible to pay for the cost of providing service from the property to the dwelling. Tr. 11, 26.
5. Respondent visited the property and told Complainant he would be responsible for getting adjacent property owners to provide a thirty foot right away along the front of their properties to obtain service. Tr. 12.
6. Respondent advised that it would cost Complainant approximately \$36,000 to bring electric service to the property. Tr. 12.
7. Complainant testified there is a public right of way from Fuller Road, where the service starts, to Hill Road to his property. Tr. 33-34.
8. Complainant testified that every pole on Fuller Road and Hill Road are within that public right of way. Tr. 33-35.
9. Complainant requested that the Commission require the Company to extend the electric line through the public right of way to the edge of his property. Tr. 36-37.

10. Company Tariff Rule 3 requires that the applicant provide the Company, at no cost, all rights of ways, easements, or permits necessary for the Company to permanently erect and maintain facilities over, under, through, across, and/or along private property. Tr. 47-48; Respondent Exhibit 2.

11. The cost of any such right of way, easement, or permit is the responsibility of the applicant. Tr. 48; Respondent Exhibit 2.

12. Company Tariff Rule 4 controls when an applicant is requesting new service to a property. Tr. 50.

13. Complainant is requesting a non-speculative line extension pursuant to Tariff Rule 4 (a). Tr. 50-51.

14. An overhead span of primary conductor is approximately equal to 250 feet. The Company provides at no charge, up to three spans of conductors and three poles and related material along the public right of way on Fuller Road or Hill Road, including the service line. For private rights of way, the Company provides one span of conductors and related material for the line extension, including the service line. Tr. 52-53.

15. Under Company Rule 4(a)(1), the applicant is responsible for the costs in excess of the span allowance that is not covered by the Company's Tariff. Tr. 52-53.

16. Prior to commencing construction of a line extension for new service, an applicant must provide the application, execution of all necessary agreements and payment for any and all associated costs or charges, and to furnish the Company with all necessary right of ways, easements, or permits consistent with Company Tariff Rule 3. Tr. 53.

17. An applicant is also responsible for paying for all tree trimming, brush clearance, and other related activities associated with the right of way in compliance with Tariff Rule 3. Tr. 53-54.

18. Respondent provided a rough estimate of the project to bring the new service to Complainant in the approximate amount of \$40,000. Tr. 54.

19. Respondent requires an upfront payment of \$4,000 if the executed right of ways are not submitted from an applicant. The upfront deposit represents ten percent of the estimated cost of the project and is applied to the cost of the project. Tr. 54-55.

20. In Complainant's situation, Respondent considered three potential routes. Tr. 55.

21. The service location is a heavily wooded area with the closest neighboring residence being at least 1,500 feet away. Tr. 56.

22. The first proposed route would be through the first property owner on Fuller Road, who refused to grant the required right of way. Tr. 58.

23. The second proposed route eliminates the necessity for an easement from the first property owner on Fuller Road and requires one easement from the property owner on Hill Road. Tr. 58-59.

24. Two additional options are available if rights of way were not available on Fuller Road. The first would require coming from the south of Hill Road, running north approximately 2,300 feet, and would require an easement from the private property owners so the Company could do proper vegetation management and maintenance. Tr. 59.

25. The Company is requiring a 15-foot right of way in addition to the public right of way since the poles would be placed along the edge of the public right of way. Tr. 60.

26. Any new applicant seeking service to a neighboring property to Complainant would have to go through the same process and meet the same conditions set forth in Tariff Rule 4 (a)(1). Tr. 76.

DISCUSSION

Complainant alleged that Respondent was obligated to bring electric service to his property at the cost of the Company and that Complainant's cost was for the line extension from his property to his dwelling. Complainant further argued that he was not responsible for obtaining rights of way to extend the service line to his property.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proving he is entitled to the requested relief.¹ To satisfy this burden, Complainant must show Respondent utility is responsible or accountable for the problem described in the Complaint.² Complainant must show this fact to be true by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.³ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁴ Furthermore, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵

¹ 66 Pa.C.S. § 332(a).

² *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

³ *Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁴ *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Trans. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

⁵ *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Pursuant to the Pennsylvania Code, all relevant and material evidence may be admitted but will be excluded if repetitious or cumulative, or if its probative value is outweighed by a danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time.⁶

Party Positions

Complainant averred that he wanted electric lines extended to his property so that he could have electric service to his property. Specifically, Complainant stated he wanted Respondent to visit his property and receive a quote to extend service to his property without spending the \$4,000 upfront payment required by Respondent. He also indicated he was unable to obtain easements from neighboring properties. Complainant stated he would like to receive a quote from Respondent and a reasonable way of paying for it. Complainant testified that there is a public right of way from Fuller Road, where the service starts, to Hill Road, to his property. He further testified that every pole on Fuller Road and Hill Road is within that public right of way. Complainant requested that the Commission require the Company to extend the electric line through the public right of way to the edge of his property at the cost of the Company. It is the Complainant's position that it is the responsibility of the Company to provide service to the property and Complainant would be responsible to pay for the cost of providing service from the property to the dwelling.

Respondent argues this case is straightforward and governed by the Commission-approved Tariff. Complainant is requesting a non-speculative line extension pursuant to Tariff Rule 4(a). The Company provides at no charge, up to three spans of conductors and three poles and related material along the public right of way on Fuller Road or Hill Road, including the service line. For private rights of way, the Company provides one span of conductors and related material for the line extension, including the service line. Under Company Rule 4(a)(1), the

⁶ See "Admissibility of Evidence," 52 Pa. Code § 5.401.

applicant is responsible for the costs in excess of the span allowance that is not covered by the Company's Tarriff.

In addition, Respondent submits, prior to commencing construction of a line extension for new service, an applicant must provide the application, execution of all necessary agreements and payment for any and all associated costs or charges, and to furnish the Company with all necessary rights of way, easements, or permits consistent with Company Tariff Rule 3. An applicant is also responsible to pay all tree trimming, brush clearance, and other related activities associated with the right of way in compliance with Tariff Rule 3. Respondent asserts that a utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public and that a utility is required to follow the terms of its Tariffs and charge its customers in accord with its lawful tariffed rates and charges.

Consistent with Company policy, Respondent asserts it provided a rough estimate of the project to bring the new service to Complainant in the approximate amount of \$40,000, and required an upfront payment of \$4,000, since the executed rights of way were not submitted from Complainant. This amount represents ten percent of the estimated cost of the project and is applied to the cost of the project.

Applicable Provisions for Reasonable and Adequate Service

A violation of the Code may occur when a utility company fails to provide reasonable service. Pursuant to the provisions of 66 Pa.C.S. § 1501:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and

the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.^[7]

Additionally, the Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.⁸ The term "service" is "used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied ... by public utilities ... in the performance of their duties under [the Public Utility Code]...."⁹

It is well established that a utility may charge its customers in accord with its lawful tariffed rates.¹⁰ A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public.¹¹

Complainant's argument is essentially that he should only be charged for the costs to bring electric service from his property line to his dwelling. However, Complainant did not present any evidence to support his position or to challenge the Tariff provisions relied upon by Respondent.

A utility is to be paid for the service it renders.¹² The Company may charge customers consistent with its Commission-approved Tariff. Complainant has failed to show that the Company is charging him inconsistent with its Tariff.

⁷ 66 Pa.C.S. § 1501.

⁸ *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

⁹ 66 Pa.C.S. § 102.

¹⁰ 66 Pa.C.S. § 1302.

¹¹ 66 Pa.C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

¹² *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982).

Disposition

The undersigned concludes, based upon the totality of factual evidence set forth in the Findings of Fact above, that Complainant did not prove Respondent provided inadequate or unreasonable service to Complainant or attempted to impose requirements or charges upon Complainant to initiate service to his property inconsistent with Respondent's Commission approved Tariffs.

Complainant contends that he should not be responsible for the requirements or costs to extend a service line to his property. Complainant argues he should only be responsible for the costs of extending the service line from his property line to his dwelling. I find Complainant's evidence does not meet the burden of proof based upon the lack of credible evidence to support Complainant's position.

Furthermore, Respondent presented credible evidence from Noah Vroman, an engineer employed by First Energy Service Company who is responsible for handling new service requests and general distribution design work.¹³ Witness Vroman provided testimony regarding the applicable Company Tariff section 3 and 4 and testified he visited the property, met with Complainant and created proposed sites for the new service consistent with the Company Tariff sections.¹⁴ Witness Vroman testified he provided Complainant with an estimate of \$40,000 to bring the new service to Complainant in a heavily wooded area with the closest neighboring residence being at least 1,500 feet away.¹⁵ He testified that ten percent of the estimate was required to be paid by Complainant as an upfront payment, to be applied to the costs of the project.¹⁶ The actual cost of the project cannot be determined until the design for the route is finalized.¹⁷ Witness Vroman testified the Company can use the existing public right of

¹³ Tr. 42-44.

¹⁴ Tr. 43-47.

¹⁵ Tr. 56-57.

¹⁶ Tr. 54-56.

¹⁷ Tr. 59-60.

way however, extra footage is required so that vegetation maintenance can be done consistent with the Company's vegetation maintenance plan to ensure reliability of service.¹⁸

Complainant failed to meet his burden of proof and failed to establish that Respondent violated any provision of the Public Utility Code, the Commission's regulations, Company Tariff or an outstanding order of the Commission. Accordingly, the Complaint will be denied in the Ordering Paragraphs that follow.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).
3. As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).
4. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
5. The burden of proof must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).
6. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public. 66 Pa.C.S. § 1303; *DiSanto v.*

¹⁸ Tr. 60.

Dauphin Consol. Water Supply Co., 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

7. A utility may charge its customers in accord with its lawful tariffed rates.
66 Pa.C.S. § 1302.

8. Complainant failed to sustain his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint in *Thomas Stephens v. Pennsylvania Electric Company* at Docket No. C-2023-3041880 is dismissed.

2. That the Secretary's Bureau shall mark Docket No. C-2023-3041880 as closed.

Date: June 12, 2024

/s/
Jeffrey A. Watson
Administrative Law Judge