

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chris K. Simpson	:	
	:	
v.	:	C-2024-3051793
	:	
FirstEnergy Pennsylvania Electric Company	:	
Met-Ed Rate District	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This decision dismisses a formal Complaint filed by a property owner seeking to have the electric distribution company (EDC) within whose service territory the property at issue is located “release” him so he can be served by a nearby rural electric cooperative. The Complaint is dismissed because the Complainant failed to meet his burden of proof to demonstrate that he is entitled to the requested relief or that the EDC violated the Pennsylvania Public Utility Code, a Pennsylvania Public Utility Commission (Commission) order or regulation, or its tariff.

HISTORY OF THE PROCEEDING

On October 24, 2024, the Complainant, Chris Simpson, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission)

against FirstEnergy Pennsylvania Electric Company – Met-Ed Rate District (FE PA or Met-Ed). In his Complaint, Mr. Simpson explained that his property is split between two electricity providers, Met-Ed and Adams Electric Cooperative (Adams Electric). He explained that 90% of his property is in Met-Ed’s service territory. The remaining portion of the property is in territory served by Adams Electric. He intends to build a storage building and a home on the portion of the property in Met-Ed’s territory. He avers that Met-Ed has no right-of-way over neighboring properties that would allow it to bring service to the portion of the property where he intends to build. By way of relief, Mr. Simpson would like Adams Electric to have full control over his entire property, which would allow it to provide electric service to the structures he intends to build.

On November 14, 2024, Met-Ed filed an Answer to Mr. Simpson’s Complaint. Met-Ed first noted that Adams Electric is a non-profit, member-owned electric cooperative that provides electric service exclusively to its members and, accordingly, does not fall under the jurisdiction of the Commission. In its Answer, Met-Ed averred that it agreed to release Mr. Simpson’s property to Adams Electric to allow Adams Electric to provide service to the property. Met-Ed averred that it provided a release form to Adams Electric for its review, but Adams Electric is unwilling to provide service to Mr. Simpson. Met-Ed requests that Mr. Simpson’s Complaint be dismissed with prejudice.

By Initial Telephonic Hearing Notice dated December 20, 2024, the parties were advised that an Initial Telephonic Hearing was scheduled for March 4, 2025, and that I was assigned as the Presiding Officer.

The hearing was convened as scheduled on March 4, 2025. Mr. Simpson appeared *pro se*. Timothy K. McHugh, Esquire, appeared on behalf of Met-Ed and presented the testimony of one witness who sponsored two exhibits (FE PA Ex. Nos. 1

and 2), both of which were admitted into the record without objection. The record consists of a 40-page transcript and two FE PA exhibits.

Both prior to and following the hearing, the parties discussed possible avenues through which electric service could be provided to the portion of Mr. Simpson's property on which he intended to build the storage building and house. Counsel for Met-Ed indicated that the company was exploring a possible solution involving an arrangement between Met-Ed and Adams Electric. Mr. McHugh stated that the two providers had begun discussions, but that additional time would be needed for proposals to be exchanged and evaluated by each provider's executives and legal personnel. Mr. McHugh indicated that it would likely take some time for this process to proceed to an ultimate decision. We agreed to hold the record open to allow time for this effort to occur to try to find a solution that would allow Mr. Simpson to receive electric service at his property.

After providing several updates about settlement efforts, I was informed by Met-Ed's counsel, via an e-mail dated June 6, 2025, that those efforts ultimately proved unsuccessful. Accordingly, I closed the record on June 6, 2025.

Mr. Simpson's Complaint is ready for disposition. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this proceeding is Chris K. Simpson.
2. The Respondent in this case is FirstEnergy Pennsylvania Electric Company – Met-Ed Rate Division.

3. The service address is 1685 Storms Store Road, New Oxford, PA. Tr. 24.

4. Approximately 90% of the property at issue is in Met-Ed's service territory, with the remaining 10% in territory served by Adams Electric. Tr. 12-13.

5. The portion of the property where Mr. Simpson intends to build a storage building and a house is in Met-Ed's service territory. Tr. 11.

6. In order for Met-Ed to provide service to the property, Mr. Simpson would need to obtain a right-of-way agreement from one of his neighbors to allow Met-Ed to extend its facilities to the proposed build site. Tr. 1, 26.

7. Mr. Simpson's neighbors refuse to execute a right-of-way agreement to allow Met-Ed to extend its facilities across their property to the build site. Tr. 1, 15, 26.

8. Met-Ed offered to "release" Mr. Simpson's property to Adams Electric and allow Adams Electric to provide electric service to the proposed storage building and house. Tr. 12-13, 23-24.

9. Adams Electric refuses to provide electric service to Mr. Simpson's property. Tr. 12-13, 23-25.

10. Met-Ed explored options for extending electric service to Mr. Simpson's property, including the installation of both overhead and buried facilities. Tr. 25-26.

11. All of the options considered by Met-Ed would require execution of a right-of-way agreement allowing Met-Ed to extend its facilities through a neighbor's property. Tr. 26.

12. Mr. Simpson has never provided a right-of-way agreement executed by any of his neighbors to Met-Ed. Tr. 27.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). 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). 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. In this proceeding, Mr. Simpson filed a Complaint against Met-Ed seeking legal relief. Mr. Simpson, therefore, has the burden of proof in this proceeding.

Additionally, public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pa. Elec. Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995). Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable.

Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).

In this proceeding, Mr. Simpson is faced with the unenviable position of being unable to obtain electric service to the portion of the property on which he would like to build a storage building and a house. Unfortunately, as explained below, the Commission is unable to grant the relief he seeks.

Mr. Simpson explained during his testimony that he wants to build a storage building and a house on a portion of his property located within Met-Ed's service territory. Tr. 11. He testified that he has been unable to obtain from any of his neighbors a right-of-way agreement that would allow Met-Ed to install electric lines across their properties to serve the proposed buildings. Tr. 11. Mr. Simpson stated that his neighbors refuse to provide the necessary right-of-way agreement. Tr. 11-12, 15.

Met-Ed witness Dominic Lucato is the Supervisor of Engineering Services in First Energy's Met-Ed rate district. Tr. 21. He testified that the company is not obligated to provide service to an Applicant unless and until the Applicant obtains any necessary right-of-way or easement agreements that would allow Met-Ed to access the subject property with its facilities. Tr. 26-27. In support, Mr. Lucato referred to FE PA Ex. 1, which is a section of the company's tariff that addresses right-of-way agreements. This tariff provision provides, in relevant part:

The company shall not be obligated to provide any electric service to an Applicant/Customer until the Company has received and/or obtained satisfactory and acceptable to the Company rights-of-way, easements and/or permits from, but not limited to, the Applicant/Customer, applicable Government agencies, railroad owners or other property owners. Any right-of-way, easement or permit fees, either initial or recurring, or other charges in connection with rights-of-way, easements or permits for providing service to an Applicant/Customer, shall be paid for by the Applicant/Customer.

Mr. Lucato testified that the company explored several options for providing service to Mr. Simpson, including running both overhead lines and buried lines across a neighbor's property, but both of those options would require a right-of-way agreement. He testified that Mr. Simpson never provided the company with a right-of-way agreement that would allow Met-Ed to run its facilities to the proposed build site. Tr. 27.

It is because of the refusal of his neighbors to provide the necessary right-of-way agreement that Mr. Simpson seeks in this proceeding to be "released" to Adams Electric and that Adams Electric be directed to provide electric service to his proposed storage building and house. This, unfortunately, is a remedy that the Commission is unable to provide.

In an effort to assist Mr. Simpson in receiving electric service, Met-Ed was, in fact, willing to "release" him to Adams Electric and allow Adams Electric to provide service to the section of his property located within Met-Ed's service territory. Met-Ed witness Dominic Lucata confirmed that the company was willing to allow Adams Electric to serve Mr. Simpson. He testified, ". . . me and my team petitioned for his release to Adams Electric. I guess that would be my team and I, but an internal meeting was held, and the decision was made to release Mr. Simpson to Adams Electric." Tr. 23-24. He testified that Met-Ed prepared and provided Adams Electric with a release agreement. Tr. 24-25. Mr. Lucato testified, however, that this proposed accommodation ultimately proved unsuccessful because Adams Electric refused to provide service to Mr. Simpson. Mr. Simpson acknowledged this refusal by Adams Electric, stating, ". . . Adams Electric turned around and told me, Jim, whatever his name is, the attorney for them, he told myself and State Representative Dan Moul, that they won't give me electric." Tr. 13.

The law is well settled in Pennsylvania that cooperative associations that provide service only to their members on a non-profit basis are not subject to Commission jurisdiction. First, the definition of “Public Utility” set forth in Section 102 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 102, explicitly excludes “[a]ny bona fide cooperative association which furnished service only to its stockholders or members on a nonprofit basis.” Likewise, Pennsylvania’s “Corporations and Unincorporated Associations” law found in Title 15 Pa.C.S. provides, “. . . all electric cooperative corporations subject to this chapter shall be exempt from the jurisdiction and control of the Pennsylvania Public Utility Commission.” 15 Pa.C.S. § 7334. Because Adams Electric is a rural electric cooperative association, the Commission simply has no jurisdiction or regulatory authority over its operations. Therefore, the Commission does not have the legal authority to order the remedy sought by Mr. Simpson, namely that Adams Electric be directed to provide electric service to the build site on his property, which is located outside of Adams Electric’s service territory.

CONCLUSION

Mr. Simpson failed to meet his burden of proof to demonstrate that he is entitled to the requested relief or that Met-Ed violated the Public Utility Code, a Commission order or regulation, or its tariff. While I am very sympathetic to the difficult situation with which Mr. Simpson is faced, the Commission simply does not have the legal authority to direct the relief he seeks. Accordingly, Mr. Simpson’s Formal Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. 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).

5. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pa. Elec. Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlt. 1995).

6. Tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n, 686 A.2d 910 (Pa. Cmwlt. 1996).

7. Bona fide cooperative associations that provide service only to their members on a non-profit basis are not subject to Commission jurisdiction. 66 Pa.C.S. § 102; 15 Pa.C.S. § 7334.

8. Complainant failed to meet his burden of proof to demonstrate that he is entitled to the requested relief or that the EDC violated the Public Utility Code, a Commission order or regulation, or its tariff.

