BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-291-E - ORDER NO. 2017-775

DECEMBER 29, 2017

IN RE:	Ms. Lutz, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent	)))	ORDER DENYING PETITION FOR RECONSIDERATION

On November 29, 2017, the Public Service Commission of South Carolina ("PSC" or "Commission") issued Order No. 2017-728, finding that the Commission could not grant Ms. Patricia Lutz ("Ms. Lutz") the relief she requested: namely, an order excluding her property from the exclusive service territory of South Carolina Electric & Gas Company ("SCE&G" or "Company"), under the facts presented in this docket. Subsequently, on or about December 12, 2017, Ms. Lutz filed the Petition for Reconsideration which we address herein.

In her Complaint, Ms. Lutz complained of "frequent power surges, consistent rate increases and poor customer service" and requested a letter of release from SCE&G and a hearing. SCE&G moved to dismiss the Complaint, arguing that Ms. Lutz's Complaint did not meet the Commission's requirements for pleadings, and that her Complaint did not state facts sufficient to constitute a basis for the relief she sought. SCE&G further sought to strike certain portions of Ms. Lutz's filings with the Commission.

At the hearing on November 7, 2017, Ms. Lutz appeared *pro se*. South Carolina Electric & Gas Company was represented by Benjamin P. Mustian, Esquire, of the law firm Willoughby & Hoefer, P.A.

Because Ms. Lutz was a *pro se* Complainant, the Commission viewed her Complaint in the light most favorable to her and granted her broad latitude in construing her written filings in this matter. Furthermore, the Commission itself elected to hear the motions and hold a full evidentiary hearing on the merits, rather than having an appointed Hearing Examiner hear the matter as authorized by S.C. Code § 58-27-2030.

The Commission first conducted its hearing on SCE&G's motion to strike and motion to dismiss. At the outset, the Commission denied the Company's motion to strike, instead electing to admit and evaluate each filing and assign it appropriate weight.

The motion to dismiss was based upon the South Carolina statutes governing the assignment of electric service areas. An electric supplier may, by agreement, allow another electric supplier to furnish electric service to a consumer within its service area; however, in Ms. Lutz's case, there was no such agreement by SCE&G to allow Ms. Lutz to be served by Mid-Carolina Electric Cooperative or any other provider, nor was there an agreement by Mid-Carolina to provide electric service to her home. The PSC found as a matter of law that, absent agreement by both electric suppliers, Ms. Lutz could have obtained an order granting the relief she sought only upon showing that the service provided by that utility was or would be inadequate or undependable, and could not or would not be made adequate or dependable within a reasonable time, or that the rates, conditions of service, or service regulations, applied to the consumer, were unreasonably discriminatory. S.C. Code

§ 58-27-660(2). Furthermore, the Code also provides, at § 58-27-650(B) that "[i]n determining the adequacy and dependability of service or whether rates, conditions of service, or service regulations are unreasonably discriminatory, the commission may not consider rate differentials between the affected electric suppliers…" (emphasis added)

The Commission heard arguments from SCE&G and from Ms. Lutz on the motion to dismiss, and then recessed the hearing to allow the parties to determine whether Ms. Lutz's complaint could be resolved. After the parties and the mediator came to impasse in negotiations, the Commission immediately reconvened to conduct its full evidentiary hearing. Recognizing that Ms. Lutz might present evidence to support her claims and to oppose SCE&G's motions in the course of either hearing, the Commission elected to allow Ms. Lutz to be heard completely before rendering any decisions regarding her Complaint.

In support of her Complaint, Ms. Lutz moved to have all of her written filings to be placed into evidence, and the Commission allowed all of the documents to be marked and entered into the record over the objections of Counsel for SCE&G. The Commission asked Ms. Lutz to present any and all evidence she had to support her complaint, and specifically to meet the requirements that she show SCE&G's service to be inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to her, are unreasonably discriminatory. Ms. Lutz testified, without supporting evidence, that she had experienced power outages and power surges, but her primary complaint was based upon SCE&G's rates.

SCE&G, for its part, presented the testimony of Lead Analyst, Carolyn Frick, to address the customer service history of Ms. Lutz. Ms. Frick testified that, from the time

her service was established on May 19, 2015, through her requested disconnection on August 22, 2017 – a period of over 27 months – Ms. Lutz had experienced 12 power outages of a total combined duration of 5 hours and 4 minutes. SCE&G's customer service records show no complaints by Ms. Lutz of inadequate or undependable service prior to August 2017.

Ms. Frick further testified that Ms. Lutz contacted SCE&G in August 2017 to request that her property be released from the Company's service territory. The Company advised her that it would not agree to release her residence. On August 22, 2017, at Ms. Lutz's request, SCE&G disconnected her service and removed the meter, service line, and security light from her property.

SCE&G also presented the testimony of Joshua Jackson, its Manager of Distribution Dispatch and Distribution Planning Engineering. Mr. Jackson provided testimony as to various types of service interruptions, and as to the differences and distinctions between most service interruptions and power surges. Mr. Jackson testified that service interruptions and faults are frequently misidentified as power surges. He further explained some of the mechanisms by way of which power is restored following an outage. Mr. Jackson testified that the Company was unaware of any power surges occurring over the distribution line serving Ms. Lutz's residence during her time as an SCE&G customer.

Upon a review of all of the evidence presented, both in the motions hearing and in the full evidentiary hearing, the Commission concluded that SCE&G was entitled to judgment as a matter of law. Ms. Lutz presented some conclusory testimony, but

ultimately, she has failed to produce the evidence required under South Carolina to support an order changing her electric supplier from SCE&G to Mid-Carolina Electric Cooperative. There was simply inadequate proof that SCE&G's service was inadequate or undependable. The evidence in this case clearly showed that Ms. Lutz's motivation for seeking a change in electric suppliers was cost. However, the plain language of S.C. Code § 58-27-650(B) specifically prohibits the Commission from considering cost differential in determining whether to reassign any portion of service territory. Therefore, South Carolina Electric & Gas Company was found to be entitled to judgment as a matter of law, and such judgment was entered.

In her Petition for Reconsideration, Ms. Lutz reiterated her complaints of "power surges, power outages, constant rate hikes, customer service inaccuracies and other SCE&G activities," and renews her request for a Commission order releasing her property from SCE&G's exclusive territory. She further restates her belief that the PSC is empowered to grant her the release from SCE&G's service territory as she seeks.

As a matter of law, Ms. Lutz is mistaken. The evidence presented in her case was insufficient to support the order she sought, as the statutory prerequisites for changes in territorial assignments were not met. The PSC committed no error of law in this docket, and Ms. Lutz has presented no other grounds for reconsideration. Therefore, her petition is denied.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Swain E. Whitfield, Chairman

ATTEST:

Comer H. Randall, Vice Chairman