

COMMONWEALTH COURT OF PENNSYLVANIA

Borough of Middletown v. Pennsylvania Public Utility Commission;
Metropolitan Edison Company v. Pennsylvania Public Utility
Commission

Borough of Middletown · No. Nos. 1450 C.D. 2021 and 36 C.D. 2022 · Decided August 7, 2023

SUMMARY

The Pennsylvania Commonwealth Court reviews consolidated cross-petitions challenging a Pennsylvania Public Utility Commission order concerning whether Metropolitan Edison Company could provide electric distribution service to Librandi Machine Shop, Inc., within the Borough of Middletown without the Borough’s consent. The Commission had determined that Metropolitan Edison possessed grandfathered or legacy authority under Section 103(a) of the Pennsylvania Public Utility Code and that the change in service providers would not cause impermissible competition or unnecessary duplication of facilities. The opinion addresses the Commission’s jurisdiction, certificates of public convenience, municipal electric-service authority, and overlapping utility service territories.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Renée Cohn Jubelirer, President Judge; Lori A. Dumas, Judge; Mary Hannah Leavitt, Senior Judge
JURISDICTION	Pennsylvania
DECIDED	August 7, 2023
DOCKET	Nos. 1450 C.D. 2021 and 36 C.D. 2022
DISPOSITION	reversed
PROCEDURAL POSTURE	Cross-petitions for review of a Pennsylvania Public Utility Commission opinion and order granting Librandi Machine Shop, Inc.'s petition for a declaratory order permitting it to obtain electric distribution service from Metropolitan Edison Company without the Borough of Middletown's consent.
STANDARD OF REVIEW	Review is limited to whether a constitutional violation, error of law, violation of Commission procedure, or lack of substantial evidence occurred; questions of law are reviewed de novo or plenary.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Borough of Middletown, Metropolitan Edison Company v.
Pennsylvania Public Utility Commission

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QUESTIONS PRESENTED

1. Whether MetEd was authorized and obligated to provide electric distribution service to Librandi without the Borough's consent.
2. Whether MetEd's tariff established authority to provide service in the Borough beyond the limitations of its certificate of public convenience.
3. Whether MetEd acquired grandfathered or legacy service rights under Section 103(a) of the Public Utility Code by purchasing the former Olmsted Air Force Base's internal electric distribution facilities.

HOLDINGS

1. MetEd was not authorized to provide electric distribution service to Librandi without the Borough's consent because its 1923 certificate of public convenience required the Commission's approval and the Borough's consent for service to consumers in the Borough, and no other valid authority supported the Commission's declaration.
2. MetEd's tariff did not establish authority to provide service in the Borough beyond the terms of the 1923 CPC.
3. MetEd did not acquire grandfathered or legacy rights under Section 103(a) from the federal government or Commonwealth's operation of the former Olmsted Air Force Base's internal electric distribution system because those entities were not public utilities providing service to the public.

KEY QUOTATIONS

"The extent of a public utility's authority, as well as the territory in which that authority can be exercised, is established in its CPC." (20)

"A tariff does not establish a public utility's authority to offer service in a particular area – that is established in the utility's CPC." (21)

"At its essence, the Commission's interpretation of Section 103(a) allows MetEd to expand its certificated authority beyond that expressly set forth in the 1923 CPC by entering into a private contract with a non-public utility, the Commonwealth, to purchase the non-public utility's facilities." (26)

FACTUAL BACKGROUND

Librandi operates a machine shop on property leased from the Susquehanna Area Regional Airport Authority within or associated with the Borough of Middletown. The Borough operates a municipal electric distribution system, while MetEd and its predecessor had historically provided electric service on the former Olmsted Air Force Base property and MetEd provided service to Librandi from 1994 to 1997. MetEd later sought to resume service without the Borough's consent, relying on its 1923 certificate of public convenience, its tariff, and alleged grandfathered rights arising from its acquisition of the former base's internal electric distribution facilities.

PROCEDURAL HISTORY

Librandi filed a petition for a declaratory order with the Commission after seeking to change its electric distribution service provider from the Borough to MetEd. An ALJ issued a recommended decision, and the Commission modified and adopted it, declaring that Librandi could obtain service from MetEd without the Borough's consent and that MetEd was authorized to provide the service based on its current CPC and grandfathered or legacy rights. The Commission denied reconsideration, and the Borough and MetEd petitioned the Commonwealth Court for review.

DISPOSITION

reversed

CASES CITED

- *Cap. City Cab Serv., Inc. v. Susquehanna Area Reg. Airport Auth.*, 70 Pa. D. & C. 4th 501, 503-04 (2004), 2004 WL 3401755
- *Popowsky v. Pa. Pub. Util. Comm'n*, 910 A.2d 38, 48 (Pa. 2006)
- *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055 n.18 (Pa. 2007)
- *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602-03 (Pa. Cmwlth. 1990)
- *Riedel v. County of Allegheny*, 633 A.2d 1325, 1329 n.11 (Pa. Cmwlth. 1993)
- *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001)
- *Borough of Lansdale v. Phila. Elec. Co.*, 170 A.2d 565, 566-67 (Pa. 1961)
- *Borough of Grove City v. Pennsylvania Public Utility Commission*, 505 A.2d 346, 352 (Pa. Cmwlth. 1986)
- *Lukens Steel Co. v. Pa. Pub. Util. Comm'n*, 499 A.2d 1134, 1136 n.1 (Pa. Cmwlth. 1985)
- *Purolator Sec., Inc. v. Pa. Pub. Util. Comm'n*, 378 A.2d 1020, 1022 (Pa. Cmwlth. 1977)
- *Makovsky Bros., Inc. v. Pa. Pub. Util. Comm'n*, 423 A.2d 1089, 1092 (Pa. Cmwlth. 1980)
- *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006)
- *Whinney v. Pub. Serv. Comm'n*, 176 A. 753, 754-55 (Pa. Super. 1935)
- *Hostetter v. Pub. Serv. Comm'n*, 168 A. 493, 494 (Pa. Super. 1933)
- *Harmony Elec. Co. v. Pub. Serv. Comm'n*, 78 Pa. Super. 271, 280, 283 (1922)
- *Dublin Water Co. v. Pa. Pub. Util. Comm'n*, 213 A.2d 139, 142-43 (Pa. Super. 1965)
- *Drexelbrook Assocs. v. Pa. Pub. Util. Comm'n*, 212 A.2d 237, 239, 242 (Pa. 1965)

- Brink's Ex. Co. v. Pub. Serv. Comm'n, 178 A. 346, 348-49 (Pa. Super. 1935)
- Borough of Ambridge v. Pub. Serv. Comm'n, 165 A. 47, 49 (Pa. Super. 1933)
- Crown Castle NG E. LLC v. Pa. Pub. Util. Comm'n, 234 A.3d 665, 674 (Pa. 2020)
- Lackawaxen Water & Sewer v. Pa. Pub. Util. Co., 481 A.2d 1386, 1389 (Pa. Cmwlth. 1984)

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