

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

James E. Coggins
vs.
PPL Electric Utilities Corp.

Public Meeting: June 13, 2013
2312785-ALJ
Docket No. C-2012-2312785

MOTION OF COMMISSIONER CAWLEY

Before us for consideration is the Initial Decision (ID) of Administrative Law Judge Kandace F. Melillo (ALJ) granting the Preliminary Objections of PPL Electric Utilities Corporation (PPL), which she appropriately treated as a Motion for Judgment on the Pleadings,¹ and dismissing the Formal Complaint filed by James E. Coggins (Complainant) against PPL on the grounds that Complainant lacked standing to sue PPL since he is not a customer of PPL.

This Motion seeks to affirm the ALJ's dismissal of PPL as a party to this suit and to overrule the ALJ's determination that the Public Utility Commission (Commission) does not have jurisdiction over the Echo Valley Campground, in Tremont, Pa. (Campground), in relation to the provision of private contract electric service to Complainant, after purchasing wholesale electricity for resale from PPL.

The Complainant alleges that he is a permanent resident of the Campground and that the Campground is overcharging him and others for electric service. Complainant also alleges safety concerns with the Campground. He seeks both a refund for the money he has been overcharged and the institution of an investigation into the safety violations he alleges.

PPL filed a Certificate of Satisfaction indicating that this matter was satisfactorily resolved. However, Complainant filed a timely Objection to the Certificate of Satisfaction seeking permission to amend his Complaint to include the Campground as a party. Complainant explained that the Campground is overcharging him at the rate of 20 cents per kWh. The ALJ did not permit the Complainant to add the Campground as a party on the grounds that the Commission did not have jurisdiction over the Campground.

However, the resale of utility service by non-public utilities is addressed in section 1313 of the Public Utility Code (Code), 66 Pa. C.S. §1313. Under section 1313 a non-public utility entity cannot resell electricity it purchases from a public utility to any

¹ ALJ Melillo correctly held that standing is not a proper basis upon which to file Preliminary Objections, as PPL did here. Rather, standing is a ground upon which to assert an affirmative defense properly raised in a motion for judgment on the pleadings. The Commission's regulations permit the presiding ALJ to disregard an error or defect of procedure if the error does not adversely affect a substantive right of a party as in this case. *See* 52 Pa. Code §1.2(a). *See* also the standards for granting a motion for judgment on the pleadings at 52 Pa. Code §5.102(d)(1).

residential consumer² for an amount greater than what the utility would charge its own residential customers for the same quantity of service.

Specifically, section 1313 provides:

Price upon resale of public utility services.

Whenever any person, corporation or other entity, not a public utility, electric cooperative corporation, municipality authority or municipal corporation, purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its own residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect.

By its terms, section 1313 of the Code places a price cap on the resale of utility service to residential consumers and this cap applies to non-public utilities. Therefore, in this instance, the Campground may be within the jurisdiction of the Commission for the purposes of determining whether it is in violation of section 1313 by reselling utility service at a cost that exceeds the amount which PPL would bill its own residential customers, for the same quantity of service, under the provisions of its tariff.

Section 3313 of the Code further provides a specific penalty for violations of section 1313 involving the imposition of excessive prices on the resale of utility service. Specifically, section 3313 provides that:

[a]ny person, corporation or other entity violating the provisions of section 1313 (relating to price upon resale of public utility services) shall be guilty of a summary offense³ and shall, upon conviction, be sentenced to pay a fine of \$100 multiplied by the number of residential bills exceeding the maximum prescribed in section 1313.

Given the state of the law as set forth in the Code and outlined above, it appears that the Complainant should be given two options from which to choose in pursuing his Complaint:

² It appears that, to date, the Commission has not decided the issue of whether a "permanent resident" at a campground is a "residential consumer" within the meaning of section 1313 of the Code. Furthermore, there is no factual record in this case upon which to decide whether a "permanent resident" at a campground is a "residential consumer" under section 1313, and if so, whether or not the Campground is overcharging Complainant.

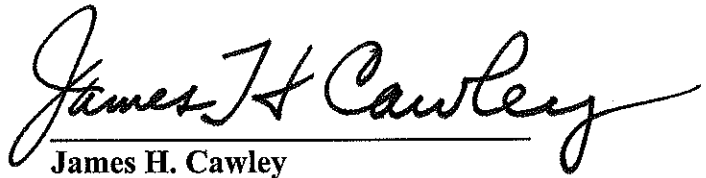
³ Summary offense is defined in 18 Pa. C.S. §106.

1. Within 30 days of the entry date of this Order, Complainant may file an amended complaint, substituting the Campground as the Respondent and proceed before the Commission⁴ seeking a refund and/or an investigation; or
2. Complainant may file a private criminal complaint with the appropriate Magisterial District Court, pursuant to sections 1313 and 3313 of the Code, seeking the imposition of per violation penalties for summary offenses.

THEREFORE, I move that:

1. The decision of the Administrative Law Judge be affirmed, in part, allowing the dismissal of PPL Electric Utilities Corporation; and that;
2. The decision of the Administrative Law Judge be modified, in part, to allow Complainant, James E. Coggins, to file an amended complaint naming Echo Valley Campground as Respondent; or, in the alternative;
3. The Complainant may file a private criminal complaint with the appropriate Magisterial District Court, pursuant to section 3313 of the Public Utility Code, 66 Pa. C. S. §3313;
4. In the event the Complainant does not file an amended complaint as described above within 30 days of the order permitting him to do so, this matter shall be closed;
5. The Office of Special Assistants prepare an Order consistent with this Motion.

June 13, 2013
Date


James H. Cawley

⁴ Under sections 501(c) and 1313 of the Code, it appears clear that the Commission has jurisdiction to award refunds if deemed appropriate for these violations. Further, a section 1313 violation may also involve the imposition of civil fines under section 3301(a). In either case, the Commission has clear jurisdiction over resale price cap complaints.