**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael A. Rizzo :

:

v. : C-2015-2469134 :

PECO Energy Company :

and Public Power, LLC :

**INITIAL DECISION**

Before

David A. Salapa

Administrative Law Judge

INTRODUCTION

A customer filed a complaint against the electric utility and an electric generation supplier (EGS) alleging that his supplier had tripled its rates even though the price of energy had significantly dropped. This decision dismisses the complaint against the utility because the complaint does not allege that the utility failed to comply with any Commission statutes, regulations or orders.

HISTORY OF THE PROCEEDING

On February 2, 2015, Michael A. Rizzo (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Public Power, LLC (Public) and PECO Energy Company (Respondent). In the complaint, the Complainant alleged that Public had tripled its rates and that his bill had gone from $199 a month to $800 a month. He stated that this had also happened last year. He asked that the Commission monitor energy providers.

On March 10, 2015, the Respondent filed an answer and preliminary objections. The answer admits that the Respondent provides service to the Complainant at the address shown on the complaint. The answer asserts that the Respondent received notices from various EGSs that the Complainant had selected those EGSs, including Public Power, LLC to supply electricity to him. The answer further states that the Respondent is not a party to the contract between the Complainant and Public Power, has no knowledge of the rate agreed upon, and that the complaint is improperly brought against the Respondent. The answer requests that the Commission dismiss the complaint.

The preliminary objections state that the complaint disputes the rate the Complainant is paying his EGS. The preliminary objections argue that the complaint is legally insufficient because the allegations in the complaint do not pertain to the Respondent. According to the preliminary objections, the complaint does not allege any violation by the Respondent of the Public Utility Code, Commission regulations, or the Respondent’s tariff. Rather it alleges that the EGS’s rates have tripled. The preliminary objections request that the Commission dismiss the complaint against the Respondent.

On March 20, 2015, Public filed an answer to the Complaint. The answer denies that Public tripled the Complainant’s bill. According to the answer, the Complainant’s increased electricity usage caused his electric bills to increase. Public’s answer requests that the Commission dismiss the complaint against Public.

By notice dated March 27, 2015, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to the Respondent’s preliminary objections. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint as it pertains to the Respondent.

FINDINGS OF FACT

1. The Complainant in this case is Michael A. Rizzo.

2. The Respondent in this case is PECO Energy Company.

3. On February 2, 2015, the Complainant filed a complaint with the Commission against the Respondent.

4. The Respondent filed an answer on March 10, 2015.

5. On March 10, 2015, the Respondent filed preliminary objections.

6. The Complainant did not file an answer to the Respondent’s preliminary objections.

DISCUSSION

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.

7. Standing of a party to participate in the proceeding.

Here, the Respondent’s preliminary objections assert that the complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4), in that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations, or Commission orders. I agree.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C‑00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming a violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa.Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa.Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n, 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n, 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa Pub. Util. Comm’n, 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pa Pub. Util. Comm’n, 103 A.2d 502 (Pa. Super. 1954).

Viewing the complaint in this case in the light most favorable to the Complainant, the rates the Complainant’s EGS has charged him have tripled.

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objections, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations, or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code §5.22(a)(4). Here, the complaint does not allege any facts that could be construed as a violation by the Respondent of any statute, regulation or order which the Commission has jurisdiction to administer. Rather, the complaint alleges high rates charged by an EGS. The complaint is therefore legally insufficient as it pertains to the Respondent.

Since the Complainant’s complaint does not set forth any facts that could be construed as a violation of a statute or Commission regulation or order by the Respondent, it is legally insufficient.

In prior decisions, the Commission has indicated that it disfavors granting motions dismissing complaints filed by pro se complainants. Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock); Brown v. PECO Energy Company, Docket No. C-2008-2055866 (Order entered May 29, 2009) (Brown); Richmond v. PECO Energy Company, Docket No. F-2010-2187305 (Order entered December 7, 2011) (Richmond). In Carlock, Brown, and Richmond, the Commission indicated that a complaint filed by a pro se complainant should not be dismissed until the complainant has the opportunity to orally explain his or her position at a hearing.

However, in Mulzet v. PPL Electric Utilities Corporation, Docket No. C-2013-2367132 (Order entered August 28, 2013) (Mulzet), the Commission sustained preliminary objections filed by a utility and dismissed a complaint where the complaint alleged that a complainant had entered into agreements with various EGSs for electric generation supply service and the EGS billed him at rates higher than the rates set forth in the agreements. In dismissing the complaint, the Commission in Mulzet concluded that the complaint did not allege any facts that could be construed as a violation by the utility of any statute, regulation or order which the Commission has jurisdiction to administer and was therefore legally insufficient.

Similarly, in Friz v. Respond Power LLC and PPL Electric Utilities Corp., Docket No. F-2014-2453888 (Order entered March 19, 2015) (Friz), the Commission sustained preliminary objections filed by a utility and dismissed a complaint where the complaint alleged that an EGS had raised the complainant’s rates by 300% without notification. In dismissing the complaint against the utility, the Commission in Friz again concluded that the complaint did not allege any facts that could be construed as a violation by the utility of any statute, regulation, or order which the Commission has jurisdiction to administer and was legally insufficient.

Since the complaint in this case raises the same issue as the complaints in Mulzet and Friz, I find the decisions in Mulzet and Friz to be more persuasive than the decisions in Carlock, Brown, and Richmond. In these circumstances, giving the Complainant the opportunity to explain his position against the Respondent at a hearing would be a fruitless exercise. Sustaining the Respondent’s preliminary objections and dismissing the complaint is appropriate under the circumstances. I will enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa. C.S.A. §701.

2. The Complainant’s complaint fails to state a claim upon which relief can be granted.

3. It is just, reasonable and in the public interest that the complaint filed against PECO Energy Company at Docket No. C-2015-2469134 be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2015-2469134 are sustained.
2. That the complaint of Michael A. Rizzo at Docket No. C-2015-2469134 against PECO Energy Company is dismissed.

3. That the complaint against Public Power LLC at Docket No. C-2015-2469134 shall be scheduled for a hearing before an administrative law judge.

Date: April 13, 2015 /s/

David A. Salapa

Administrative Law Judge