**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Graziano Trucking, Inc. :

:

v. : C-2015-2465723

:

Direct Energy Services, LLC. :

**ORDER SUSTAINING THE PRELIMINARY OBJECTION OF PPL Electric utilities Corporation**

HISTORY

On January 15, 2015, Doreen M. Graziano, Esquire, filed a formal Complaint on behalf of Graziano Trucking, Inc. (Complainant) against Direct Energy Services, LLC (Direct Energy). Attorney Graziano attached multiple documents to the Complaint, comprised chiefly of correspondence to Direct Energy, PPL Electric Utilities Corporation (PPL), and the Secretary of the Commission. The core of the Complaint centers on alleged mis-billing/overbilling by Direct Energy. The Complainant demands that the Commission “order Direct Energy Business to refund payment of any and all charges made from date of termination of services. Further, order Direct Energy to notify all credit reporting agencies to amend their records regarding Graziano’s payment history . . . and to amend Graziano’s credit rating accordingly.”

On February 5, 2015, the Secretary of the Commission served the Complaint on both Direct Energy and PPL.

On February 24, 2015, PPL filed an Answer and New Matter to the Complaint. To date, no responsive pleading addressing the New Matter has been filed.

Also on February 24, 2015, PPL filed a Preliminary Objection properly endorsed with a Notice to Plead asking that the Complaint against PPL be dismissed in its entirety, citing 52 Pa. Code § 5.101(a)(4) and arguing that the Complaint is legally insufficient in that no cause of action lies against PPL in a matter involving rates charged by Direct Energy. To date, no Answer or responsive pleading has been filed with respect to the Preliminary Objection.

On February 25, 2015, Direct Energy filed an Answer to the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties in this proceeding. 66 Pa. C.S. § 701.

2. Commission regulations permit the filing of preliminary objections. 52 Pa.Code § 5.101(a).  
  
 3. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.  
  
 4. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996).  
  
 5. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).  
  
 6. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

7. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. § 701; 52 Pa. Code § 5.22(a)(5).

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101:

**§ 5.101. Preliminary objections.**  
   
(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:  
  
(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.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).  
  
 Therefore, the primary focus in resolving this issue is on the Complainant’s’ pleadings.

In deciding preliminary objections, the presiding officer must determine whether, based on well-pleaded factual averments in the Complaint, relief is possible. I see no factual averments in the Complaint or its attachments to the effect that PPL has violated any provision of the Pennsylvania Public Utility Code or the rules and regulations of the Commission. Indeed, the Complainant did not list PPL as a party-Respondent in the Complaint, though some correspondence directed to PPL by the Complainant was attached to the Complaint. That correspondence, however, is related to Complainant’s dispute with Direct Energy.

Therefore, I must agree with PPL. The Complaint fails to state a cause of action against PPL.

The Preliminary Objection is sustained, and while an Administrative Law Judge cannot *assign* a case to mediation, this matter will be *referred* to the Commission’s Mediation Unit for review and appropriate action.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PPL Electric Utilities Corporation Inc., is sustained, and the Complaint against PPL is dismissed.

2. That the remainder of Complaint of Graziano Trucking, Inc., against Direct Energy Services, LLC, will be referred to the Commission’s Mediation Unit for mediation review.

Date: July 8, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dennis J. Buckley

Administrative Law Judge

**C-2015-2465723 - DOREEN GRAZIANO ESQUIRE FOR GRAZIANO TRUCKING INC v. PPL ELECTRIC UTILITY CORP/DIRECT ENERGY BUSINESS**

GRAZIANO TRUCKING INC

307 KEYSER AVENUE

TAYLOR PA 18517

Complainant

DOREEN GRAZIANO ESQUIRE

R 120 CORCORAN STREET

OLD FORGE PA 18518**570.451.1860**

*Does not accepts E-service*

Representing Complainant

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Representing PPL Electric Utilities CorporationLINDSAY A BERKSTRESSER ESQUIREPOST & SCHELL PC17 N 2ND STHARRISBURG PA 17101**717.612.6021***Accepts E-service*

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