



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: SEPTEMBER 13, 2004

R-00049255C0011

PAUL E RUSSELL ESQUIRE
PPL ELECTRIC UTILITIES CORP
D/B/A PPL UTILITIES
TWO NORTH NINTH STREET
ALLENTOWN PA 18101-1179

DOCUMENT

Margaret M. Stuski
V.
PPL Electric Utilities Corporation

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Allison K. Turner. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
FG
See Attached Listing for Additional Parties of Record.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

SEP 14 2004

Margaret M. Stuski

v.

PPL Electric Utilities Corporation

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R-00049255C0011

INITIAL DECISION GRANTING MOTION TO DISMISS

Before
Allison K. Turner
Administrative Law Judge

DOCUMENT

HISTORY OF THE PROCEEDING

On March 29, 2004, Margaret M. Stuski (Customer, Complainant or Stuski) filed this complaint against PPL Electric Utilities Corporation (PPL Electric, Company or Utility). Stuski alleges and avers in 34 numbered paragraphs that PPL Electric owns H. T. Lyons, a mechanical contractor, and that H.T. Lyons engaged in various activities to the detriment of small business in the same industry, sometimes with the aid and assistance of PPL Electric, and seeks to have the PUC: investigate PPL Electric's for-profit subsidiaries; order that PPL Electric divest itself of its for-profit subsidiaries; and, deny PPL Electric's rate increase.

On July 15, 2004, the Commission served notice of this complaint on PPL Electric.

On August 4, 2004, PPL Electric filed and served its Answer with New Matter. PPL Electric specifically denied most of the allegations of the complaint by paragraph, often for lack of any reasonable access to the source of the facts alleged. It denied ownership of H. T. Lyons (Lyons), but averred that it was affiliated with Lyons because both are owned by PPL Corporation. It denied providing legal services to Lyons and averred that it has no legal department, and that legal

services are provided within the corporate structure by PPL Services Corp., or by outside counsel. It denied that any funds from PPL Electric were provided to Lyons, or were involved in the dispute between Lyons and complainant, or that funding for Lyons is in anyway included in the proposed rate increase. PPL Electric acknowledged the affiliated interest sections of the Public Utility Code, 66 Pa.C.S §§2101, et seq., but asserts that these sections apply to contracts and agreements between a utility and its affiliates, and that Stuski has not alleged any such relationship between PPL Electric and Lyons.

In its New Matter, PPL Electric avers that all of the matters raised by Stuski are irrelevant to the base rate proceeding before the Commission at R-00049255, and further asserts that the Commission lacks subject matter jurisdiction over the complaint because: many of the allegations of the complaint involve H. T. Lyons a mechanical contractor not subject to the regulatory jurisdiction of the Commission; the only possible jurisdiction would arise from the provisions of the Public Utility Code dealing with relations between public utilities and their affiliated interests; no such transactions are alleged, with the exception of legal services; that PPL Electric has no legal department and does not provide any legal services to any of its affiliates; that no expense for legal services to Lyons are reflected in PPL Electric's proposed increase in rates; and, the matters raised in the complaint involve private disputes between an unregulated mechanical contractor and other entities arising under construction contracts. Answers to Complaints seeking affirmative relief are to be included as New Matter in the Answer, 52 Pa. Code §§5.61(c), 5.62, and Responses may be filed in 20 days from the date of service. 52 Pa. Code §5.63

Simultaneously on August 4, 2004, PPL filed its Motion to Dismiss Complaint (Motion) pursuant to 52 Pa. Code §5.101(a). PPL asserts that the complaint should be dismissed for lack of subject matter jurisdiction, and relies on many of the same grounds raised in the Answer and New Matter. An answer may be filed to such a Motion within ten (10) days of service. Section 5.101(c).

By Hearing Notice dated August 6, 2004, the Commission scheduled a telephone hearing on Stuski's and other customer complaints against the PPL increase to be held on Friday, August 13, 2004 at 2:00 PM. The hearing was scheduled because most of the complaints had been

delayed in the docketing process, and thus the complainants had not received notice of the public input hearings on the rate increase. It was in effect an opportunity to be heard for those complainants who had not received notice of the public input hearings.

Counsel for PPL Electric, OTS, OCA and OSBA attended. Five of the seven complainants were successfully contacted by telephone. One of these declined to participate. Margaret Stuski's answering or voice mail machine was contacted, and a message was left, but she was not available to participate in the hearing.

As of the date of preparation of this Initial Decision (I.D.), the ALJ has not received a copy of any Response to the Hearing Notice, the Motion, or New Matter filed by Stuski.

FINDINGS OF FACT

(based on the pleadings, exhibits and Commission records)

1. The respondent is PPL Electric Utilities Corporation, which is a corporation providing electricity and natural gas service for compensation in Pennsylvania.
2. The Complainant is Margaret M. Stuski. At the time she filed her Complaint, Stuski was a residential electric customer of PPL, whose address was 908 Walnut Street, Wormleysburg, PA 17043.
3. On March 29, 2004, PPL filed a proposed rate increase with a proposed effective date of June 1, 2004, and a final effective date of January 1, 2005. The Commission suspended the proposed rate increase for investigation. Various public agencies and private individuals, including Stuski, who are customers of PPL Electric filed complaints against the proposed increase. Eight public input hearing sessions have been held, technical evidentiary hearings have also been held, and a final telephone hearing was held for certain complainants, including Stuski, who had not received notice to which they were entitled of the public input hearings.

4. On July 14, 2004, PPL filed its Answer and New Matter and Motion to Dismiss Complaint against Stuski's complaint. Answers to New Matter and Motions to Dismiss are permitted but not required.

5. On August 6, 2004, the Commission served a hearing notice scheduling Stuski's complaint, along with others, against PPL for a telephone hearing on August 13, 2004.

6. Stuski was not available at the phone number provided on the hearing notice, which was the one she gave on her complaint, and thus did not participate in the hearing.

DISCUSSION

Preliminary Motions are authorized by the Commission's regulations. Specifically, 52 Pa. Code § 5.101 (a) provides in pertinent part:

§5.101. Preliminary motion.

(a) A preliminary motion is available to participants. The preliminary motion shall state specifically the grounds relied upon, the standing of the party and shall be limited to the following:

(1) **A motion questioning the jurisdiction of the Commission.**

(2) A motion to strike a pleading that is insufficient as to form.

(3) A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party.

(4) A motion for a more specific pleading.

(b) Except when a motion for a more specific pleading is filed, a **preliminary motion shall be filed along with an answer within the time period prescribed by §5.61** (relating to answers to complaints, petitions and motions). All preliminary motion shall be raised at the same time.

* * *

(d) **An answer to a preliminary motion may be filed within 10 days of date of service.**

(Emphasis added).

In its regulations, the Commission has set forth guidance as to the contents of a formal complaint:

§5.22. Contents of formal complaint.

(a) A formal complaint shall set forth the following:

* * *

(4) The 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.

The Public Utility Code allows the Commission to dismiss a complaint without a hearing if in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. §703(b). This section provides in pertinent part:

§703. Fixing of hearings

* * *

(b) **Notice of hearing.** – The commission shall fix the time and place of hearing, within or without this, Commonwealth, if any is required, and shall serve notice thereof upon parties in interest. **The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.**

(Emphasis added).

In making a recent ruling on a Motion to Dismiss, one of my learned colleagues discussed this section of the regulations, and the Commission's standards for consideration of such a Motion:

Section 5.101 of the Commission's regulations, 52 Pa. Code §5.101, permits the filing of preliminary motions in cases before the Commission. One of the motions permitted by that Section is a motion to dismiss a [complaint for lack of Commission jurisdiction] Section 5.101 also permits, but does not require the party against whom a motion has been filed to file a written response to the motion.

The filing of preliminary motions before the Commission is similar or analogous to the filing of preliminary objections in Pennsylvania civil practice. See, Rule 1017(b), Pennsylvania Rules of Civil Procedure. The Supreme Court of Pennsylvania has held that a case should be dismissed on preliminary objections only when the dismissal is clearly warranted and free from doubt. See, e.g., *Interstate Traveller Services, Inc. v. Commonwealth, Department of Environmental Resources*, 406 A.2d 1020 (1979). The Commission follows the same standard in ruling on preliminary motions seeking the dismissal of a complaint.

Order Denying Preliminary Motion to Dismiss Complaint, ALJ Robert Meehan, C-20042354 – Josephine Greaves v PECO Energy Company, April 21, 2004, at 1-2. Further on in this ruling, the Judge states: "One of the principles utilized by the Pennsylvania civil courts in ruling on a preliminary objection seeking the dismissal of a complaint is that the complaint must be interpreted and construed in the light most favorable to the party filing the complaint". *Id.* at 2

Judge Meehan denied the Motion to Dismiss before him in that case. However, after reviewing the applicable regulations and Judge Meehan's analysis, I find it appropriate to grant this Motion to Dismiss.

In the first place, although the Commission's rules do not require a response to New Matter or Motions to Dismiss, they do permit one, and none was filed here. Thus, none of the factual averments made by PPL in its New Matter or its Motion to Dismiss has been disputed. A response to New Matter is permitted also, and no response was filed to New Matter, either. Neither

the Motion nor New Matter was accompanied by a Notice to Plead,¹ but Stuski has identified herself as an attorney, and as representing herself. Complaint Form, ¶6, Attachment to Complaint Form, Signature. Therefore she should have some knowledge about the value of replying to Motions and New Matter.

Second, there are very few averments or allegations in the complaint that do or could fall within the Commission's jurisdiction. Stuski has not disputed PPL Electric's averments that it does not own H. T. Lyons, the mechanical contractor which apparently harmed her. Nor does she dispute that both PPL Electric and H. T. Lyons are owned by the same parent, PPL Corporation (PPL Corp.). Nor does she dispute that PPL Electric does not have a legal department, and that legal services are provided to affiliates in the PPL Corp. family by yet another subsidiary, PPL Services. And finally, she does not dispute PPL Electric's averment that none of the monies for H. T. Lyons' legal defense is included as an expense in the PPL Electric rate case.

The verification for the Complaint, New Matter and Motion is by Joseph Schadt, who is the witness for PPL Electric who prepared the information in response to the Commission's regulations requiring information on revenue and expenses, including item Exhibit Regs. §53.52 II-D-8, which provides an analysis by function of charges by affiliates. Page 2 of this exhibit is cited by PPL Electric in its Motion as showing how legal costs are charged to affiliates. It is on this basis that PPL Electric denies that any of H. T. Lyons legal costs are included in its proposed rate increase request.

As PPL Electric points out, the Commission does have jurisdiction over contracts between utilities and their affiliated interests as defined by the Public Utility Code, 66 Pa.C.S. §§2101, et seq. A review of these sections shows that these provisions are aimed at preventing covert or indeed any improper influence being exerted on utilities by their affiliated interests. Stuski alleges that PPL supported an affiliate in improper conduct. Moreover, she does not allege any agreement between PPL Electric and Lyons that would fall under these sections.

¹ Such notices are not required by the Commission's regulations, but some utilities and law firms that appear before the Commission serve them as a matter of better practice.

Finally, Stuski does make one allegation that might have fallen squarely within the Commission's jurisdiction. She alleges that PPL Electric had placed a lien against her personal residence regarding business service that was initiated without Complainant's knowledge. The Commission does have jurisdiction over the provision of electric service, and PPL Electric is in the business of providing electric service. This is not a matter that any other member of the corporate family could have carried out. However, if a lien was placed against Stuski's house, a final judgment must have been rendered by a court of competent jurisdiction, and the Commission does not have jurisdiction to collaterally attack such judgments. The Commission itself does not have the jurisdiction to enter judgments or place liens. See cases cited in Philip Harris v. PECO Energy Company, Z-01537336, (Initial Decision served to parties August 16, 2004; No Commission Review or Final Order.)

Stuski has not alleged that PPL Electric has done or omitted to do anything which is in violation of any statute that the Commission has jurisdiction to administer, or any violation of any Commission Order or regulation. 52 Pa. Code § 5.22 (a) (4)

A hearing would be required if there were disputed facts that fall within the Commission's jurisdiction. Here, even construing the complaint in the most favorable light, I find no such facts. Therefore, to hold a hearing on this complaint would not be in the public interest. 66 Pa.C.S. § 703 (b)

For these reasons, I conclude that PPL's Motion to Dismiss should be granted, and that Stuski's Complaint should be dismissed without a hearing because the Commission does not have subject matter jurisdiction over the gravamen of the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this complaint, and over PPL Electric's proposed rate increase.

2. The forms of relief sought by Complainant are: to have the PUC investigate PPL's for-profit subsidiaries; to Order that it divest itself of its for-profit subsidiaries; and to deny PPL is requested rate increase.

3. The PUC has jurisdiction over PPL' rate increase, but not over the matters on which Stuski bases her request that it be denied.

4. The Commission scheduled and held a telephone hearing on this and other customer complaints against the increase on Friday August 13, 2004. A notice was sent to Stuski at the address on her complaint, but she was not available at the phone number included for her on the telephone hearing notice, nor had she supplied the ALJ with another telephone number to use as directed by the hearing notice. Therefore Stuski has not availed herself of the opportunity to prosecute her complaint.

5. The Commission may dismiss any complaint without a hearing if in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. §703(b).

6. A hearing is not necessary when the Commission does not have jurisdiction over the subject matter of the complaint.

7. A hearing is not necessary in the public interest in this case.

ORDER

THEREFORE,

IT IS ORDERED:

1. PPL Electric's Motion to Dismiss this complaint on the basis of lack of subject matter jurisdiction is hereby granted. No further hearing need be or shall be held on this complaint.

2. The complaint of Margaret M. Stuski v. PPL Electric Utilities, Corporation, docketed at R-00049255C0011, is hereby dismissed, and the file shall be marked closed.



Allison K. Turner
Administrative Law Judge

Date: August 27, 2004