

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diana K. Roemig	:	
	:	
v.	:	C-2016-2522685
	:	
UGI Utilities, Inc.	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS
AND DISMISSING COMPLAINT**

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A customer, Diana Roemig, filed this complaint against a natural gas distribution company alleging that in 2008, she had paid for a natural gas boiler with a “credit card check” and had installed the boiler in a formerly-owned rental property in Harrisburg. She claims that seven years after she paid for the boiler, a bill collector started calling her claiming she never paid for the boiler. She requests UGI Corp. admit that she paid for the boiler and remove this from her credit report. This decision dismisses the complaint because the Commission lacks jurisdiction over UGI HVAC, a wholly owned and unregulated subsidiary of UGI Utilities, Inc., which installed the furnace referenced in the complaint.

HISTORY OF THE PROCEEDING

On January 7, 2016, Diana K. Roemig (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI). At paragraph 2, the complaint alleges the Respondent is “UGI Corp.” At paragraphs 4 and 5 of the complaint form, requesting the nature of the complaint and the relief sought, the Complainant alleges that in 2008, she had paid for a natural gas boiler with a “credit card check” and had

installed the boiler in a formerly-owned rental property in Harrisburg. She claims that seven years after she paid for the boiler, a bill collector started calling her claiming she never paid for the boiler. She requests UGI Corp. admit that she paid for the boiler and remove this from her credit report.

The complaint was served upon Respondent on January 8, 2016.¹ On January 28, 2016, UGI timely filed an answer and new matter with a notice to plead. The answer admits that UGI Corp. is a holding company that through subsidiaries, distributes, stores, transports and markets energy products and related services. UGI Corp. owns UGI HVAC Enterprises, doing business as UGI Heating Plumbing and Cooling (UGI HVAC), a subsidiary providing heating, ventilation, air conditioning, refrigeration and electrical contracting services. UGI avers the Commission has no jurisdiction over UGI HVAC, and denies Complainant purchased a boiler from UGI. The answer contends that the allegations in the complaint concern services not regulated by the Commission.

The new matter reiterates that the complaint purchased a furnace from an entity other than UGI. The new matter avers that UGI HVAC, a wholly owned and unregulated subsidiary of UGI, apparently installed the furnace referenced by Complainant. UGI avers the Commission has neither the power to enter a judgment for Complainant nor to require UGI HVAC not continue to attempt to enforce payment for a furnace. The answer with new matter requests that the Commission dismiss the Complainant's complaint.

Also on January 28, 2016, UGI timely filed preliminary objections with a notice to plead. According to the preliminary objections, the complaint concerns services not regulated by the Commission. The preliminary objections allege that the complaint raises issues that are outside the Commission's jurisdiction. The preliminary objections request that the Commission dismiss the complaint.

¹ UGI signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints*, Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.* Service is listed in the electronic Audit History of the case as entered by the Secretary's Bureau as having been effected on January 8, 2016.

By notice dated February 29, 2016, 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 either the preliminary objections or new matter. Answer to new matter was due on February 22, 2016. The preliminary objections are ready for decision. For the reasons set forth below, this decision dismisses the complaint because the complaint concerns services not regulated by the Commission. The Commission has no authority to grant the relief Complainant requests.

FINDINGS OF FACT

1. The Complainant in this case is Diana Roemig.
2. The Respondent in this case is UGI Utilities, Inc., a natural gas distribution company.
3. On January 7, 2016 Complainant filed a complaint against UGI Corp. averring that in 2008, she had paid for a natural gas boiler with a “credit card check” and had installed the boiler in a formerly-owned rental property in Harrisburg. Complaint.
4. Complainant claims that seven years after she paid for the boiler, a bill collector started calling her claiming she never paid for the boiler. Complaint.
5. Complainant requests UGI Corp. admit that she paid for the boiler and remove this from her credit report.
6. The complaint was served upon Respondent on January 8, 2016.
7. On January 28, 2016, UGI timely filed preliminary objections.
8. The Complainant has not filed an answer to either the preliminary objections or the new matter.

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 lack of Commission jurisdiction, pursuant to 52 Pa. Code §5.101(a)(1). 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). A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

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. Cmwlt. 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 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)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa. Code §5.101(a)(1) 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. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlt. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlt. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlt. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super. 1954).

Viewing the factual averments in the complaint in the light most favorable to Complainant, the complaint fails on its surface because the Commission has no authority to grant Complainant the relief requested as the Commission has no authority over the service

complained of, the installation and billing regarding a boiler furnace by UGI Corp. referenced in the Complaint. I agree with UGI that the issues raised in the Complaint do not rise to matters this Commission has exercised jurisdiction over.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

CONCLUSIONS OF LAW

1. The Commission has no jurisdiction to regulate the terms and conditions of Complainant's purchase or lease of a boiler furnace from UGI Corp. Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977).

2. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

3. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2016-2522685 be dismissed with prejudice.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by UGI Utilities, Inc. at Docket No. C-2016-2522685 are sustained.

2. That the complaint of Diana K. Roemig against UGI Utilities, Inc. at Docket No. C-2016-2522685 is dismissed with prejudice for lack of jurisdiction.

3. That Docket No. C-2016-2522685 be marked closed.

Date: April 6, 2016

_____/s/_____
Elizabeth H. Barnes
Administrative Law Judge