

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marybeth Hanasewych	:	
	:	
v.	:	F-2016-2551441
	:	
Duquesne Light Company	:	

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

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This decision sustains the preliminary objections filed by Duquesne Light Company (Duquesne or Respondent) and dismisses the formal complaint filed by Marybeth Hanasewych (Complainant), who requests that Duquesne change its budget billing procedures. The preliminary objections are sustained because the Complainant does not allege a violation by the Respondent of the Pennsylvania Public Utility Code or an order or regulation of the Pennsylvania Public Utility Commission (Commission) over which the Commission has jurisdiction.

HISTORY OF THE PROCEEDING

On June 7, 2016, the Complainant filed a formal complaint against the Respondent with the Commission. In paragraph 4 of the Commission’s complaint form, Ms. Hanasewych checked the box next to “Other.” Next to the box she wrote, “budget amount payment estimation formula.” By way of relief, the Complainant avers that revising her budget

bills every four months results in billing swings that are too great. She requests that her budget estimation return to a yearly basis, rather than the current four month basis.

On July 6, 2016, the Respondent filed an answer and preliminary objections (POs) to the complaint. In its answer, Duquesne admits that its budget billing procedures changed in November of 2014, after which it recalculates its customers' budget bill amount every four months, in compliance with the Commission's regulation at 52 Pa. Code §56.12. Duquesne avers that the Complainant's budget bills are calculated based on actual meter reads and that customers may cancel their enrollment in the budget billing plan at any time.

In its POs, Duquesne argues that the complaint should be dismissed on the ground of legal insufficiency, in that its budget billing calculation procedures are in compliance with 52 Pa. Code §56.12(7), which requires budget bills to be reviewed at least three times during the optional billing period. Duquesne argues that the Complainant has not alleged a violation by Duquesne of the Public Utility Code, a Commission order or regulation, or a tariff provision. The Complainant did not file a response to the POs.

By notice dated August 29, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. The POs are ready for decision. As explained below, I agree that the Complainant has not alleged any violation on the part of Duquesne of the Public Utility Code, a Commission order or regulation, or an applicable tariff provision. Accordingly, I will sustain the POs and dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this proceeding Marybeth Hanasewych.
2. The Respondent in this proceeding is Duquesne Light Company.
3. Respondent provides electric distribution service to the Complainant at 8400 Knollwood Drive, Allison Park, PA 15101.

4. Complainant takes service from Respondent under the company's budget billing plan, pursuant to which the Complainant's bills are reviewed and recalculated every four months.

DISCUSSION

The Complainant is a customer of Duquesne for electric distribution service. Ms. Hanasewych takes service from Duquesne under the company's budget billing plan where she pays the same budget bill amount each month, with the bills being reviewed and adjusted every four months. She wants her budget estimates to be reviewed and re-calculated on an annual basis, rather than every four months.

Duquesne requests in its POs that the complaint be dismissed on the basis that the Complainant has not alleged any violations by Duquesne of the Public Utility Code, a Commission order or regulation, or any applicable tariff provision. Duquesne argues that its budget billing procedures are in compliance with the Commission's regulation at 52 Pa. Code §56.12(7), which requires that budget bills be reviewed at least three times per billing period. I agree with Duquesne that Ms. Hanasewych has not alleged in her complaint any violations by the company of the Public Utility Code, a Commission order or regulation, or any applicable tariff provisions. Accordingly, the POs will be sustained and the complaint dismissed.

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 has raised POs on the ground of legal insufficiency, pursuant to 52 Pa.Code § 5.101(a)(4).

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 preliminary objection all well pleaded, material facts of the nonmoving party, as well as every reasonable inference deducible 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).

Finally, in order to ultimately prevail, Complainant must allege and prove a violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code §§ 5.21(a) and 5.22(a)(4).

In viewing the complaint in the light most favorable to the Complainant, it must be accepted as true that she takes service from Duquesne under the company’s budget billing plan, and that Duquesne reviews and makes adjustments as necessary to her budget bills every four months. She would like her budget bills reviewed and re-calculated on an annual basis, rather than every four months.

As noted above, I agree with Duquesne that the Complainant has not alleged any violation by the company of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. 52 Pa. Code §§ 5.21(a) and 5.22(a)(4). Duquesne’s budget billing procedures are in compliance with the Commission’s regulation at 52 Pa. Code §56.12(7), which requires that budget bills be reviewed and adjusted, as necessary, at least three times per billing period.¹ Therefore, if Duquesne were to grant Ms. Hanasewych’s request for relief and review her budget bills on an annual basis, it would be violating the Commission’s regulation at 52 Pa. Code §56.12(7).

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), 52 Pa.Code § 5.21(d). Dismissing a complaint without a hearing is appropriate and in the public interest when there are no genuine questions of material fact and the Respondent is entitled to judgment as a matter of law. Lehigh Valley Power Comm. V. Pa. Pub. Util. Comm’n, 563 A.2d 548 (Pa.Cmwlt. 1989); Edan Transportation Corp. V. Pa. Pub. Util. Comm’n, 623 A.2d 6 (Pa.Cmwlt. 1993). The complaint fails to state a claim upon which the Commission can grant relief. A hearing would be a fruitless exercise and a waste of Commission resources.

¹ See also, *In re: Insuring Consistent Application of 52 Pa.Code §56.12(7) Equal Monthly Billing*; Docket No. M-00051925 (Final Interpretive Order entered June 2, 2006).

Respondent's POs are granted and the complaint is dismissed without hearing.

CONCLUSIONS OF LAW

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

2. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code § 5.101.

3. Commission preliminary objection practice is similar to Pennsylvania civil practice. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).

4. When considering the preliminary objection, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. P. J. S. v. Pa. State Ethics Commission, 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)." Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003).

5. In reviewing preliminary objections, only the facts in the Complaint can be presumed to be true in order to determine whether recovery is possible. In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the utility company in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a).

6. Public utilities shall review budget billing accounts at least three times annually. 52 Pa. Code § 56.12(7).

