

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET
C-20055729
JAN 25 2006

Jacqueline Marie Crabb

v.

Verizon Pennsylvania, Inc.

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C-20055729

ORDER DENYING MOTION TO DISMISS AND
GRANTING MOTION TO CONSOLIDATE

Before
Veronica A. Smith
Chief Administrative Law Judge

On December 21, 2005, Jacqueline Marie Crabb (Complainant) filed a Formal Complaint with the Commission against several utility companies¹. One of the named Respondents was Verizon Pennsylvania, Inc. (Respondent) and the complaint, as it relates to Respondent was assigned Docket No. C-20055729. The Complaint alleged inaccurate billing, over billing, that her service was terminated and that Complainant was a victim of identity theft². As relief, Complainant requested that her service be restored and that she be given a new account with a zero balance.

On January 25, 2006³, Respondent filed an Answer with New Matter and Motion to Dismiss, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that (1) all the allegations raised deal with Complainant's service with PECO Energy Company and (2) the Complaint fails to allege that Respondent violated the Public Utility Code or

¹ The Complaint names Verizon Pennsylvania, Inc., PECO Energy Company and Aqua Pennsylvania, Inc. as respondents. Each named respondent was assigned a separate docket number by the Commission.

² The body of the complaint primarily discusses Complainant's account with PECO Energy Co. however, in her prayer for relief, Complainant requested that the allegations raised be applied to each of the named respondents.

³ Respondent was served with a copy of the Complaint on January 5, 2006.

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a regulation or order of the Commission. For these reasons, Respondent seeks dismissal of the Complaint for insufficiency as to substance. Alternatively, Respondent's Motion requested that PECO Energy Company be joined as an indispensable party or that this proceeding be consolidated with the related proceeding against PECO Energy Company at Docket No. C-20055727.

According to Commission records, Complainant did not file a response to the New Matter⁴ raised in Respondent's Answer or the Motion to Dismiss⁵. Accordingly, the relevant facts raised as new matter are deemed admitted⁶. The matter was assigned to me by Motion Judge Assignment Notice dated February 7, 2006. The Motion to Dismiss is now ready for a decision.

Motion to Dismiss

Before the Commission are a Complaint and a Motion to Dismiss the Complaint on the basis that it is insufficient as to substance.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §5.101(a)(1). When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490

⁴ Pursuant to 52 Pa. Code §5.62(c) an answer to New Matter was due by February 14, 2006.

⁵ Pursuant to 52 Pa. Code §5.101(d) a response to the Motion to Dismiss was due by February 4, 2006.

⁶ The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

A 2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

Complainant alleges numerous billing and service problems relating to her utilities and while the specific Complaint allegations relate to her service with PECO Energy Company, Complainant requests that these allegations be applied, by reference, to each of the utility companies named in her Complaint, including the instant Respondent, Verizon Pennsylvania, Inc. As relief, Complainant requested that her service be restored, that she be issued a new account with a zero balance and that she not be held responsible for outstanding balances on prior accounts. In its Answer, Respondent admits that Complainant's service was terminated; that Complainant has unpaid charges on her prior accounts and stated that it attempted to investigate Complainant's allegations regarding identity fraud but was not successful in contacting Complainant.

In Carlock v. The United Telephone Co. of Pa., Order entered May 17, 1993 at Docket No. F-00163617, the Commission determined that preliminary motions filed against unrepresented complainants pursuing "small claims" against a utility should not be granted without a hearing and the development of a record with respect to the motion. Id. at 7. The Commission reasoned that in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form. Id. Given the number of allegations and parties named in the Complaint, I am reluctant to dismiss any party from this proceeding without providing Complainant with the opportunity to orally explain her Complaint as it relates specifically to Respondent, Verizon Pennsylvania, Inc. Accordingly, Respondent's Motion to Dismiss is denied and this case will be set for hearing.

Complainant will bear the burden of proof at hearing and must present evidence sufficient to demonstrate that the Respondent has violated a provision of the Public Utility Code or a regulation or Order of the Commission. See 66 Pa. C.S. §332(a).

Motion to Consolidate

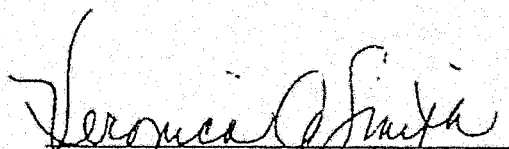
As alternative relief, Respondent requested that the proceeding at this docket be consolidated with the related proceeding involving PECO Energy Company at Commission Docket No. C-20055727. A review of these related cases demonstrates that consolidation is appropriate. Therefore, Respondent's request for consolidation will be granted and a separate order will be issued consolidating these proceedings for the purpose of a hearing.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by Verizon Pennsylvania, Inc., seeking dismissal of the Complaint filed by Jacqueline Marie Crabb, at PUC Docket No. C-20055729, is denied.
2. That the Alternative Motion to Consolidate the instant proceeding with the related proceeding filed by Jacqueline Marie Crabb against PECO Energy Company at PUC Docket No. C-20055727 is granted.
3. That a separate Consolidation Order will be issued.

Dated: March 9, 2006


Veronica A. Smith
Chief Administrative Law Judge