

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

R & M Industries, Inc.

v.

PPL Electric Utilities Corporation

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C-20043428

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FOLDER

INTERIM ORDER
DENYING MOTION TO DISMISS

DOCKETED
APR 06 2005

On July 26, 2004, R & M Industries, Inc. ("Complainant" or "R&M") filed a Complaint with the Pennsylvania Public Utility Commission ("PUC" or "Commission") against PPL Electric Utilities Corporation ("PPL" or "Respondent"), alleging that the Respondent should not assess a security deposit for continued service because of Complainant's recent troubled payment history. R&M requests that the security deposit be eliminated and that a reasonable payment arrangement be implemented for its electric service. R&M also states that it cannot afford to be represented by an attorney.

On August 19, 2004, Respondent filed its Answer and Preliminary Motions admitting to the assessment of a security deposit upon the account of R&M on November 10, 2004 because of the Complainant's delinquent payment history. PPL states that the security deposit was applied in accordance with PUC regulations. PPL further states that R&M is a registered Pennsylvania corporation; and therefore, must be represented in the within proceedings by a licensed attorney. 52 Pa. Code §§ 1.21 - 1.23. PPL requests that the Complaint be dismissed for insufficiency in form—lack of representation by a licensed attorney and insufficiency in substance—fails to allege or establish any violation of any regulation, statute or Order of this Commission.

Complainant did not file a response to the Motion to Dismiss. The 10-day response period has passed, and the matter is now ready for decision.

Commission regulations provide for the filing of a preliminary motion to dismiss. 52 Pa. Code § 5.101. When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant. The Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18 1994).

In deciding whether to grant a motion to dismiss, the Commission must assume that the facts alleged in the complaint are true. Marinoff v. Bell Telephone of Pennsylvania, 75 Pa. PUC 489, 491 (1991).

Regarding the Complainant's failure to employ a licensed attorney for representation or a pleading that is insufficient as to form, PUC regulations would require that the pleading be struck. 52 Pa. Code § 5.101(a)(2). However, R&M would be given ten (10) days to cure the Complaint by filing an amended pleading. 52 Pa. Code § 5.101(f). Moreover, the grounds to strike for insufficient in form are tenuous at best because of recent Commission precedent comparing the filing of a Complaint to the filing of an application where attorney representation is not necessary. Samuel Y. Botts/VIGORworks Fitness Center v. Verizon Pennsylvania, Inc., Order entered November 16, 2004, at Docket No. C-20043478; Application of Pittsburgh Information and Research Company t/d/b/a Onyshko Investigative Service, Final Order entered November 2, 2004, at Docket No. A-00120710. Furthermore, the Commission's regulations permit an officer of a corporation to sign and execute pleadings, including complaints. 52 Pa. Code §§ 1.31, 1.35.

The grounds for dismissal for lack of a licensed attorney are inappropriate. The preliminary motion to dismiss cannot be granted based on Complainant's lack of representation by a licensed attorney.

The matter of whether there is a controversy at issue to which PPL has violated a rule, statute or Order of the Commission is much more complex. The Commission does not have

regulations regarding payment arrangement for commercial service only residential service. R&M is receiving electric service from PPL as a commercial customer; consequently, the rules and regulations of the Commission regarding payment arrangement are not applicable to R&M. Furthermore, since R&M is the Complainant in this matter, the R&M has the burden to prove that PPL acted unreasonably or inadequately. If PPL has a tariff that provides it with discretion to assess a security deposit of a commercial customer once some discrete amount of delinquent payments have occurred and R&M's payment history fits that tariff, there is no further relief that can be granted to the Complainant once it is established that PPL is operating within its current and Commission approved tariff. Lastly, R&M must be represented by counsel if it wishes to pursue its Complaint in an Initial Hearing. See Prehearing Order ¶ 6.

Complainant is within its rights to bring forward a controversy to examine whether PPL is reasonably operating with its tariff and the rule and regulations of the Commission. Complainant, however, has the burden of proving that the Company is in violation of the Commission rules and regulations. If Complainant does not have any evidence to prove that the Company has indeed violated its tariff or a Commission rule or regulations, the Complaint cannot be sustained.

Additional facts need to be determined regarding the security deposit inquiry. PPL's preliminary motion implicates that based on the facts as presented; a determination of no violation of law is inevitable. In deciding the preliminary motion to Dismiss, the Commission looks to R&M to carry the burden of proof whether a violation of PPL's tariff, or Commission rule, statute or order has occurred. More facts are needed to make a determination of whether a violation of PPL's tariff or the PUC statute or regulations occurred.

Accordingly, the preliminary motion to dismiss will be denied and the matter will be set for hearing. Complainant will have an opportunity to prove that Respondent has violated the statute, regulations or Order of the Commission, and he is cautioned that the burden of identifying and proving the violation will be his. Moreover, the Complainant must be represented by a licensed attorney at the hearing.

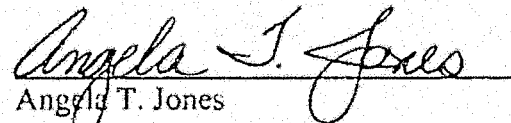
THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by PPL Electric Utilities Corporation seeking dismissal of the Complaint filed by R & M Industries, Inc. at Docket No. C-20043428, is denied

2. That this matter be set for hearing.

Dated. December 9, 2004


Angela T. Jones
Administrative Law Judge

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20043428	Prehearing Held:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
Case Name:	R & M Industries, Inc. v. PPL Electric Utilities Corporation	Hearing Held:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
		Testimony Taken:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
		Transcript Due:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
		Hearing Concluded:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Location:	HBG	Further Hearing Needed:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
		Estimated Add'l Days:		
Date:	December 14, 2004	RECORD CLOSED:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
ALJ:	Angela T. Jones	DATE:	12-14-04	
		Briefs to be Filed:	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
		DATE:		
Reporting Firm:	Sargents Court Reporting	Bench Decision:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
RECEIVED 2004 DEC 16 AM 10:19 SECRETARY'S BUREAU		REMARKS: CORPORATION WAS NOT REPRESENTED BY COUNSEL. GRANTED MOTION TO DISMISS.		

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Name and Telephone Number	Address	Who are you representing?						
MS. JUDITH PECK	R & M INDUSTRIES, INC P.O. BOX 98 RL. 100							
	<table border="1"> <tr> <td>City</td> <td>State</td> <td>Zip</td> </tr> <tr> <td>TEALEETOWN</td> <td>PA</td> <td>18087</td> </tr> </table>	City	State	Zip	TEALEETOWN	PA	18087	
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Telephone: 610-395-4388	E-mail Address:	Fax Number:						
JOHN F. GROSS, ESQ.	GROSS, MCGINLEY, LABARRE & SEATON 33 S. 7th ST.	PPL						
	<table border="1"> <tr> <td>City</td> <td>State</td> <td>Zip</td> </tr> <tr> <td>ALLENTOWN</td> <td>PA</td> <td>18101</td> </tr> </table>	City	State	Zip	ALLENTOWN	PA	18101	
City	State	Zip						
ALLENTOWN	PA	18101						
Telephone: 610-774-2199	E-mail Address:	Fax Number:						
	<table border="1"> <tr> <td>City</td> <td>State</td> <td>Zip</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>	City	State	Zip				
City	State	Zip						
Telephone:	E-mail Address:	Fax Number:						

Check this box if additional parties or attendees appear on back of form.

Courtney M. Wilson
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.