

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Whitehill Manufacturing Corporation :  
 :  
 v. : C-20065931  
 :  
 PECO Energy Company :

ORDER GRANTING MOTION TO DISMISS, IN PART  
AND DENYING IT, IN PART

Before  
Veronica A. Smith  
Chief Administrative Law Judge

**DOCKETED**  
OCT 19 2006

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HISTORY OF THE PROCEEDINGS

On February 21, 2006, Whitehill Manufacturing Corporation (Complainant) filed a Formal Complaint<sup>1</sup> against PECO Energy Company (Respondent), alleging that the power unit for its telephone system was damaged as a result of electric facility upgrade work performed by Respondent.

On March 27, 2006<sup>2</sup>, Respondent filed an Answer and a Motion to Dismiss addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that the Commission cannot grant the relief requested in the Complaint, namely monetary damages.

According to Commission records, as of April 21, 2006, the Complainant has not filed a response to the Motion to Dismiss<sup>3</sup>. The matter was assigned to me by Motion Judge Assignment Notice dated March 28, 2006. The Motion to Dismiss is ripe for ruling.

BTL

<sup>1</sup> The Complaint contained numerous attachments, including copies of notices received from Respondent advising of a scheduled power outage necessary to perform the upgrades

<sup>2</sup> Respondent was served with a copy of the Complaint on March 2, 2006

<sup>3</sup> Pursuant to 52 Pa. Code §5.101(d) a response to the Motion was due on or before April 5, 2006.

## FINDINGS OF FACT

1. Complainant is Whitehill Manufacturing Corporation, P.O. Box 356, Lima, Pennsylvania 19037.
2. Respondent is PECO Energy Company.
3. On February 21, 2006, Complainant filed a Formal Complaint with the Commission alleging that the power unit for its telephone system was damaged following a scheduled power outage.
4. Complainant further avers that Respondent denied its claim for damages to repair the telephone system.
5. Respondent moved for dismissal of the Complaint on the basis that the Commission lacks jurisdiction over claims for monetary damages.

## DISCUSSION

Before the Commission are a Complaint and a Motion to Dismiss the Complaint on the basis that the Commission lacks jurisdiction over claims from monetary damages.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 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, 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 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). In ruling on a motion to dismiss, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true. *Id.* 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 objects to Respondent's denial of its claim for damages allegedly caused by Respondent when it performed electric facility upgrades. Specifically, Complainant alleges that when power was restored following a scheduled outage, Complainant's telephone system was inoperable. Complainant seeks an order from the Commission requiring Respondent to pay the costs associated with repairing the damaged phone system.

Respondent, in its Motion, argues that the Complaint must be dismissed because the Commission does not have jurisdiction over claims for monetary damage and therefore, the Complaint is not properly before this Commission.

In order to be a legally sufficient formal complaint, the pleading submitted must set forth an "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." 52 Pa.Code §5.22(a)(4). *See also* 66 Pa.C.S. §701.

Respondent correctly notes that the Commission lacks the authority to award damages. Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977); Elkin v. Bell of Pa., 420 A.2d 371 (Pa. 1980); Zdziarski v. UGI Utilities, Inc., 2002 Pa. PUC Lexis 2 (February 22, 2002). However, the Commission has been granted broad powers to supervise and regulate all public utilities doing business

within the Commonwealth and is empowered to determine whether a public utility is providing safe, adequate and reasonable service. 66 Pa. C.S. §§501, 1501. The Commission may impose civil penalties upon a utility that is found to be in violation of a statute, regulation or order of the Commission. 66 Pa. C.S. §3301.

Although Complainant requests monetary damages, the underlying dispute challenges the adequacy and reasonableness of the service provided by Respondent during and after the scheduled power outage. Disposition of this issue will hinge on determinations of fact, not law. Therefore, Respondent's Motion to Dismiss will be granted, in part, denied, in part 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 Respondent's actions violated the Public Utility Code or a regulation or order of this Commission. 66 Pa. C.S. §332(a). Finally, Complainant is a corporation and must be represented at the hearing by an attorney licensed to practice law in the Commonwealth of Pennsylvania. 52 Pa. Code §§1.21-1.23. Failure to be so represented may result in dismissal of the Complaint.

#### CONCLUSIONS OF LAW

1. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions.
2. The Commission has been granted broad powers to supervise and regulate all public utilities doing business within the Commonwealth.
3. The Commission is empowered to determine whether a public utility is providing safe, adequate and reasonable service.
4. The Commission lacks jurisdiction to award damages.

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

6. A hearing is necessary to resolve genuine questions of material fact

7. A hearing is necessary in this case.

ORDER

THEREFORE,

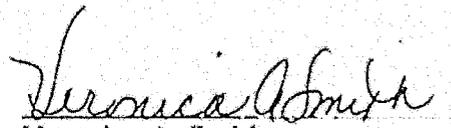
IT IS ORDERED:

1. That the Motion to Dismiss filed by PECO Energy Company, seeking dismissal of the Complaint filed by Whitehill Manufacturing Corporation, at PUC Docket No. C-20065931, is granted, in part and denied, in part.

2. That the prayer for relief portion of the Complaint requesting that the Commission order PECO Energy Company to pay monetary damages is denied.

3. This case be set for hearing.

Dated: April 25, 2006

  
Veronica A. Smith  
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
May 23, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20065931

(See attached list)

DOCUMENT  
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Whitehill Manufacturing Corporation v. PECO Energy Company  
Service dispute.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing  
Date: Wednesday, July 19, 2006  
Time: 10:00 a.m.  
Location: In an available hearing room  
Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
Presiding: Administrative Law Judge Angela T. Jones  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215.560.2105  
Fax: 215.560.3133

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JUN 23 2006

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*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Jones  
Susan Licon  
Beth Plantz  
Docket Section  
Calendar File