

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA P.U.C  
SECRETARY'S BUREAU

C-20065815

Glenn O. Confer

v.

PPL Electric Utilities Corporation

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

DOCUMENT  
FOLDER

Before  
Veronica A. Smith  
Chief Administrative Law Judge

**DOCKETED**  
OCT 19 2006

HISTORY OF THE PROCEEDING

On January 27, 2006 and January 31, 2006<sup>1</sup>, Glenn O. Confer (Complainant) filed a Formal Complaint with the Commission against PPL Electric Utilities Corporation (Respondent), alleging that Respondent terminated service to a rental property without notice and as a result, the pipes at the property froze damaging the water heater, pipes and carpeting. As relief, Complainant requests reimbursement for the cost of repairing the damage.

On February 20, 2006<sup>2</sup>, 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 the Commission does not have the authority to grant the relief requested namely, monetary damages.

According to Commission records, Complainant did not file a response to the New Matter<sup>3</sup> raised in Respondent's Answer or the Motion to Dismiss<sup>4</sup>. Accordingly, the relevant facts

<sup>1</sup> The January 31 Complaint was deemed, by the Commission's Secretary's Bureau, to be "additional information" amending the original complaint and was docketed at the above-referenced case number. Both documents will be considered as one complaint for purposes of this order.

<sup>2</sup> Respondent was served with a copy of the Complaint on January 20, 2006.

<sup>3</sup> Pursuant to 52 Pa. Code §5.62(c) an answer to New Matter was due by March 12, 2006.

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raised as new matter are deemed admitted<sup>5</sup>. The matter was assigned to me by Motion Judge Assignment Notice dated February 24, 2006. The Motion to Dismiss is ripe for ruling.

### FINDINGS OF FACT

1. Complainant is Glenn O. Confer, 187 Bolopue Road, Mill Hall, Pennsylvania, 17751.
2. Respondent is PPL Electric Utilities Corporation
3. On January 27 and 31, 2006, Complainant filed a Formal Complaint with the Commission alleging that Respondent terminated service to a rental property without notice causing the pipes to freeze and damaging the property. As relief, Complainant requested that the Commission direct Respondent to reimburse him for the cost of repairing the damage.
4. The Complaint allegations arose from service provided by Respondent at 243 Draketown Road, Mill Hall, Pennsylvania.
5. Respondent moved for dismissal of the Complaint on the basis that the Commission is without the authority to grant the relief requested by Complainant.

### DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that it is insufficient as to substance because the Commission is unable to grant the relief requested by Complainant.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §§5.101-5.103. Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small

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<sup>5</sup> 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).

Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental 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 has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

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 (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)).

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). However, the Commission has been granted broad powers to 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.

The Complaint states that Respondent failed to provide proper notice prior to terminating service to Complainant's rental property and failed to timely reconnect service. Complainant essentially alleges that Respondent failed to provide reasonable service when it did not advise him, as owner of the property, that the electricity was going to be shut off. Although, the Commission cannot grant the monetary damages requested by Complainant, it is the proper venue to adjudicate the issue of whether Respondent followed the termination procedures set forth in the Public Utility Code and Commission regulations. *See* 66 Pa. C.S. §§1406, 1503 and 52 Pa. Code §§56.81 *et seq*

The appropriateness of Respondent's actions is a disputed question of fact and there is too much uncertainty concerning this Complaint for me to grant the Motion to Dismiss solely on the basis of the relief requested. Therefore, for the reasons set forth above, the Motion to Dismiss will be granted, in part, because the Commission lacks the authority to award Complainant monetary damages, and denied, in part, because Complainant's dispute involves a question regarding the adequacy and reasonableness of the service provided by Respondent prior to terminating service to Complainant's rental property.

This case will be set for a resolution conference to provide the parties with the opportunity to resolve the allegations raised in the Complaint. The parties are directed to attempt to resolve this matter themselves and are strongly encouraged to participate in this process. This process is consistent with the Commission's regulations at 52 Pa. Code §§ 5.231(a) and 69.391.

Respondent shall contact Complainant no later than April 3, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of this case. The conference shall occur no later than April 24, 2006. No later than ten days following the conference, Respondent shall file a report with Herbert R. Nurick (Mediation Coordinator), setting forth:

- (a) The date, time and location of the conference;
- (b) The participants representing each party;
- (c) A statement describing whether a full resolution, including withdrawal of the complaint, was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and

- (d) A statement listing any resolved issues, if a full resolution was not achieved.

Should the conference not take place by the due date, Respondent shall file a report with the mediator, no later than May 4, 2006, giving the reason(s) why the due date was not met.

The Commission encourages mediation if the parties cannot reach an agreement through the resolution conference.<sup>6</sup> If the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, they are entitled to a hearing, which will include the presentation of oral testimony and other evidence before an Administrative Law Judge, who will consider the case and issue a written decision.<sup>7</sup>

#### 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 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 the authority to award monetary damages.

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<sup>6</sup> Mediation is an informal process in which the parties attempt to resolve the case with the help of a mediator. The mediator is a neutral staff member of the Commission who does not give advice, make a decision or represent any party. Instead, the mediator assists the parties in their efforts to come to an agreement.

<sup>7</sup> Should this case proceed to hearing, Complainant will bear the burden of proof and must present evidence sufficient to demonstrate that Respondent has violated a statute, regulation or order of the Commission. 66 Pa. C.S. §332(a).

ORDER

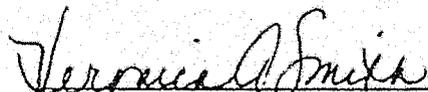
THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's Motion to Dismiss the Complaint filed by Glenn O. Confer, at PUC Docket No. C-20065815, is granted, in part and denied, in part.
2. That the portion of the Complaint filed by Glenn O. Confer at PUC Docket No. C-20065815 requesting that this Commission award monetary damages is dismissed.
3. That this matter be set for a resolution conference.
4. That PPL Electric Utilities Corporation shall contact Glenn O. Confer no later than April 3, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of the allegations raised in the Complaint.
5. That the resolution conference shall take place no later than April 24, 2006.
6. That PPL Electric Utilities Corporation shall file a report addressed to Herbert R. Nurick, Mediation Coordinator, Office of Administrative Law Judge, P.O. Box 3265, Harrisburg, PA 17105-3265, no later than ten days following the resolution conference setting forth:
  - (a) the date, time and location of the conference;
  - (b) the participants for each party
  - (c) a statement describing whether a full resolution, including withdrawal of the complaint was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
  - (d) a statement listing any resolved issues, if a full resolution was not achieved.
7. That, if the resolution conference does not take place by the due date, PPL Electric Utilities Corporation shall file a report with the mediator, no later than May 4, 2006 giving the reason(s) why the due date was not met.

8. That, if the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, this matter will be set for hearing.

Dated: March 22, 2006

  
\_\_\_\_\_  
Veronica A. Smith  
Chief Administrative Law Judge

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April 18, 2006

ORIGINAL

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED  
2006 APR 20 AM 9:25  
PA P.U.C.  
SECRETARY'S BUREAU

RE: Glenn O. Confer vs. PPL Electric Utilities Corporation  
Case No: C-20065815

Dear Mr. McNulty:

Enclosed for filing in the above-captioned matter are an original and three (3) copies of a Certificate of Satisfaction of Complaint under 52 Pa. Code § 5.24(b).

Because all legal and factual issues in this proceeding have been resolved, PPL respectfully requests that this docket be terminated.

I hereby certify that I have provided a copy of the Certificate to the Complainant in this proceeding.

Thank you for your assistance.

Very truly yours,  
  
JOHN F. GROSS

DOCUMENT  
FOLDER

JFG/dm

Enclosures

cc: Herbert R. Nurick (w/enc.)  
Deidre L. Bilger (w/enc.)  
Glenn O. Confer (w/enc.)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
2006 APR 20 AM 9:25  
PA P.U.C.  
SECRETARY'S BUREAU

GLENN O. CONFER

v.

PPL ELECTRIC UTILITIES CORPORATION

Complaint Docket  
NO. C-20065815

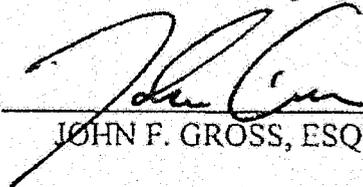
CERTIFICATE OF SATISFACTION OF COMPLAINT

1. Complainant is Glenn O. Confer.
2. Respondent is PPL Electric Utilities Corporation (hereafter referred to as "PPL").
3. This Certificate of Satisfaction of Complaint is submitted pursuant to 52 Pa. Code § 5.24(b).
4. Complainant, Glenn O. Confer, withdraws his Complaint with prejudice.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the docket be marked closed in this matter.

Respectfully submitted,

PPL Electric Utilities Corporation

By:   
JOHN F. GROSS, ESQUIRE

DOCUMENT  
FOLDER

Dated: 4/18/06  
at Allentown, Pennsylvania

**DOCKETED**  
APR 24 2006

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLENN O. CONFER

v.

PPL ELECTRIC UTILITIES CORPORATION

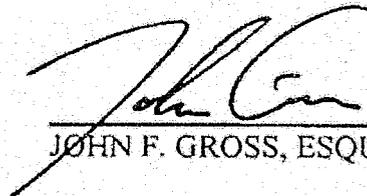
Complaint Docket  
NO. C-20065815

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the participant, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):

GLENN O. CONFER  
187 BOLOPUE ROAD  
MILL HALL, PA 17551

Dated this 18th day of April, 2006.

  
\_\_\_\_\_  
JOHN F. GROSS, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

**DATE:** April 26, 2006

**SUBJECT:** Glenn O. Confer v. PPL Electric Utilities Corporation  
C-20065815

**TO:** Wanda Zeiders  
Docket Management

**FROM:** Linda Salome, ALJ Support Staff  
Office of Administrative Law Judge

DOCUMENT  
FOLDER

On April 20, 2006, a Certificate of Satisfaction was filed in the above-captioned proceeding. If no objection is filed to this certificate within 10 days of service, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

## Attachment

pc: Herbert Nurick, Mediation Coordinator  
Beth Plantz  
Case File

**DOCKETED**  
MAY 8 - 2006