

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gus Gregorakis

v.

West Penn Power Company

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C-2016-2579574

**ORDER**  
**SUSTAINING IN PART AND DENYING IN PART PRELIMINARY OBJECTIONS**

On December 7, 2016, Gus Gregorakis (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against West Penn Power Company (Respondent), Docket Number C-2016-2579574. In his complaint, Complainant alleges that on July 5, 2016 the Respondent improperly shut off electric service to several tenants at the premises he owns at 29 S. Main Street, Masontown, Pennsylvania. As a result of this shut off, and what the Complainant believes to be an unreasonable delay in the return of the service by Respondent, Complainant seeks monetary damages for the time and expense he believes he incurred as a result of having to address this shutoff as the owner and landlord of the premises.

On January 3, 2017 Respondent filed an answer and new matter to this complaint. In its answer, Respondent admitted or denied the various elements of the complaint. Specifically, Respondent averred that while there are four meters installed at the service location for the various tenants, it was denied that service was erroneously terminated or that the return of the service was untimely. Respondent also averred that the events of July 5, 2016 were the direct result of the Complainant's specific request to discontinue service to certain meters at the premises due to lack of occupants. The remainder of the Respondent's answer and new matter relate to Respondent's argument that the complaint seeks monetary damages for which the Commission has no jurisdiction to award.

Respondent's answer and new matter included a notice to plead advising the Complainant that he would be required to file a response within twenty days. The deadline to file an answer to this new matter was January 26, 2017. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). The Complainant did not file an answer.

Also on January 3, 2017, Respondent filed preliminary objections to the complaint. In short, these preliminary objections argued that the Complainant's sole request for relief was an award of monetary damages over which the Commission does not maintain jurisdiction. As such, the Respondent requested that the request for monetary damages be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction. The Respondent further requested that an order be entered expressly prohibiting the Complainant from introducing any testimony or exhibits relating to alleged monetary damages at the time of hearing.

Respondent's preliminary objections included a notice to plead advising the Complainant that he would be required to file a response within twenty days. The deadline to file an answer to these preliminary objections was January 26, 2017. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). The Complainant did not file an answer.

On February 24, 2017 a hearing notice was issued to the parties and assigned this matter to the undersigned for initial hearing on March 27, 2017. Respondent's preliminary objections are now ready for disposition. For the reasons discussed below, the objections will be sustained in part, and denied in part.

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:

**§ 5.101 Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and

prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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 a proceeding.

Here, the Respondent's preliminary objections assert lack of Commission jurisdiction, pursuant to 52 Pa.Code §§ 5.101(a)(1). This is not correct. A request for relief that is not legally available in the cause of action pleaded is "impertinent matter" in the sense that it is irrelevant to that cause of action. A preliminary objection in the nature of a motion to strike off impertinent matter is the appropriate method to challenge an erroneous prayer for damages. Hudock v. Donegal Mut. Ins. Co., 264 A.2d 688 (Pa. 1970).

The Respondent's preliminary objections argue that the Commission should dismiss the complaint because the Commission lacks jurisdiction to award monetary damages. The Respondent is confusing the Commission's power or authority with the Commission's

subject matter jurisdiction. The difference was explained by the Pennsylvania Supreme Court in Riedel v. The Human Relations Comm'n of the City Of Reading, 739 A.2d 121, 124 (Pa. 1999):

Jurisdiction and power are not interchangeable although judges and lawyers often confuse them - Hellertown Borough Referendum Case, 354 Pa. 255, 47 A.2d 273 (1946). Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result. Delaware River Port Auth. v. PA Public Utility Commission, 408 Pa. 169, 178, 182 A.2d 682, 686 (1962); see also Beltrami Enterprises, Inc. v. Commonwealth of PA, Dep't of Environmental Resources, 159 Pa. Commw. 72, 632 A.2d 989, 993 (Pa. Commw. 1993) (fact that administrative agency may not have power to afford relief in particular case presented is of no moment to determination of its jurisdiction over general subject matter of controversy).

See also, In Re: Melograne, 812 A.2d 1164 (Pa. 2002); Bell Telephone Co. of Pa. v. Philadelphia Warwick Co., 50 A.2d 684 (Pa. 1947).

Although it has general jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Public Utility Code simply does not grant the Commission the authority to award damages in this case. There is no question that the Commission lacks authority to award damages. Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994); Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371 (Pa. 1980); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977); Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa.Super. 1991); Poorbaugh v. Pa. Pub. Util. Comm'n., 666 A.2d 744 (Pa.Cmwlth. 1995).

Even if the facts alleged in the Complainant's complaint were proven to be true, the Commission could not award the monetary relief requested by the Complainant. The Complainant's request that the Respondent reimburse him for his costs is a request for monetary damages and is beyond the authority the General Assembly has granted to the Commission.

It is noted that the Respondent's preliminary objections have also asserted the inclusion of impertinent matter in the complaint pursuant to the 52 Pa.C.S. § 5.101(a)(2). However, while the Respondent alluded to impertinent matter in the argument section of its objections, the Respondent specifically requested that "the relief for damages ... be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction." This is again incorrect. A preliminary objection relating to monetary damages and subject matter jurisdiction cannot be sustained. However, to the extent that the Respondent has filed preliminary objections relating to the Complainant's requested relief of monetary damages as impertinent matter under 52 Pa.C.S. § 5.101(a)(2), such preliminary objections are sustained. The portions of the complaint relating to the request for monetary damages are therefore stricken.

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) (Equitable). A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

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 motion all well pleaded, material facts of the nonmoving party, as well as every inference 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 factual assertions in 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.

Viewing the factual assertions in the complaint in this case in their entirety and in the light most favorable to Complainant for purposes of disposing of the preliminary objections, Complainant has made several allegations with respect to the alleged erroneous shut-off of electric service to his tenants as well as what the Complainant believes to be an unreasonable delay by the Respondent to restore this service. The framing of this complaint by the Respondent in its preliminary objections as solely a request for monetary damages (over which the Commission has no subject matter jurisdiction) is clearly misplaced. This conclusion is corroborated by the Respondent's own answer to the complaint which avers that service was "timely restored ... within 24 hours as required by the Code and Commission regulation."

The Commission has jurisdiction to ensure that every public utility furnishes and maintains adequate, efficient, safe and reasonable service and facilities, and makes all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary for the accommodation, convenience and safety of its patrons, employees and the public. 66 Pa.C.S. § 1501. To the extent that the complaint raises allegations relating to the appropriateness or reasonableness of the shut-off and restoration of service to the Complainant's property, there are clearly issues of material fact remaining and which must be decided and over which the Commission maintains jurisdiction. The Respondent's preliminary objection that the complaint be dismissed with prejudice in its entirety for lack of subject matter jurisdiction is therefore denied.

Last, it is noted that in its preliminary objections the Respondent requests that the Complainant be barred at the time of hearing from presenting testimony or exhibits relating to alleged monetary damages. The time and place for such consideration is at the time of hearing. Should the Complainant testify or sponsor exhibits relating to monetary damages, the Respondent is free to make legal objections regarding such evidence – and the Complainant is afforded the opportunity to explain the purpose for which such evidence is being presented. This preliminary objection is denied.

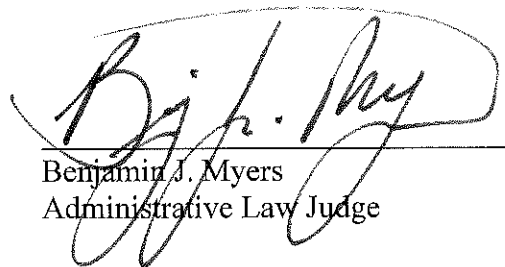
ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by West Penn Power Company at Docket No. C-2016-2579574, are sustained in part and denied in part.
2. That the preliminary objections relating to a lack of subject matter jurisdiction are denied.
3. That the preliminary objections relating to monetary damages as impertinent matter are sustained.
4. That the portions of the complaint filed by Gus Gregorakis at Docket No. C-2016-2579574 requesting monetary damages are stricken.
5. That the preliminary objection asking that the Complainant be barred at the time of hearing from presenting testimony or exhibits relating to alleged monetary damages is denied.
6. That the remaining issues set forth in the complaint of Gus Gregorakis at Docket No. C-2016-2579574 shall be heard at the hearing scheduled for March 27, 2017.

Date: March 6, 2017

  
Benjamin J. Myers  
Administrative Law Judge

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