

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ross E. Schell	:	
	:	
v.	:	C-2016-2578796
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This Initial Decision dismisses the formal complaint filed by Ross E. Schell for failure to file an amended complaint as required by an interim order entered on March 9, 2017.

HISTORY OF THE PROCEEDING

Ross E. Schell (Complainant or Mr. Schell) filed a formal complaint (complaint or original complaint) dated December 5, 2016, with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL) on December 7, 2016. The original complaint averred that Respondent was threatening to shut off his electric service and the existence of reliability, safety or quality problems with his electric service. Complainant also checked the box on the formal complaint entitled “other.” As relief, Complainant requested a refund of payments made for the past 17 years. The original and amended complaints were not signed by Complainant and did not include verifications. On December 27, 2016, Respondent filed an answer essentially denying the material allegations set forth in the original complaint.

On January 18, 2017, Complainant filed an amended complaint dated January 14, 2017 (amended complaint), raising additional claims to those set forth in his original complaint.

A hearing notice was issued and served upon the parties on January 13, 2017, scheduling the initial telephone hearing for Tuesday, February 28, 2017. A prehearing order was entered and served upon the parties by the Commission on January 18, 2017, which provided procedural rules and guidelines for the proceeding.

The hearing was convened as scheduled on Tuesday, February 28, 2017, at 10:00 a.m. Complainant appeared *pro se*. Respondent was represented by Kimberly G. Krupka, Esquire. Prior to taking testimony, Complainant stated that he filed an amended complaint but did not effectuate service of the amended complaint upon Respondent.¹

At the hearing, Respondent raised various objections including an objection to the filing of the amended complaint and the lack of service of the amended complaint upon Respondent. Respondent could not proceed with presenting a defense to the amended complaint without having been served with the pleading prior to the hearing. Under the circumstances, the hearing was continued.

On March 1, 2017, an interim order was entered that required Complainant to serve his amended complaint dated January 14, 2017, upon counsel for Respondent and the undersigned presiding officer and comply with the service and filing requirements on or before March 10, 2017. In addition, it was ordered that Respondent file any responsive pleadings, objections or other petitions or motions within 20 days of receipt of the amended complaint served by Complainant. No certificate of service was filed by Complainant subsequent to the interim order entered on March 1, 2017.

On March 1, 2017, Respondent filed an answer to Complainant's amended complaint and a motion for a more specific complaint (motion). The motion included a

¹ See 52 Pa.Code §§ 1.54 – 1.59.

certificate of service stating that Complainant was served with a copy of the motion on March 1, 2017. In its motion, Respondent averred that Complainant filed an amended complaint alleging:

(a) “Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if they have it/them.”

“Service contrary to stated [sic] in laws”

(b) “I am having reliability, safety, or quality problems with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.”

“Poser [sic] keeps going off and on for 17 years”

(c) “Other (explain)”

“See enclosed sheets”

The only documents attached to Complainant’s amended complaint were a copy of 66 Pa.C.S. §§ 1501 – 1505, PPL’s nine month feeder history for various lines and Complainant’s outage history. In addition, Complainant failed to identify any specific outages about which he complained, and his “other” concerns were not described. Respondent averred that without Complainant identifying the specific charges about which he complained, PPL could not appropriately respond to the amended complaint and could not adequately investigate and prepare a defense.

No responsive pleading was filed by Complainant. Respondent’s motion was treated as preliminary objections in the nature of a motion for a more specific pleading.

An interim order was entered on March 9, 2017, directing Complainant to file a second amended complaint stating the specific allegations which form the basis for his amended complaint, identifying the specific outages about which he complained and explaining his “other” concerns. Complainant was further directed to file and serve his second amended complaint upon counsel for Respondent and the undersigned presiding officer on or before

March 17, 2017, and to comply with the Commission's service and filing requirements. Respondent was directed to file any responsive pleadings, objections or other petitions or motions within 20 days of receipt of the second amended complaint served by Complainant.

Complainant did not file a second amended complaint as directed by the interim order entered on March 9, 2017.

The record closed by interim order entered on April 26, 2017.

FINDINGS OF FACT

1. On December 7, 2016, Ross E. Schell filed a formal complaint with the Pennsylvania Public Utility Commission (Commission), dated December 5, 2016, against PPL Electric Utilities Corporation.

2. In the formal complaint, Complainant averred that Respondent was threatening to shut off his electric service or has shut off service, the existence of reliability, safety or quality problems with his electric service, and he checked the box on the formal complaint entitled "other."

3. The formal complaint was not signed by Complainant and did not include a verification.

4. On December 27, 2016, Respondent filed an answer essentially denying the material allegations set forth in the complaint.

5. On January 18, 2017, Complainant filed an amended complaint dated January 14, 2017, raising additional claims to those set forth in his original complaint.

6. A hearing was convened as scheduled on February 28, 2017.

7. Prior to taking testimony, Complainant stated that he had not effectuate service of the amended complaint upon Respondent.
8. The hearing was continued.
9. On March 1, 2017, Respondent filed an answer to Complainant's amended complaint and a motion for a more specific complaint.
10. No responsive pleading to the motion was filed by Complainant.
11. An interim order was entered on March 9, 2017, directing Complainant to file a second amended complaint stating the specific allegations which formed the basis for his formal complaint, identifying the specific outages about which he complained and explaining his "other" concerns and to file the amended complaint on or before March 17, 2017, and to comply with the Commission's service and filing requirements.
12. Complainant did not file a more specific formal complaint as directed by the interim order entered on March 9, 2017.

DISCUSSION

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa.Cmwlt. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlt. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlt. 1988).

Complainant averred incorrect charges on his bill, that he has a reliability, safety, quality or other problems with his electric service and “other” and attached copies of what appears to be several sections of the Public Utility Code and various other documents to his complaint. However, Complainant presented no specific factual allegations regarding his alleged problem. The amended complaint, as filed, was insufficiently specific and prevented Respondent from investigating and defending the complaint.

A formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4). The Commission’s regulations require that a complaint contain a clear statement of the relief sought. 52 Pa.Code § 5.22(a)(5). A complaint should contain information specific enough to allow respondent to understand the allegations against it and to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense.

In addition, a pleading must be legally sufficient. See 52 Pa.Code § 5.101(a)(4). Although, as set forth above, Complainant made general averments in his amended complaint, he provided no factual explanation of his alleged problem. The amended complaint, as filed, was legally insufficient to provide Respondent with notice of the alleged facts and issues to be litigated. To allow the amended complaint to go forward would have denied Respondent its due process rights.

52 Pa.Code § 5.92(c) permits a presiding officer to allow pleadings to be amended and evidence to be received when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a party. Section 5.92(d) provides for a continuance when necessary to allow the objecting party to address new issues and evidence.

Complainant expressed a desire to amend his complaint at the initial hearing in this proceeding. Accordingly, an interim order was entered on March 9, 2017 directing Complainant to file with the Commission’s Secretary a second amended complaint stating the

specific allegations which form the basis for his amended complaint, identifying the specific outages about which he complained and explaining his “other” concerns and to file the second amended complaint on or before March 17, 2017, and to comply with the Commission’s service and filing requirements. Complainant failed to file a more specific formal complaint as directed by the interim order entered on March 9, 2017.

The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainant’s conduct concerning this matter involves not just failing to comply with an order of the administrative law judge, but involves a failure to provide Respondent with notice of the alleged facts and issues to be litigated and to bring this matter to a fair and prompt conclusion. To allow the amended complaint to go forward would have denied Respondent’s due process rights. Complainant was given sufficient opportunity to file and serve a second amended complaint and failed to do so. Complainant has filed numerous complaints with the Commission and is familiar with Commission procedures.² He could have provided a more specific amended complaint or he could have requested additional time to file a second amended complaint. Complainant chose to ignore the terms of the interim order entered on March 9, 2017, which permitted him to amend his amended complaint. As such, a hearing in this matter is not necessary and is not in the public interest. Under the circumstances, there is no factual issue in dispute in this proceeding. Accordingly the amended complaint will be dismissed.

If there is no factual issue pertinent to the ultimate resolution of a proceeding before the Commission, it is not necessary to hold a hearing. 66 Pa.C.S. § 703(a). See also, *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n*, 128 Pa. Commonwealth Ct. 276, 563 A.2d 557 (1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n*, 128 Pa. Commonwealth Ct. 259, 563 A.2d 548 (1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm’n*, 116 Pa. Commonwealth Ct. 13, 540 A.2d 1006 (1988); *White Oak Borough*

² See Docket Nos. C-2016-2535220, C-2016-2538023, C-2016-2539969, C-2016-2551544, C-2016-2552834, C-2016-2557856, C-2016-2557858, C-2016-2557863, C-2016-2558239, C-2016-2558244, C-2016-2559741, C-2016-2563040, C-2016-2565236, C-2016-2565671, C-2016-2566322, and C-2016-2566390.

Authority v. Pa. Pub. Util. Comm'n, 175 Pa. Superior Ct. 114, 103 A.2d 502 (1954); *Kaczmarczyk v. Lakewood Telephone Co.*, Docket No. F-00162260 Final Order entered January 22, 1993); *Joint Petition of Pennsylvania Power & Light Co., Philadelphia Electric Company and UGI Corporation for a Declaratory Order Regarding the Proposed Purchase of Coal from the Florence Mining Company*, Docket No. P-920569 (Order entered May 19, 1992).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this complaint. 66 Pa.C.S. § 701.
2. Motions for insufficiency of a pleading are governed by Section 5.101 of the Commission's regulations, 52 Pa.Code § 5.101.
3. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa.Code § 5.22(a)(4).
4. A formal complaint must include a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation; a clear and concise statement of the relief sought and a verification executed in accordance with 52 Pa.Code § 1.36. 52 Pa.Code §5.22(a)(5-6), (b).
5. A pleading must be legally sufficient. See 52 Pa.Code § 5.101(a)(4).
6. A presiding officer may allow pleadings to be amended and evidence to be received when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a party. 52 Pa.Code § 5.92(c).

7. A presiding officer may permit a continuance when necessary to allow the objecting party to address new issues and evidence. 52 Pa.Code § 5.92(d).

8. The amended complaint filed in this proceeding is not sufficiently specific and prevented Respondent from investigating and defending the amended complaint.

9. If there is no factual issue pertinent to the ultimate resolution of a proceeding before the Commission, it is not necessary to hold a hearing. 66 Pa.C.S. § 703(a). See also, *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 128 Pa. Commonwealth Ct. 276, 563 A.2d 557 (1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 128 Pa. Commonwealth Ct. 259, 563 A.2d 548 (1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 116 Pa. Commonwealth Ct. 13, 540 A.2d 1006 (1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n*, 175 Pa. Superior Ct. 114, 103 A.2d 502 (1954); *Kaczmarczyk v. Lakewood Telephone Co.*, Docket No. F-00162260 (Initial Decision issued December 14, 1992, Final Order entered January 22, 1993); *Joint Petition of Pennsylvania Power & Light Co., Philadelphia Electric Company and UGI Corporation for a Declaratory Order Regarding the Proposed Purchase of Coal from the Florence Mining Company*, Docket No. P-920569 (Order adopted May 14, 1992, entered May 19, 1992).

10. The Commission's regulations specify certain sanctions that are available when a party fails to comply with an order of the Commission "as is just." 52 Pa.Code § 5.372(a).

11. Under the circumstances, the dismissal of the amended complaint for failure to comply with the order requiring Complainant to file a second amended complaint is just.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the amended complaint filed by Ross E. Schell against PPL Electric Utilities Corporation at Docket No. C-2016-2578796, is hereby denied for Complainant's failure to comply with the interim order entered on March 9, 2017 requiring Complainant to file a second amended complaint.

2. That the Secretary's Bureau shall mark Docket No. C-2016-2578796 as closed.

Date: April 27, 2017

/s/
Jeffrey A. Watson
Administrative Law Judge