

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dave Price	:	
	:	
v.	:	C-2017-2618525
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

This Initial Decision dismisses the Formal Complaint filed by Dave Price for failure to file an amended complaint as required by interim order entered on November 15, 2017.

**HISTORY OF THE PROCEEDING**

On July 27, 2017, Dave Price (Complainant or Mr. Price) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Company) alleging *inter alia*, his opposition to the Company’s plan to exchange his existing meter and install a digital meter with radio frequency (RF) technology in its place. As relief, Complainant requests “a hearing on use of digital meter. Don’t want this meter use in my home. I object to the RFI meter and other reasons.”

On August 30, 2017, Respondent filed an answer to the Complaint, essentially averring that Respondent is required by Act 129 of 2008,<sup>1</sup> to install a smart meter and requesting that the Complaint be dismissed with prejudice.

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<sup>1</sup> 66 Pa.C.S. Sections 2806.1, *et seq.*

On August 30, 2017, Respondent also filed preliminary objections to the Complaint. Respondent essentially averred that Complainant has not alleged any safety or health issue with the smart meter to be installed at the service location. Respondent also averred that Complainant failed to allege that Respondent violated any law, the Public Utility Code, 66 Pa.C.S. § 101, *et seq.*, (Code), or any Commission regulation or order that can be the basis of any finding against the Company, and therefore the Complaint should be dismissed as being legally insufficient. Finally, Respondent alleged that the Complaint is not sufficiently specific to apprise the Company of the claims being asserted in order to prepare a defense.

Complainant did not file a response to the preliminary objections.

A Motion Judge Assignment Notice was issued on October 5, 2017 and assigned the undersigned presiding officer to this proceeding.

On November 15, 2017, an interim order was entered granting the preliminary objections filed by Respondent to the limited extent that the preliminary objections sought an order requiring Complainant, Dave Price, to file a more specific pleading. The preliminary objections were denied in all other respects. In addition, Complainant was ordered to file an amended complaint stating the specific allegations against Respondent about which he complains and identifying in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent. Complainant was ordered to file his amended complaint upon legal counsel for Respondent, Jeremy V. Farrell, Esquire and the undersigned presiding officer and comply with the Commission’s service and filing requirements on or before December 5, 2017.

Complainant has not filed an amended complaint as ordered on November 15, 2017.

On December 19, 2017, Respondent filed Duquesne Light Company’s Motion To Dismiss For Lack of Prosecution (Motion to Dismiss). Attached to the Motion to Dismiss was a notice directing Complainant to file a written response within 20 days or judgment may be entered against him. Complainant did not file a response to the Motion to Dismiss.

On January 25, 2018, an order was entered requiring Complainant to file an amended complaint stating the specific allegations against Respondent about which he complains and identifying in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent as previously ordered, on or before February 5, 2018. In addition, it was ordered that Complainant serve an amended complaint upon legal counsel for Respondent, Jeremy V. Farrell, Esquire and the undersigned presiding officer and comply with the Commission’s service and filing requirements on or before February 5, 2018.

Complainant failed to file an amended complaint by February 5, 2018, as ordered.

The record closed by interim order entered on February 6, 2018.

#### FINDINGS OF FACT

1. Complainant, Dave Price, filed a Complaint with the Pennsylvania Public Utility Commission against Respondent, Duquesne Light Company, on July 27, 2017.
2. Complainant averred, *inter alia*, Complainant’s opposition to the Company’s plan to exchange his existing meter and install a digital meter with RF technology in its place. As relief, Complainant requests “a hearing on use of digital meter. Don’t want this meter use in my home. I object to the RFI meter and other reasons.”
3. On August 30, 2017, Respondent filed an answer to the Complaint, essentially averring that Respondent is required by Act 129 of 2008,<sup>2</sup> to install a smart meter and requesting that the Complaint be dismissed with prejudice.
4. On August 30, 2017, Respondent filed preliminary objections to the Complaint, averring, *inter alia*, that Complainant did not allege any safety or health issue with the smart meter to be installed at the service location and that the Complaint was not sufficiently specific to apprise the Company of the claims being asserted in order to prepare a defense.

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<sup>2</sup> 66 Pa.C.S. Sections 2806.1, *et seq.*

5. On November 15, 2017, an interim order was entered granting the preliminary objections filed by Respondent to the limited extent that the preliminary objections sought an order requiring Complainant to file a more specific pleading.

6. The November 15, 2017 interim order also ordered Complainant to file an amended complaint stating the specific allegations against Respondent about which he complains and identifying in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent.

7. Complainant was ordered to serve an amended complaint upon legal counsel for Respondent, Jeremy V. Farrell, Esquire and the undersigned presiding officer and comply with the Commission’s service and filing requirements on or before December 5, 2017.

8. Complainant did not file an amended complaint as ordered on November 15, 2017.

9. On December 19, 2017, Respondent filed Duquesne Light Company’s Motion to Dismiss for Lack of Prosecution (Motion to Dismiss). Attached to the Motion to Dismiss was a notice directing Complainant to file a written response within 20 days or judgment may be entered against him.

10. Complainant did not file a response to the Motion to Dismiss.

11. On January 25, 2018, an order was entered requiring Complainant to file an amended complaint stating the specific allegations against Respondent about which he complains and identifying in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent as previously ordered, on or before February 5, 2018.

12. In addition, it was ordered that Complainant serve an amended complaint upon legal counsel for Respondent, Jeremy V. Farrell, Esquire and the undersigned presiding

officer and comply with the Commission's service and filing requirements on or before February 5, 2018.

13. Complainant failed to file an amended complaint by February 5, 2018, as ordered.

14. The record closed by interim order entered on February 6, 2018.

### 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 and authorizes preliminary objections to be filed in response to a complaint. 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.Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa.Cmwlth. 1988).

Complainant alleged in his Complaint, *inter alia*, his opposition to the Company's plan to exchange his existing meter and install a digital meter with RF technology in its place. As relief, Complainant requests "a hearing on use of digital meter. Don't want this meter use in my home. I object to the RFI meter and other reasons." However, Complainant presented no specific factual allegations regarding his alleged problem. The 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 the respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense.

In addition, a pleading cannot be legally insufficient. See 52 Pa.Code § 5.101(a)(4). Complainant made general averments in his Complaint and he provided no factual explanation of his alleged problem. The Complaint, as filed, was legally insufficient to provide Respondent with notice of the alleged facts and issues to be litigated. To allow the 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 on the merits of the proceedings will be served.

On August 30, 2017, Respondent filed preliminary objections to the Complaint. Respondent essentially averred that Complainant has not alleged any safety or health issue with the smart meter to be installed at the service location. Respondent also averred that Complainant has failed to allege that Respondent has violated any law, the Code, or any Commission regulation or order that can be the basis of any finding against the Company, and therefore the Complaint should be dismissed as being legally insufficient under 52 Pa.Code § 5.101(a)(4). Finally, Respondent alleged that the Complaint is not sufficiently specific to apprise the Company of the claims being asserted in order to prepare a defense.

Complainant did not file a response to the preliminary objections.

On November 15, 2017, an interim order was entered granting the preliminary objections filed by Respondent to the limited extent that the preliminary objections sought an order requiring Complainant to file a more specific pleading. The preliminary objections were

denied in all other respects. In addition, Complainant was ordered to file an amended complaint. The order required Complainant to state the specific allegations against Respondent about which he complains and to identify in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent. Complainant was ordered to serve an amended complaint upon legal counsel for Respondent and the undersigned presiding officer and comply with the Commission’s service and filing requirements on or before December 5, 2017.

Complainant did not file an amended complaint as ordered on November 15, 2017.

On December 19, 2017, Respondent filed Duquesne Light Company’s Motion to Dismiss for Lack of Prosecution. Attached to the Motion to Dismiss was a notice directing Complainant to file a written response within 20 days or judgment may be entered against him. Complainant did not file a response to the Motion to Dismiss.

On January 25, 2018, an order was entered requiring Complainant to file an amended complaint stating the specific allegations against Respondent about which he complains and identifying in detail the reasons for his complaint and all of his claims and “other reasons” against Respondent as previously ordered, on or before February 5, 2018. In addition, it was ordered that Complainant shall serve an amended complaint upon legal counsel for Respondent and the undersigned presiding officer and comply with the Commission’s service and filing requirements on or before February 5, 2018.

Complainant failed to file and serve an amended complaint by February 5, 2018, as ordered.

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. Moreover, a second interim order was issued on January 25, 2018 providing Complainant with a second opportunity to file an amended complaint, and Complainant failed to comply with either order.

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record, and cautions against dismissing cases on a preliminary basis. In the often-cited case of Richard Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock), the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed because of a preliminary pleading. Id. at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Order entered October 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).

In this case, Respondent filed preliminary objections, requesting that the complaint be dismissed. Instead of dismissing the complaint, Complainant was given an opportunity to amend his complaint to identify the reasons that he objected to the installation of a smart meter at his home. Complainant did not respond to the preliminary objections and did not file an amended complaint. Subsequently, Respondent filed a motion to dismiss the complaint. Complainant did not file any response to the motion to dismiss. Instead of granting the motion to dismiss, Complainant was given another opportunity to file an amended complaint by interim order entered on January 25, 2018. Again, Complainant failed to respond by filing an amended complaint, asking for additional time, or by filing any response or identifying the reasons that he objected to the installation of a smart meter at his home. While every opportunity has been provided to Complainant to identify the reasons for the filing of his complaint, Respondent also

has due process rights that must be protected. The complaint provides no information that would enable Respondent to prepare a defense to the complaint. Complainant has been afforded sufficient time and opportunity to identify his reasons for objecting to the smart meter installation. Nonetheless, no response has been provided by Complainant.

To allow the initial Complaint to go forward would result in the denial of Respondent's due process rights. Complainant was given sufficient opportunities to file and serve an amended complaint and failed to do so. Complainant could have provided a more specific amended complaint or he could have requested additional time to file an amended complaint. Complainant chose to ignore the terms of the interim orders entered on November 15, 2017, and January 25, 2018, which permitted him to amend his Complaint. As such, a hearing in this matter is not necessary or appropriate and is not in the public interest. Under the circumstances, there is no factual issue in dispute in this proceeding. Accordingly, the 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. Public Utility Commission*, 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).

## 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; and 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 cannot be legally insufficient. 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 on the merits of the proceedings will be served thereby. 52 Pa.Code § 5.92(c).
7. The Complaint filed in this proceeding is insufficiently specific and prevented Respondent from investigating and defending the Complaint.
8. 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).

9. 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). Under the circumstances, the dismissal of the Complaint for failure to comply with two interim orders requiring Complainant to file an amended complaint is just.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion to Dismiss for Lack of Prosecution at Docket No. C-2017-2618525 is granted.

2. That the Complaint filed by Dave Price against Duquesne Light Company at Docket No. C-2017-2618525, is hereby dismissed with prejudice for Complainant's failure to comply with the interim orders entered on November 15, 2017 and January 25, 2018, requiring Complainant to file an amended complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2017-2618525 as closed.

Date: February 8, 2018

\_\_\_\_\_/s/  
Jeffrey A. Watson  
Administrative Law Judge