

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                        |   |                |
|------------------------|---|----------------|
| Nathaniel Walker       | : |                |
|                        | : |                |
| v.                     | : | F-2018-3001412 |
|                        | : |                |
| Duquesne Light Company | : |                |

**INITIAL DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This initial decision grants the utility’s preliminary objections and dismisses the complaint because the Commission lacks jurisdiction to determine what is a negotiable instrument and the complaint is insufficiently specific.

**HISTORY OF THE PROCEEDING**

On April 17, 2018, Nathaniel Walker filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne) at docket number F-2018-3001412. In his complaint, Mr. Walker averred that Duquesne is threatening to terminate his service or has already terminated his service. Mr. Walker explained that, on several occasions, he caused to be tendered negotiable instruments which clearly stated that they were tendered as full satisfaction of the debts owed to Duquesne. Mr. Walker provided several attachments to his complaint, including a document entitled “Letter of Instruction Regarding International Bill of Exchange.”

On May 15, 2018, Duquesne filed an answer to Mr. Walker's complaint. In its answer, Duquesne admitted or denied the various averments Mr. Walker made and specifically denied that Mr. Walker is entitled to a discharge of his outstanding balance. Instead, Duquesne stated that Mr. Walker is responsible for the outstanding balance on his account. Duquesne added that, on three occasions, Mr. Walker attempted to pay his bill by sending self-prepared promissory notes and that promissory notes are not accepted as a form of payment. Duquesne added that Mr. Walker is responsible for the outstanding balance because he has not paid his balance with acceptable currency and requested that the complaint be dismissed.

Also on May 15, 2018, Duquesne filed preliminary objections in response to Mr. Walker's complaint. In its preliminary objections, which were accompanied by a notice to plead, Duquesne averred that the complaint should be dismissed because of lack of jurisdiction and for insufficient specificity. Duquesne added that the Commission lacks jurisdiction to determine the negotiability of instruments and that there are no allegations related to Mr. Walker's claim that Duquesne is threatening to terminate his service or has already terminated his service. Duquesne reiterated its request that Mr. Walker's complaint be dismissed.

Mr. Walker's answer to Duquesne's preliminary objections was due no later than May 28, 2018. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Mr. Walker did not file an answer to Duquesne's preliminary objections.

On June 22, 2018, a motion judge assignment notice was issued informing the parties that I was responsible for resolving any issue which may arise during the preliminary phase of this proceeding.

The record in this case closed on June 22, 2018, the date of the motion judge assignment notice. Duquesne's preliminary objections are now ready for disposition. For the reasons discussed below, Duquesne's preliminary objections will be granted and Mr. Walker's complaint will be dismissed.

## FINDINGS OF FACT

1. The complainant in this case is Nathaniel Walker.
2. The respondent in this case is Duquesne Light Company.
3. On April 17, 2018, Mr. Walker filed a formal complaint against Duquesne averring that the company has terminated or is threatening to terminate his utility service.
4. On May 15, 2018, Duquesne filed an answer to Mr. Walker's complaint averring that Mr. Walker is responsible for the outstanding balance on his account because he attempted to pay with a self-executed promissory note that is not an acceptable form of payment.
5. On May 15, 2018, Duquesne filed preliminary objections in response to Mr. Walker's complaint arguing that Mr. Walker's complaint should be dismissed because the Commission lacks jurisdiction to determine what is a negotiable instrument and Mr. Walker's complaint is insufficiently specific.
6. Mr. Walker did not file an answer to Duquesne's preliminary objections.

## DISCUSSION

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

- (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.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable 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 complaint in this case in the light most favorable to Mr. Walker and should dismiss the complaint only if it appears that Mr. Walker would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

In this case, Mr. Walker filed his complaint alleging Duquesne had terminated his service or threatened to terminate his service. Mr. Walker explained in his complaint, in toto:

On several occasions, I caused to be tendered negotiable instruments in which clearly stated therein that they were tendered as full satisfaction of the alleged debts within the note itself. The

utility company accepted (received) my note without being bound to the conditions therein. The taking of my notes were by law causation for “discharge” of the alleged debts owed. “Payment” as that word is defined by law is an impossibility when we are in a state of emergency (See Public Law 73-10). I authorized the alternative use of my EXEMPTION using my account number (security account). The debt should be considered “discharged” per UCC 3-310(b); 3-603, 3-104(a) in support of the U.S. Bankruptcy and Commercial Law. (see att.)

Complaint at 3 (emphasis in original). The attachments to Mr. Walker’s complaint include the Commission’s Bureau of Consumer Services disposition of Mr. Walker’s informal complaint, a document entitled “Letter of Instruction Regarding International Bill of Exchange,” and a copy of Mr. Walker’s bill from Duquesne for the period of February 7, 2018 to March 10, 2018.

Even when accepting all of these averments as true and viewing them in the light most favorable to Mr. Walker, as well as every reasonable inference from those averments, it is clear that Mr. Walker has not raised a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company and is not entitled to relief under any circumstances as a matter of law.

As an initial matter, Section 56.94 of the Commission’s regulations governs methods of payment. This Section provides: “Payment in any reasonable manner includes payment by personal check unless the customer within the past year has tendered a check which has been returned for insufficient funds or for which payment has been stopped.” 52 Pa.Code § 56.94(2). The Commission has addressed what is a reasonable form of payment in prior cases. *See e.g.*, James Coppedge v. PECO Energy Co., Docket No. F-2009-2135893 (Ordered entered August 3, 2010) (Coppedge I), Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125 (Order entered January 12, 2012) (Alkhatib), James Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Ordered entered January 29, 2015) (Coppedge II) and George Kennedy v. PECO Energy Co., Docket No. C-2015-2471718 (Order entered October 22, 2015) (Kennedy). In those cases, the Commission has made clear that it does not have jurisdiction to determine whether alternative forms of payment are negotiable instruments that can be used to pay a utility bill.

In Alkhatib, for example, the Commission affirmed the decision of the Administrative Law Judge that the Commission lacks jurisdiction to determine what is a negotiable instrument. The Commission stated:

We do not agree with the Complainant that the Commission has subject matter jurisdiction to determine the negotiability of the instruments that the Complainant tendered to PECO as payment for service. The Commission, as an administrative agency, possesses only those powers expressly conferred on it by statute or those powers which are necessarily implied from its express powers. *Norfolk Southern Ry. Co. v. Pa. Public Utility Commission*, 875 A.2d 1243 (Pa. Cmwlth. 2005). In order to determine if the Complainant's instruments are a reasonable manner of payment, the Commission would be required to determine the instruments' negotiability which is a question of law governed by application of the UCC, and in particular 13 Pa. C.S. § 3104. Section 701 of the Public Utility Code (Code), 66 Pa. C.S. § 701, authorizes the Commission to hear complaints regarding the Code, Commission Regulations or a Commission order. Section 1501 of the Code, 66 Pa. C.S. §1501, provides the basis for the Commission's subject matter jurisdiction. The Commission is responsible for ensuring the adequacy, efficiency, safety and reasonableness of public utility services. *Id.*; *Schriner v. Pa. Power & Light Co.*, 349 Pa. Superior Ct., 177, 501 A.2d 1128 (Pa. Superior 1985). Because an instrument's negotiability does not fall within that realm, we concur with the ALJ's findings that the Commission lacks subject matter jurisdiction to entertain the Complaint. Accordingly, the Complainant's first Exception is denied.

Alkhatib at 8-9. The Commission then concluded: "Having found that the Commission lacks subject matter jurisdiction to determine whether Complainant's purported tender is a negotiable instrument, *supra*, we are unable to make a finding whether PECO should have accepted the Complainant's instruments as payment for electric service and whether PECO's actions were unlawful, as alleged by the Complainant." *Id.* at 10. The Commission then dismissed the complaint.

The facts and circumstances of the complaint filed by Mr. Walker in this case are identical to those in Alkhatib, Coppedge I, Coppedge II and Kennedy – namely, whether the Commission has jurisdiction to determine what forms of payment are sufficient to be used to pay a utility bill. Therefore, these cases are controlling. The Commission has repeatedly said it does

not have such jurisdiction. As such, even when accepting the averments in Mr. Walker's complaint as true, and viewing them in the light most favorable to Mr. Walker, as well as every reasonable inference from those averments, it is clear that Mr. Walker has not raised a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Mr. Walker is not entitled to relief under any circumstances as a matter of law.

In its second preliminary objection, Duquesne argued that Mr. Walker's complaint should be dismissed for insufficient specificity. Duquesne added that, to the extent the Commission determines that the complaint contains allegations other than those relating to matters over which it lacks jurisdiction to hear, such allegations lack the required specificity for pleading. Duquesne argued that there are no allegations in the complaint that the company has improperly terminated or attempted to improperly terminate Mr. Walker's service and that the complaint as a whole is so vague that it cannot properly prepare a meaningful response.

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. Angelo Rodriguez v. Philadelphia Gas Works, Docket No. F-2009-2110772, Initial Decision (Final Order entered Jan. 5, 2010). The Commission has held with regard to complaints:

The purpose of our rules of practice is to facilitate orderly proceedings to afford the parties notice and an opportunity to participate. It is well settled that if these purposes have been met, application of the rules will be relaxed. Hence, a complaint filed with this commission is adequate if it gives the respondent notice and an opportunity to defend; it need not be drawn with technical accuracy.

Green Cab Co. v. Hajducho, 50 Pa. PUC 745, 746 (1977).

In this case, Mr. Walker has failed to plead with sufficient specificity any alleged violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. To the extent that the complaint is not dismissed for lack of subject matter jurisdiction, Mr. Walker would be required to provide an amended complaint with sufficient specificity of a violation over which the Commission has jurisdiction to allow Duquesne to understand the allegations against it so that it can conduct a meaningful investigation of those allegations and prepare a coherent response or defense.

Finally, it is recognized that Mr. Walker is a pro se complainant. In Kennedy, *supra*, the Commission recognized that the complainant in that case appeared pro se and, as such, may not be well-versed in the proper presentation of legal pleadings or understand the rules regarding sufficiency or admissibility of evidence to support a complaint. Kennedy at 11. The Commission noted its position in Carlock v. United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock) wherein the Commission expressed an interest in not dismissing complaints filed by pro se consumers on a preliminary basis prior to a hearing given the difficulties of navigating through pre-hearing motions. Id. Yet, the Commission noted that such accommodation must be within the bounds of due process and there are some cases that would not alter the inevitable conclusion that the Commission cannot provide the complainant the relief requested. Id. at 11-12, *citing*, MacLuckie v. Palmco Energy LLC, Docket No. C-2014-2402558 (Order entered December 4, 2014).

The Commission, however, noted in Kennedy that the complaint did not rest on the ability of the complainant to describe factual underpinnings of the complaint but was about subject matter jurisdiction, thereby distinguishing Carlock, and dismissed the complaint prior to a hearing. Again, the same distinction applies here. Therefore, it is not unreasonable to dismiss Mr. Walker's complaint prior to a hearing on the basis of a preliminary motion.

As a result, the preliminary objections filed by Duquesne are granted and Mr. Walker's complaint is dismissed. Mr. Walker has failed to aver in his complaint an issue over which the Commission has jurisdiction, even when viewing all well pleaded averments in the complaint in the light most favorable to Mr. Walker, as well as every reasonable inference from

those averments. The Commission does not have jurisdiction to determine what is a negotiable instrument.

### CONCLUSIONS OF LAW

1. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. 52 Pa. Code § 5.101.

2. 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, and (7) Standing of a party to participate in a proceeding. 52 Pa.Code § 5.101(a)(1)-(7).

3. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable 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).

4. For purposes of disposing of preliminary objections, the Commission must view the complaint in this case in the light most favorable to the non-moving party and should dismiss the complaint only if it appears that the non-moving party would not be entitled to relief under any circumstances as a matter of law. Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

5. Payment in any reasonable manner includes payment by personal check unless the customer within the past year has tendered a check which has been returned for insufficient funds or for which payment has been stopped. 52 Pa.Code § 56.94(2).

6. The Commission lacks jurisdiction to determine what is a negotiable instrument. Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125 (Order entered January 12, 2012).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Duquesne Light Company against Nathaniel Walker at docket number F-2018-3001412 and dated May 15, 2018 are hereby granted.

2. That the formal complaint filed by Nathaniel Walker against Duquesne Light Company at docket number F-2018-3001412 and dated April 17, 2018 is hereby dismissed.

3. That this matter be marked closed.

Date: June 29, 2018

\_\_\_\_\_/s/  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge