

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Wendell	:	
	:	
v.	:	C-2018-3002839
	:	
Duquesne Light Company	:	

**INITIAL DECISION
GRANTING RESPONDENT’S PRELIMINARY OBJECTIONS**

Before
Katrina L. Dunderdale
Administrative Law Judge

HISTORY OF THE PROCEEDING

On June 5, 2018, Richard Wendell (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Duquesne Light) and alleged Duquesne Light submitted a proposal in its rate base filing¹ concerning its plans for vegetation management which did not include an environmental component.² Complainant requested the Commission require Duquesne Light to submit a revised proposal that includes a constructive environmental vision for the future that enhances the environment.

On July 10, 2018, Duquesne Light filed an Answer and New Matter in addition to filing Preliminary Objections against the formal complaint. The Answer and New Matter, which

¹ The docket number for Duquesne Light’s 2018 base rate filing is Docket No. R-2018-3000124.

² On June 20, 2018, the Commission electronically served the formal complaint upon Duquesne Light Company.

included a Notice to Plead (pursuant to 52 Pa.Code § 5.62 and § 5.63), and the Preliminary Objections were served upon Complainant via first-class mail on July 10, 2018.

Duquesne Light denied all material allegations and alleged Complainant was not entitled to the relief sought in the formal complaint. Duquesne Light averred the formal complaint requested Duquesne Light amend its vegetation management practices. In New Matter, Duquesne Light averred its vegetation management plan was last approved by the Commission on December 22, 2016 at Docket No. M-2009-2094773, and further alleged it met with Complainant to discuss the scheduled 2018 vegetation management plans adjacent to Complainant's property. Duquesne Light denied its current base rate proceeding at Docket No. R-2018-3000124 proposed to cut more trees. Duquesne Light requested the Commission dismiss the matter in its entirety.

Through its Preliminary Objections, Duquesne Light requests the Commission dismiss the formal complaint because: (1) Complainant lacks standing to bring the complaint because he does not have a direct, immediate or substantial interest in the proceeding, pursuant to 52 Pa.Code § 5.101(a)(7); and (2) the formal complaint is legally insufficient, pursuant to 52 Pa.Code § 5.22(a)(4).

Complainant did not respond to either the Answer and New Matter or the Preliminary Objections within twenty days from the date Respondent filed the Answer and New Matter. On August 9, 2018, the Chief Administrative Law Judge assigned this matter to the undersigned for a ruling on the Preliminary Objections.

DISCUSSION

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 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.

The regulation at 52 Pa.Code § 5.101(a)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa.Code § 5.101(a)(1) 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); White Oak Borough Authority v. Pa. Pub. Util. Comm'n, 103 A.2d 502 (Pa. Super. 1954).

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. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub.

Util. Comm'n, 43 A.2d 348 (Pa.Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa.Cmwlt. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

Viewing the factual assertions in the formal complaint in this case in the light most favorable to Mr. Wendell for purposes of disposing of the preliminary objections, Mr. Wendell complains about how Duquesne Light operates its vegetation management program. Mr. Wendell alleges Respondent improperly removed vegetation from Old Mill Road. Mr. Wendell specifically argues Duquesne Light does not have an environmental component to address the preservation and enhancement of the natural beauty of the environment in general, and on the street where he lives. Mr. Wendell references Duquesne Light's current base rate proceeding and asks the Commission to force Duquesne Light to revise its proposal in order to include a constructive environmental vision for the future which enhances the environment rather than degrading it.

Accepting the facts alleged in the formal complaint as true for purposes of disposing of its preliminary objection, Duquesne Light contends Mr. Wendell lacks standing to file a complaint. Duquesne Light avers its planned vegetation management action is not located on Mr. Wendell's property, and he has no discernible interest in the base rate proceeding. Because the planned action is not on his property, Duquesne Light avers Mr. Wendell does not have a direct, immediate or substantial interest. In addition, Duquesne Light averred Mr. Wendell failed to allege that Respondent violated the Commission's statutes, regulations or orders.

In this matter, the formal complaint included a letter dated March 30, 2018 from Complainant to Duquesne Light's customer service and another letter dated May 25, 2018 explaining Complainant's averments. The March 30, 2018 letter referenced the base rate proceeding as well as vegetation management work completed by Duquesne Light along Old Mill Road in the Fox Chapel section of Allegheny County. Mr. Wendell's mailing address is listed as being on Old Mill Road in Fox Chapel.

Mr. Wendell's complaint questions the intended purpose of Duquesne Light's vegetation management program. His complaint speaks to the content and intent of Duquesne Light's vegetation management program. Complainant acknowledges Duquesne Light must trim or cut back vegetation in order to clear its electrical lines from interference which might happen if heavy vegetative growth remains under and around the electric lines. However, Mr. Wendell seeks an order from the Commission which would require Duquesne Light to craft its vegetation management program in such a way that the natural beauty of his street would not be destroyed or greatly harmed.

This formal complaint does not involve the money Duquesne Light may spend on its vegetation management program. This formal complaint does not involve how the cost of the vegetation management program must be collected from Duquesne Light's customers or how the cost of the program should be allocated among the class of Duquesne Light's customers. These issues are at work in the current base rate proceeding. Clearly, Mr. Wendell's formal complaint does not belong in the current base rate proceeding at Docket No. R-2018-3000124.

This formal complaint also does not involve an ongoing or proposed vegetation management project to be conducted, or in the process of being conducted, at Complainant's address or along his frontage by Duquesne Light. Mr. Wendell's formal complaint speaks to the future plans of Duquesne Light and speaks to the work being done near Mr. Wendell's home but not within his easement.

This formal complaint does involve questions concerning the content of the vegetation management program. As such, the formal complaint should be heard within the context of Duquesne Light's Inspection and Maintenance Plan, a biennial filing that was last filed on September 29, 2016 and covered the period from January 1, 2018 through December 31, 2019, at Docket No. M-2009-2094773. If that proceeding was ongoing currently, then this formal complaint could be consolidated into that proceeding, where Mr. Wendell could voice his concerns and advocate for how Duquesne Light implements the vegetation management program consistent with the Commission's requirements.

The preliminary objections will be granted because Mr. Wendell does not have legal standing to contest damage or poor customer service concerning the vegetation management that occurred off his property but along Old Mill Road. In addition, he fails to allege that Duquesne Light violated the Public Utility Code, the Commission's regulations or the Commission's orders.

Mr. Wendell's formal complaint, when considered in the light most favorable to him, is future-minded. He asks the Commission to act in the future. He asks Duquesne Light to include provisions and intentions in its vegetation management program which he claims are lacking. He does not complain of defects in Duquesne Light's customer service as it relates to his own property. Generally speaking, the Commission permits leeway to *pro se* complainants when pursuing a formal complaint, within the confines of due process.³ However, here Complainant has not alleged defects by Duquesne Light which affect him personally, and the matters he wants to have included in the base rate proceeding are not appropriate in that forum.

For these reasons, the formal complaint filed by Complainant at Docket No. C-2018-3002839 will be dismissed as outside the jurisdiction of the Commission because Complainant contests matters that do not affect him personally, and he fails to allege the statute, regulation or order which Duquesne Light violated.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this dispute. 66 Pa.C.S.A. § 701

2. The Commission does not have jurisdiction over the subject matter of this dispute because it does not involve a matter that affects Complainant personally as a customer, and Complainant lacks sufficient standing to contest a matter that does not involve him personally. 52 Pa.Code § 5.101(a)(1).

³ See *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*).

3. The formal complaint does not raise a claim that, if proven, would show Respondent failed in any way to furnish and maintain adequate, efficient, safe and reasonable service and facilities. 52 Pa.Code § 5.101(a)(1) and 66 Pa.C.S.A. § 1501.

4. A hearing in this matter is not necessary in the public interest. 52 Pa.Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

That the complaint of Richard Wendell against Duquesne Light Company at Docket No. C-2018-3002839 is hereby dismissed for failure to state a claim upon which relief can be granted.

Date: August 13, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge