

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Johnson	:	
	:	
v.	:	F-2017-2638955
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses a Complaint requesting a Commission order, under which Complainant’s husband would be held responsible for half of the utility charges that accrued at addresses where Complainant resided in Pittsburgh with her husband, who now resides in Philadelphia. The Complaint is dismissed because (1) the Commission lacks authority to adjudicate a private dispute seeking a monetary award, and (2) the evidence fails to establish any violation by Respondent of the Public Utility Code, a Commission regulation or a Commission order.

HISTORY OF THE PROCEEDING

Complaint

On December 18, 2017, Complainant Melissa Johnson (Complainant or Ms. Johnson) filed a Formal Complaint seeking timely review of the Commission’s Bureau of Consumer Services’ (BCS) November 15, 2017 denial of her August 17, 2017 informal complaint against Respondent Duquesne Light Company (Duquesne Light) at BCS No. 3554659. Utilizing the Commission’s standard form listing various choices for the reason for the Complaint, Complainant checked the box

for Other (explain). She explained the electric bill dated back to 2010 or 2012; she asserted her husband was on the old electric bill; so, he should be responsible for half of the bill, and she should be responsible for the other half; she had lived at three different addresses, but she was uncertain at which address the old charges had accrued. Complaint ¶ 4. For relief, Complainant requested that the Commission order her husband, Melvin Johnson, to pay half of the outstanding electric bill.

Answer and New Matter

On January 8, 2018, Duquesne Light filed an Answer and New Matter. In its Answer, Duquesne Light averred that Complainant was the ratepayer of record at 444 Taylor Street (Taylor Street) and 318 Washington Road (Washington Road) in Pittsburgh, and between the two addresses she accrued an \$882.64 balance. Answer ¶ 4 at 1. Upon Complainant's request, according to Respondent, service was terminated at Washington Road and a final bill was issued on December 6, 2016. Subsequently, when Complainant applied for service at 375 Rodi Road (Rodi Road) near Pittsburgh on June 1, 2017, Respondent informed Complainant that she would be required to pay her outstanding balance before service could be placed in her name. Answer ¶ 4 at 2; New Matter ¶ 11 at 4.

In New Matter, Duquesne Light asserted conclusions of law to the effect that the Commission's regulations and the company's tariff permitted Duquesne Light to hold Complainant responsible for the charges that accrued at Taylor Street and Washington Road. As relief, Duquesne Light requested that the Complaint be dismissed.

Hearing Notice

On February 14, 2018, a Hearing Notice was mailed to the Parties informing them that a hearing was scheduled before me at 10:00 a.m. on Wednesday, April 11, 2018. On February 15, 2018, I issued a Prehearing Order informing the Parties of the applicable procedural rules and reminding them of the date and time of the hearing.

Motion for Judgment on the Pleadings and Ruling

On February 15, 2018, Duquesne Light filed a Motion for Judgment on the Pleadings (Motion). Duquesne Light argued, in part, that Complainant acknowledged she accrued a balance at the Taylor Street and Washington Road addresses, and she merely alleged her husband “should be forced to pay half” of the balance. Consequently, Duquesne Light asserted that under its tariff and the Commission’s regulation at 52 Pa.Code § 56.35(b)(1), the Company may require Complainant, as an applicant, to pay the outstanding balance before establishing new service at Rodi Road, because she resided at the properties where the old balance had accrued. Motion ¶ 12.

Under the Commission’s regulation at 52 Pa.Code § 56.35(a), a utility may not condition the furnishing of residential service to an applicant upon the payment of an outstanding balance that accrued more than four years from the date the applicant is legally responsible for the bill.¹ On March 8, 2018, an interim order was issued denying the Motion because there was a genuine question of fact as to whether Duquesne Light had improperly required Complainant to pay her outstanding balance as a condition for furnishing her new service at Rodi Road in contravention of the Commission’s regulation.² *Id.*

Evidentiary Hearing

The hearing convened as scheduled. Complainant appeared, self-represented. Complainant did not sponsor any exhibits. Respondent was represented by Lauren N. Rulli, Esquire, who called one witness, Diana Kiesel, a regulatory customer relations specialist. On behalf of Respondent, Ms. Kiesel sponsored Exhibits A, B, E, F, and I, all of which were admitted into the record. I informed the Parties that I was taking judicial notice of Respondent’s Exhibit C, which was

¹ See *Beth Trivelpiece v. PECO Energy Company*, Docket No. C-2015-2462644 (Opinion and Order entered September 22, 2016) at 19.

² The reader is directed to the *First Interim Order Denying Respondent’s Motion for Judgment on the Pleadings* issued herein, for a more detailed analysis and disposition of the Motion.

the BCS, November 15, 2017 Decision No. 3554659, denying Complainant's informal complaint.³ The hearing generated 103 pages of transcribed testimony. The record was closed by an interim order entered on June 20, 2018. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant Melissa Johnson resides at 375 Rodi Road, Apartment 302, Pittsburgh, PA, (Rodi Road) where electric service is in the name of John Rause. Tr. 5, 71, Exhibit I at 6.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. In 2010 Ms. Johnson resided with her husband at 4316 Penn Avenue, 2nd Floor, Pittsburgh, Pennsylvania (Penn Avenue), where they received electric service from Duquesne Light. Tr. 13.
4. While living at Penn Avenue, the electric bill was in the name of both Ms. Johnson and her husband. Tr. 13-14.
5. In 2012 Ms. Johnson together with her husband moved from Penn Avenue to 444 Taylor Street, Pittsburgh, Pennsylvania (Taylor Street). Tr. 16.
6. When Ms. Johnson and her husband moved from Penn Avenue to Taylor Street, Duquesne Light, on January 6, 2012, transferred a \$1,520.51 account balance for service at Penn Avenue to the service account at Taylor Street. Tr. 36; Exhibit A.

³ Upon notification to the parties, the Commission or the Presiding Officer may take judicial notice of a material fact not appearing in the record. See 52 Pa.Code §§ 5.408(a) and (b).

7. When a customer moves from a service address with an outstanding balance to a new service address, Duquesne Light first applies any monthly payments at the new service address to the balance from the old service address until that balance is extinguished. Tr. 49.

8. While living at Taylor Street, Complainant made monthly payments on her electric account but not in amounts sufficient to reduce her account to a zero balance. Exhibit A.

9. Complainant's service at Taylor Street ended on December 7, 2012, with an account balance in the amount of \$1,215.13. Tr. 40; Exhibit A.

10. In January 2016 when Ms. Johnson and her husband moved to 318 Washington Road, Apartment 208, Pittsburgh, Pennsylvania (Washington Road) and applied for electric service, Duquesne Light transferred the \$1,215.13 account balance from Taylor Street to the Washington Road service account. Tr. 16, 26-27, 42, 47; Exhibit B.

11. While residing at Washington Road, the electric bill was in the name of both Ms. Johnson and her husband. Tr. 14, 53-54; Exhibit F.

12. On or about April 26, 2016, Ms. Johnson and her husband were enrolled in Duquesne Light's customer assistance program (CAP), under which their account arrearages were frozen at \$1,345.91 and decreased 1/24th each time they paid their monthly bill on time. Tr. 48; Exhibit B.

13. On December 5, 2016, Ms. Johnson requested termination of her service at Washington Road. Tr. 46; Exhibit I at 4.

14. Ms. Johnson's service at Washington Road terminated on December 6, 2016, with a final bill in the amount of \$931.68, which included late charges. Tr. 44; Exhibit F.

15. On June 1, 2017, Ms. Johnson applied to Duquesne Light for electric service at 375 Rodi Road, Apartment 302, Pittsburgh, PA. Tr. 28.

16. On June 1, 2017, Duquesne Light's customer representative informed Ms. Johnson she would be required to pay her \$931.68 account balance before service could be established at Rodi Road. Tr. 28-29, 65, 87.

17. After Duquesne Light denied her service at Rodi Road, service at Rodi Road was established in the name of her friend's father, John Rause. Tr. 71, 100.

18. Ms. Johnson is not currently a customer of Duquesne Light. Tr. 47.

DISCUSSION

Legal Standards

1. Commission Jurisdiction

As in every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of this dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code). 66 Pa.C.S. § 101 *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell 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). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. Van Buskirk*, 449 A.2d 621 (Pa.Super. 1982), nor can jurisdiction be obtained by waiver or estoppel, *In Re Borough of Valley-Hi*, 420 A.2d 15 (Pa.Cmwlth. 1980).

Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf., Hughes v. PA State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390 (1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

2. Burden of Proof

As the proponent of a rule or order in this proceeding, Ms. Johnson, as Complainant, bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Ms. Johnson must show that Duquesne Light is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

Analysis

In this proceeding, Ms. Johnson is seeking an order from the Commission requiring her husband to pay half of an outstanding electric account balance, i.e., \$931.68, that is owed to Duquesne Light. Ms. Johnson submits, “[H]e lives in Philadelphia and I do not talk to my husband, and there’s no communication between me and him right now and I don’t feel it’s my responsibility to go after him. It’s – you’re a big company, it’s your responsibility to go after him for half, because he was told, and he told me that you told him that he was responsible for half.” Tr. 20.

Duquesne Light argues that the relief Complainant seeks, i.e. attribution of half of the outstanding bill to her husband, is a private action for damages and beyond the Commission’s jurisdiction. Duquesne Light is correct. Ms. Johnson does not dispute the outstanding balance. *Id.* Complainant accepts responsibility for half of the balance, but she wants her husband held responsible for the other half. Tr. 72, 100. Essentially, Complainant is asking for a monetary award against her husband. On this issue the caselaw is clear. The Commission lacks authority to award monetary damages. *See In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of*

Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977). In *Feingold*, the Pennsylvania Supreme Court explained the Commission's lack of authority to award monetary damages.

The Public Utility Law placed a broad range of subject matters under the control of the Public Utility Commission (PUC), making that agency responsible for ensuring the adequacy, efficiency, safety, and reasonableness of public utility services. Act of May 28, 1937, P.L. 1053, art. IV, *as amended*, Act of October 7, 1976, P.L. 1057, No. 215, 66 P.S. § 1171 (Supp.1977-78) . . . The enforcement and remedial powers of the PUC, although formidable, are not those of a court. The PUC is empowered to correct, by regulation or order, abuses in the provision of service. Act of May 28, 1937, P.L. 1053, § 413, 66 P.S. § 1183 (1959). The PUC has the power to impose fines upon a public utility for violation of the Public Utility Law. Act of May 28, 1937, P.L. 1053, art. XIII, § 1301, *as amended*, Act of October 7, 1976, P.L. 1057, No. 215, § 25, 66 P.S. § 1491 (Supp.1977-78) . . . Since the PUC is a creature of statute, it has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication. *Allegheny County Port Authority v. Pa. P. U. C.*, 427 Pa. 562, 237 A.2d 602 (1967); *Delaware River Port Authority v. Pa. P. U. C.*, 393 Pa. 639, 145 A.2d 172 (1958).

It is relevant to the case now before us that the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

477 Pa. at 8-9, 383 A.2d at 794.

Applying the Court's ruling in *Feingold* to the present proceeding, Complainant cannot recover a monetary award against her husband at this administrative agency. Requests for monetary awards should be made before a court of common pleas or a district magistrate.

The only remaining issue to consider is whether Duquesne Light violated the Code, a Commission regulation or a Commission order. Here, Ms. Johnson alleged the account balance was an "old electric bill from 2010 or 2012." Complaint ¶ 4. The evidence established while receiving electric service from 2010 to 2016 at addresses where Ms. Johnson resided with her husband, their balance accrued because only partial payments were being made on the account starting on January 6,

2012 and ending on December 6, 2016. Exhibit A. As old charges were being paid, new charges were being added to the Johnsons' account. In other words, the entire \$931.68 balance was not an old bill from 2010 or 2012 as Ms. Johnson had alleged. As mentioned above, there was a question of fact as to whether Duquesne Light had improperly denied Ms. Johnson's application for service on June 1, 2017, by requiring her to pay an outstanding balance that was more than four years old. This question of fact prevented the granting of Duquesne Light's Motion for Judgment on the Pleadings. The evidentiary hearing resolved this question. The balance was not more than four years old. By regulation, Duquesne Light may require Ms. Johnson to pay all or part of an outstanding balance, as a condition for approving her application for new service. The regulation provides as follows:

A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility within the past 4 years for which the applicant is legally responsible and for which the applicant was properly billed.

52 Pa.Code § 56.35(a). Ms. Johnson does not dispute she resided at the service addresses as the outstanding balance accrued. Therefore, she is legally responsible for the outstanding balance. Consequently, Duquesne Light did not violate the prohibition set forth in Section 56.35(a) of the regulations, nor is there any evidence in the record to establish a statutory or regulatory violation on the part of Duquesne Light. Accordingly, the Complaint must be dismissed for Ms. Johnson's failure to satisfy her burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter in this proceeding.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon Complainant.

3. The Commission lacks authority to adjudicate a private dispute seeking a monetary award. *See In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

4. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility within the past 4 years for which the applicant is legal responsible and for which the applicant was properly billed. 52 Pa.Code § 56.35(a).

5. Complainant failed to meet her burden of proof that Respondent violated any applicable law, regulation or order of the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Melissa Johnson against Duquesne Light Company at Docket No. F-2017-2638955 is dismissed.

2. That the Secretary's Bureau shall mark Docket No. F-2017-2638955 closed.

Dated: August 24, 2018

/s/
Conrad A. Johnson
Administrative Law Judge