

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael J. Wolfe	:	
	:	
v.	:	C-2018-2646162
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Michael J. Wolfe (Complainant) as Complainant died after filing the Complaint, and no survivor or representative of Complainant or his estate took action to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 5, 2018, Complainant filed a Formal Complaint (Complaint) against West Penn Power Company (Respondent) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged, *inter alia*, that Respondent was threatening to terminate his electric service unless Complainant agreed to the installation of an “unsafe” smart meter. Complainant further averred that the high frequency waves emitted from smart meters are not good for anyone, especially for individuals like himself who suffer from a heart condition. As relief, Complainant requested that he be permitted to keep his analog meter.

On February 26, 2018, Respondent filed its Answer and New Matter responding to the Complaint, and averring, *inter alia*, that Respondent provided Complainant with

residential retail electric service, Complainant refused to allow Respondent to install a smart meter at Complainant's residence, and Respondent issued a service termination notice to Complainant. Respondent denied the remaining material allegations set forth in the Complaint and averred it is required by Act 129 of 2008¹ to install a smart meter. Respondent also requested that this matter be referred to mediation.

On February 26, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred, *inter alia*, that the Respondent is required to install a smart meter at Complainant's address, the prayer for relief to opt out of the installation of a smart meter is not legally recoverable, and the health problems suffered by Complainant that could potentially be exacerbated by the installation of a smart meter are not sufficient to state a cause of action against Respondent. Respondent averred that the Complaint did not allege Respondent committed or omitted any action in violation of a Commission statute, regulation, or order. Respondent averred the Complaint failed to state a claim upon which the Commission can grant relief, and therefore, should be dismissed as being legally insufficient under 52 Pa.Code § 5.101(a)(4).

Complainant did not file a response to the Preliminary Objections.

By notice dated March 27, 2018, the Commission scheduled a telephone hearing to be held May 15, 2018. By notice dated March 30, 2018, the May 15, 2018 hearing was cancelled.

On March 30, 2018, the Commission issued a Motion Judge Assignment Notice, assigning me to this proceeding. On March 30, 2018, I issued an Interim Order denying Respondent's Preliminary Objections and referring the Complaint for mediation.

On March 30, 2018, Respondent served Complainant with its first set of Interrogatories and Requests for Production of Documents (discovery requests). Pursuant to 52 Pa.Code § 5.342, Complainant's objections, if any, to these discovery requests were due by

¹ 66 Pa.C.S. § 2806.1 *et seq.*

April 9, 2018, and his responses were due by April 19, 2018. Complainant did not file a certificate of service regarding his service of objections or responses to the discovery requests.

Respondent attempted to contact Complainant as part of the mediation process, but Respondent's attempts were unsuccessful. On October 1, 2018, I issued an Interim Order establishing an Initial Litigation Schedule. The October 1, 2018 Interim Order directed the Parties to exchange the names, addresses, and written summaries of their witnesses on or before January 4, 2019; conclude discovery on or before February 25, 2019; and file a status report on or before March 5, 2019.

On November 9, 2018, Respondent filed a Motion for Judgment on the Pleadings. In the motion, Respondent averred that counsel for Respondent was informed, on or about October 29, 2018, that Complainant had been deceased since April 2018 and there was a new customer of record at the service location. The motion included a death certificate for Complainant as Exhibit A, a certificate of service reflecting service of the motion addressed to Complainant at the service location, and a notice to plead which stated that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

No survivor or other representative of Complainant or his estate has filed any response to the Motion for Judgment on the Pleadings or taken any action to prosecute the Complaint.

The record closed on November 29, 2018.

FINDINGS OF FACT

1. Complainant is Michael J. Wolfe.
2. Respondent is West Penn Power Company.
3. On February 5, 2018, Complainant filed a Complaint against Respondent, alleging, *inter alia*, that Respondent was threatening to terminate his electric service if

Complainant did not agree to the installation of an “unsafe” smart meter, and that the high frequency waves emitted from smart meters are not good for anyone, especially for individuals like himself who suffer from a heart condition.

4. As relief, Complainant requested that he be permitted to keep his analog meter.

5. On February 26, 2018, Respondent filed its Answer and New Matter responding to the Complaint, and averring, *inter alia*, that Respondent provided Complainant with residential retail electric service, Complainant refused to allow Respondent to install a smart meter at Complainant’s residence, and Respondent issued a service termination notice to Complainant.

6. Respondent denied the remaining material averments set forth in the Complaint and requested that the Complaint be referred to mediation.

7. On February 26, 2018, Respondent filed Preliminary Objections to the Complaint.

8. Complainant did not file a response to the Preliminary Objections.

9. By notice dated March 27, 2018, the Commission scheduled a telephone hearing to be held May 15, 2018.

10. By notice dated March 30, 2018, the May 15, 2018 hearing was cancelled.

11. On March 30, 2018, an Interim Order was issued, denying Respondent’s Preliminary Objections and referring the Complaint for mediation.

12. On March 30, 2018, Respondent served Complainant with discovery requests. Complainant’s objections, if any, to the discovery requests were due by April 9, 2018, and his responses were due by April 19, 2018.

13. Complainant filed no certificate of service regarding his service of objections or responses to the discovery requests.

14. On November 9, 2018, Respondent filed a Motion for Judgment on the Pleadings, averring, *inter alia*, that counsel for Respondent was informed, on or about October 29, 2018, that Complainant had been deceased since April 2018 and there was a new customer of record at the service location.

15. The Motion for Judgment on the Pleadings included a death certificate for Complainant, a certificate of service reflecting service of the motion addressed to Complainant at the service location, and a notice to plead which stated that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

16. No response to the Motion for Judgment on the Pleadings was filed in this proceeding.

DISCUSSION

Respondent filed a Motion for Judgment on the Pleadings, pursuant to 52 Pa. Code § 5.102. Respondent is requesting that the complaint of Michael J. Wolfe be dismissed due to Complainant's death.

No response to the Motion for Judgment on the Pleadings was filed in this proceeding. Furthermore, no survivor or other representative of Complainant or his estate has taken any action to prosecute the Complaint.

The Commission regulation at 52 Pa.Code § 5.21(a) provides 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.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).

As a general principle, causes of action abate upon the death of a complainant, though it is possible that the matter might be revived by survivors. See *Freeman v. Giacomo Costa Fu Andrea*, 282 F.Supp. 525 (E.D. Pa. 1968); *Johnson v. Peoples First Nat'l. Bank & Trust Co.*, 394 Pa. 116, 145 A.2d 716 (1958); *Ruth Smiles v. PECO*, Docket No. C-2013-3262241 (Final Order entered January 15, 2014); *Pearl Dickens v. PAWC*, Docket No. C-2013-2367268 (Final Order entered January 15, 2014). In addition, the Commission has held that the death of a party divests the Commission of subject matter jurisdiction. *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 (Final Order entered September 3, 2015).

Respondent filed a Motion for Judgment on the Pleadings, averring, *inter alia*, that Complainant's death has divested the Commission of subject matter jurisdiction over the claims in the Complaint and no one has made any attempt to substitute themselves as Complainant's personal representative in this proceeding. Complainant died after filing the Complaint, and no survivor or representative has taken any action to prosecute the Complaint. Therefore, the Complaint has abated and must be dismissed. Given that Michael J. Wolfe is deceased, Respondent's Motion for Judgment on the Pleadings is moot. That being said, I will enter an order dismissing the Complaint without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.

2. 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*, 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); *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 entered May 19, 1992).

3. As a general principle, causes of action abate upon the death of a complainant, though it is possible that the matter might be revived by survivors. See *Freeman v. Giacomo Costa Fu Andrea*, 282 F.Supp. 525 (E.D. Pa. 1968); *Johnson v. Peoples First Nat'l. Bank & Trust Co.*, 394 Pa. 116, 145 A.2d 716 (1958).

4. With the death of Complainant and no action by a survivor or representative to prosecute the Complaint, the Complaint has abated and must be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Michael J. Wolfe against West Penn Power Company at Docket No. C-2018-2646162 is dismissed without prejudice due to the death of the Complainant and the consequent abatement of his claim.

2. That the docket at Docket No. C-2018-2646162 is marked closed.

Date: February 4, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge