

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tasandra Bedford	:	
	:	
v.	:	C-2019-3014903
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision grants the Company’s Preliminary Objections and dismisses the Complainant’s Complaint against Philadelphia Gas Works alleging that the Company provided unreasonable and unsafe service related to service of her air conditioning unit under the Company’s Parts and Labor Plan, for lack of subject matter jurisdiction.

**HISTORY OF THE PROCEEDINGS**

On December 6, 2019, Tasandra Bedford (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (Respondent, PGW or Company) alleging problems with service provided to her by the Company. She specifically contends that PGW failed to fix the problem with her air conditioning unit even though the part was covered by her Parts and Labor Plan.

On December 31, 2019, PGW filed an Answer denying the material allegations of the Complaint. On the same date, PGW also filed Preliminary Objections which asserted that the Commission lacks jurisdiction to deal with issues related to the Parts and Labor Plan which is a private contract between the parties. The Preliminary Objections included a Notice to Plead which indicated that the Complainant had ten days to respond to the Preliminary Objections. The Complainant had until January 10, 2020 to file a response, but as of the date of this decision had not filed any response to the Preliminary Objections.

The record closed on February 6, 2020, when the matter was assigned to me as the motion judge.

#### FINDINGS OF FACT

1. The Complainant is the owner of 2816 South 65<sup>th</sup> Street, Philadelphia, Pennsylvania 19142 (Service Address).
2. The Respondent is Philadelphia Gas Works.
3. Ms. Bedford began having issues with her central air conditioning unit in May or June of 2019.
4. Ms. Bedford has a Parts and Labor service agreement with PGW, covering her house heater and central air conditioning unit.
5. The Complainant had to pay, out-of-pocket, \$250.00 for a capacitor which is covered under the Parts and Labor service agreement.

#### DISCUSSION

The Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC

LEXIS 69, Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

**§ 5.101. Preliminary objections.**

- (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 the proceeding.

52 Pa.Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

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.*, 477 Pa. 1, 383 A.2d 1191 (1977); *Allegheny County Port Authority v. Pa. Pub. Util. Comm'n*, 427 Pa. 562, 237 A.2d 602 (1967); *Behrend v. Bell of Pa.*, 257 Pa. Super. 35, 390 A.2d 233 (1978); *Pa. Dept. of Highways v. Pa. Pub. Util. Comm'n*, 198 Pa. Super. 87, 182 A.2d 267 (1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

Pursuant to Section 501 of the Code, 66 Pa.C.S. §501, the Commission must “enforce, execute and carry out, by its regulations, orders or otherwise” all the provisions of the Code. Section 701 of the Code, 66 Pa.C.S. §701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa.Code § 5.21(a). The issue of the Commission's jurisdiction over a dispute between a customer and a utility company, however, is not resolved simply because the latter is a public utility. *See, Carl A. Nolan v.*

*Pennsylvanian Power & Light Company*, 1996 Pa. PUC Lexis 127, Docket No. C-00956756 (Order entered October 10, 1996).

In *Allport Water Authority v. Winburne Water Co.*, 258 Pa. Super. 555, 393 A.2d 673 (1978), the Court reviewed the extent of the Commission's jurisdiction:

We start with the principle “that the courts will not originally adjudicate matters within the jurisdiction of the PUC. Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts.” *Lansdale Borough v. Philadelphia Electric Company*, 403 Pa. 647, 650, 170 A.2d 565, 567 (1961). *See also*, *Chester County v. Philadelphia Electric Company*, 420 Pa. 422, 218 A.2d 331 (1966); *Einhorn v. Philadelphia Electric Company*, 410 Pa. 630, 190 A.2d 569 (1963); *Fogelsville & T. Electric Company v. Pa. P. & L. Company*, 271 Pa. 237, 114 A. 822 (1921); *Byer v. Peoples Natural Gas Company*, 251 Pa. Super. 75, 380 A.2d 383 (1977); *Bell Telephone Company v. Sanner*, 248 Pa. Super. 273, 375 A.2d 93 (1977); *Elkin v. Bell Telephone Company*, 247 Pa. Super. 505, 372 A.2d 1203 (1977). Thus, it has long been recognized that the reasonableness, adequacy and sufficiency of public utility service are all matters within the exclusive original jurisdiction of the PUC. *See*, *Duquesne Light Company v. Monroeville Borough*, 449 Pa. 573, 298 A.2d 252 (1972); *Behrend v. Bell Telephone Company*, 431 Pa. 63, 243 A.2d 346 (1968); *Elkin v. Bell Telephone Company*, *supra*. It is equally well-settled, however, that **the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.** *See*, *Byer v. Peoples Natural Gas Company*, 251 Pa. Super. 75, 380 A.2d 383 (1977); *Leveto v. National Fuel Gas Distribution Corporation*, 243 Pa. Super. 510, 366 A.2d 270 (1976); *Reading & Southwestern Street Railway Company v. Pa. Pub. Util. Comm'n*, 168 Pa. Super. 61, 77 A.2d 102 (1950).

*Allport Water Authority*, 258 Pa. Super. at 558-59, 393 A.2d at 674-75 (emphasis added).

Directly on point with the present case, the Commission specifically discussed the issue of its jurisdiction over repair service agreements contracted between a public utility and one of its customers in *Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Order entered August 30, 2002). In that case, the Commission held that a repair contract/warranty

dispute did not involve a law, regulation or order that it had jurisdiction to administer. 66 Pa.C.S. § 701. There, the Complainant alleged that PGW violated a parts and labor warranty agreement by billing the Complainant for repairs to her gas range. The Commission stated:

Service of the Complainant's appliance is not an essential part of PGW's public gas service. It is merely a supplemental service incidental to its primary gas service. As noted in *Felix v. Pa. Pub. Util. Comm'n*, 146 A.2d 347 (Pa. Super. Ct. 1958), **private services that merely supplement the public services provided by a utility do not fall within the Commission's jurisdiction. PGW's obligations to service the Complainant's appliance are defined by the terms of the private agreement between PGW and the Complainant, not by the public rights embodied in the Public Utility Code.**

As correctly noted by the ALJ, **the Commission has no jurisdiction to rule on the validity of a private agreement of that type.** *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. Ct. 1978).

*Id.* at 4-5 (emphasis added).

Since the present case involves a purely private contractual dispute between a public utility and a customer relating to a parts and labor plan to repair a central air conditioning unit, it involves merely a supplemental service incidental to the utility's primary obligation to provide gas service to the public. As in *Anderson*, PGW's obligations to service the Complainant's appliance are defined by the terms of the private agreement between PGW and the Complainant, not by the public rights embodied in the Public Utility Code. Thus, the Commission has no jurisdiction to rule on the validity of this private agreement. *Id.*; *see also*, *Ottaviano v. Philadelphia Gas Works*, Docket No. C-20066357 (Final Order entered September 22, 2006).

For these reasons, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission's regulations permit the filing of a preliminary objection to dismiss a pleading due to lack of jurisdiction. 52 Pa. Code § 5.101(a)(1).

2. The Commission has no jurisdiction to decide a purely private contractual dispute between a public utility and a customer relating to a warranty plan to repair a gas house heater. *Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Order entered August 29, 2002); *Ottaviano v. Philadelphia Gas Works*, Docket No. C-20066357 (Final Order entered September 22, 2006).

3. The Commission does not have jurisdiction over the Complainant's formal Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Philadelphia Gas Works are granted.
2. That the Formal Complaint of Tasandra Bedford filed against Philadelphia Gas Works at Docket No. C-2019-3014903 is dismissed.
3. That the Docket No. C-2019-3014903 be marked closed.

Date: April 8, 2020

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/s/  
Marta Guhl  
Administrative Law Judge