

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawn Kinney

v.

UGI Utilities, Inc.

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C-2020-3015985

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

Shawn Kinney (Complainant) filed a complaint against UGI Utilities, Inc. (UGI) with the Pennsylvania Public Utility Commission (Commission), requesting that the Commission order UGI to satisfy all charges (to his account) by accepting a performance bond and honoring his labor wage claim for which he will provide UGI with a payment bond. This initial decision dismisses the complaint pursuant to UGI's preliminary objections because, even when accepting as true all well pleaded material averments in the complaint, and viewing the complaint in the light most favorable the complainant, Complainant has failed to demonstrate that UGI's actions in refusing to accept certain bonds as payment are a violation of the Public Utility Code, the Commission's Regulations, a Commission Order or a Commission-approved tariff of UGI. The complaint is dismissed with prejudice because this and similar payment issues have been ruled upon by the Commission in several previous decisions.

HISTORY OF THE PROCEEDING

On January 13, 2020, Complainant filed a complaint with the Commission alleging that UGI was refusing to accept certain bonds as payment for his gas utility bill. By

way of relief, the Complainant requested that the Commission order UGI to accept said bonds as payment to satisfy all his account charges.

On February 4, 2020, UGI filed an answer and new matter to the complaint, as well as preliminary objections. Responses to the preliminary objections were due within 20 days per Commission regulations. Complainant did not file an answer to the new matter or responses to UGI's preliminary objections.

In the preliminary objections, UGI asserts that the complaint contains scandalous and impertinent matter and should be dismissed for legal insufficiency. UGI also argued that the complaint should be dismissed because the Commission has already addressed the issue of alternate forms of payment by expressly rejecting the notion that alternate forms of payment – such as promissory notes, electronic funds transfers and bills of exchange – are acceptable forms of utility bill payment. UGI cites to prior decisions of the Commission in its preliminary objections and requests that the complaint be dismissed based on the Commission's prior decisions on these issues.

By motion judge assignment notice issued on March 10, 2020, the parties were advised that the preliminary objections had been assigned to me for a ruling. The preliminary objections are now ripe for consideration. For the reasons discussed below, the preliminary objections will be granted, and the complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant in this case is Shawn Kinney who resides at 816 Chestnut Street, Williamsport, PA 17701.
2. The Respondent in this case is UGI Gas Utilities, Inc.
3. On January 13, 2020, the Complainant filed a complaint with the Pennsylvania Public Utility Commission.

4. On February 4, 2020, the Respondent filed an answer and new matter along with preliminary objections to the complaint.

5. The Complainant's responses to the preliminary objections were due no later than February 27, 2020.

6. The Complainant did not file an answer to the new matter or a response to the preliminary objections.

DISCUSSION

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

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.

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). 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 may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference deducible from those facts. County of Allegheny v. Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth 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 the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable.

The Commission Regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming a 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 in the public interest and authorizes preliminary objections to be filed in response to a complaint.

UGI argues in part that the issue raised in the complaint has already been addressed in previous decisions of the Commission. UGI first points to the case of Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015). In that case, the Complainant alleged that PECO would not credit his account with payments made by other private negotiable debt instruments such as 1040V payment voucher, money order, UCC1 partial release, 1099's and Electric Funds Transfer checks. PECO responded that it only accepts cash, certified checks, money orders and valid bank checks or payment by credit card. In that case, it was determined that the Commission does not have jurisdiction to determine the negotiability of instruments. It was further determined that the Complainant had failed to show that PECO's policy of only accepting payments by cash, certified checks, money order, validated checks or credit cards was unreasonable or in violation of the Public Utility Code or any regulation of the Commission.

Mr. Coppedge filed exceptions to the initial decision. In addressing those exceptions, the Commission upheld the dismissal of the complaint, stating:

As the ALJ [Administrative Law Judge] correctly found, neither Section 1501 of the Code nor our Regulations requires that in order to provide reasonable and reliable service PECO must accept as payment on account any and all legitimate or self-proclaimed forms of payment.

UGI has also pointed out that the Commission again addressed the issue of promissory notes being tendered as payment in the case of Kennedy v. PECO Energy Co., Docket No. C-2015-2471718 (Opinion and Order entered October 22, 2015). In that case, the ALJ granted PECO's preliminary objections, and the Commission affirmed the decision on the grounds that the Commission lacked subject matter jurisdiction to determine the negotiability of Mr. Kennedy's alleged tender of payment.

The facts in this case are nearly identical to the facts presented in Coppedge and Kennedy. Here, as in those cases, the Complainant seeks to tender utility bill payments via a self-proclaimed form of payment. Paragraph 5 of the complaint (Requested Relief) states that the Complainant seeks a Commission order directing UGI to satisfy all charges (to his account) via a "performance bond" as well as by honoring a labor wage claim for which the Complainant will provide a "GSA 1416 payment bond". No other complaints are mentioned in the complaint, and no other relief is requested by the Complainant.

Viewing the complaint in the light most favorable to the Complainant, it is clear that the issues complained of have already been adjudicated by the Commission, and that the Commission has concluded that there is no legal duty for a utility company to accept promissory notes or other self-proclaimed forms of payment such as "performance bonds" or "GSA 1416 payment bond" as forms of payment. It is also clear that the Commission has concluded that it lacks subject matter jurisdiction to hear complaints involving promissory notes or other forms of negotiable instruments under the Uniform Commercial Code (UCC) as alleged tender of payment for utility bills. *See, Coppedge* and *Kennedy, supra*.

This same conclusion was most recently reached in Underwood v. PECO Energy Company, Docket No. C-2018-3001478 (Final Order entered August 28, 2018). In that matter, the ALJ granted PECO's preliminary objections and dismissed the complaint with prejudice. The relief sought by Ms. Underwood, just as the relief sought in this matter, was for the Commission to direct the utility to accept an alternate form of payment – in that case a promissory note. The ALJ's initial decision became final by operation of law with the entry of the final order on August 28, 2018. Id.

Given this precedent and that the instant case is nearly identical to those cited above, there is no need to hold a hearing in this matter. The Commission has ruled that the issues complained of exceed the scope of the Commission's jurisdiction. The Commission has ruled that alternate forms of payment such as promissory notes and other negotiable instruments – self-proclaimed or otherwise – are not required to be accepted by a utility company in any event. Additionally, since these issues have been adjudicated by the Commission in precedential decisions, the complaint in this case will be dismissed with prejudice, since there would be no justice served by allowing the Complainant to attempt to rephrase the complaint on the issue of promissory notes or any other alternative forms of payment.

In reaching the above conclusions, it is recognized that the Commission tends to afford unrepresented litigants every reasonable opportunity to set forth their cases on the record and hesitates to dispose of complaints by way of preliminary motions. *See, e.g., Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock). However, unlike Carlock, this case does not rest on the ability of the Complainant to describe the factual underpinnings of his complaint but instead concerns the issue of subject matter jurisdiction. The relief requested is a review of, and a ruling on, the negotiability of a “performance bond” and the “honoring of a labor wage claim” for which a “GSA 1416 payment bond” will be provided. Allowing an amended complaint or allowing Complainant to proceed to a hearing would not enable him to better explain his position or provide additional facts which would alter the inevitable conclusion that this Commission lacks jurisdiction to entertain his complaint in the first instance. On that basis, this distinguishes Carlock from this particular case. *See, Carlock and Kennedy, supra.*

CONCLUSIONS OF LAW

1. 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).

2. The presiding officer will grant a preliminary motion if the record shows that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

3. The Commission has held that it lacks subject matter jurisdiction to determine the negotiability of instruments such as promissory notes. Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015); Kennedy v. PECO Energy Co., Docket No. C-2015-2471718 (Opinion and Order entered October 22, 2015).

4. The Commission has held that a utility is not required to accept promissory notes as a form of payment for utility bills. Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015).

5. The Complainant's complaint fails to state a claim upon which relief can be granted because the sole issue complained of is that the utility is refusing to accept payment and performance bonds for payment.

6. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2020-3015985 be dismissed. 52 Pa. Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed at Docket No. C-2020-3015985 by UGI Utilities, Inc. are hereby granted.
2. That the complaint of Shawn Kinney at Docket No. C-2020-3015985 against UGI Utilities, Inc. is dismissed with prejudice.
3. That the docket at Docket No. C-2020-3015985 is marked closed.

Date: April 20, 2020

/s/
Benjamin J. Myers
Administrative Law Judge