

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dolores Lukashefski	:	
	:	
v.	:	C-2020-3016290
	:	
	:	
Koppy's Propane, Inc.	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal complaint filed against Koppy's Propane, Inc. with the Pennsylvania Public Utility Commission (Commission) because this company is not a Commission jurisdictional natural gas supplier (NGS), nor does the company hold any authority from the Commission. Thus, the Commission is without jurisdiction to adjudicate this complaint.

HISTORY OF THE PROCEEDING

On January 17, 2020, Dolores Lukashefski (Complainant) filed a formal complaint with the Commission alleging a billing dispute with Koppy's Propane Inc. (Koppy's or Respondent). At about the same time, Complainant filed a similar complaint with the Pennsylvania Office of Attorney General.

On February 7, 2020, Kopy's filed an informal letter/answer to the complaint in which Kopy's stated that it is not certificated by the Commission and only delivers propane to its customers.

On March 4, 2020, a hearing Notice was issued setting April 14, 2020 as the date for a telephonic hearing in this matter.

On March 16, 2020, the Commission's Harrisburg Office was closed due to the onset of the Covid-19 pandemic. The hearing set for April 14, 2020 was canceled.

On April 2, 2020, a representative of Kopy's filed a letter with the Secretary of the Commission in which Kopy's stated that the matter had been resolved by Office of the Attorney General at Complaint #BCP-20-05-000895. Kopy's asserted that it had contacted Ms. Lukashefski directly and provided her with a check in the amount of her request.

This Decision dismisses the complaint at this docket as the Commission has no authority to adjudicate the complaint.

FINDINGS OF FACT

1. The Complainant is Dolores Lukashefski.
2. The Respondent is Kopy's Propane, Inc.
3. On January 17, 2020, Complainant filed a formal complaint with the Commission alleging that Kopy's had misbilled her.
4. On February 7, 2020, Kopy's filed an informal letter/answer to the complaint in which Kopy's stated that it is not certificated by the Commission and delivers only propane to its customers.

5. On April 2, 2020, Kopyy's filed a letter with the Secretary of the Commission in which Kopyy's stated that the matter had been resolved by Pennsylvania Office of the Attorney General Complaint #BCP-20-05-000895.

6. A search of Commission records did not reveal any authority granted to Kopyy's by the Commission.

DISCUSSION

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. No preliminary objections have been filed in the instant case; however, the Commission may *sua sponte* dismiss a complaint for lack of subject matter jurisdiction.

Kopyy's Propane, Inc. is not a Commission regulated utility. The Commission is without authority to regulate the sale or pricing of bottled propane gas. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

The complaint in this case was directed against Kopyy's Propane, Inc., a distributor of bottled propane gas in northeastern Pennsylvania. At the same time that Ms. Lukashefski filed her complaint with the Commission, she also filed a similar complaint with the Pennsylvania Office of Attorney General which does have the authority to address the complaint. In fact, it appears that the complaint was resolved.

I note that neither party has been represented by counsel in this matter, and that with the onset of the Covid-19 pandemic, communication in this matter became sporadic. In fact, on or around April 13, 2020, I was contacted by a relative of Complainant who informed me that she had taken ill and would not be prosecuting this matter. That being said, there is no need to withdraw the complaint as the Commission is without the authority to adjudicate it. The Commission has dismissed with prejudice similar complaints for lack of jurisdiction over an unregulated entity. For example, in *Roemig v. UGI Utilities, Inc.*, C-2016-2522685 (Final Order entered May 26, 2016), the Commission dismissed Ms. Roemig's complaint for lack of jurisdiction over UGI HVAC, a wholly owned and unregulated subsidiary of UGI Utilities, Inc., which had installed the furnace referenced in her complaint.

As the Commission is without authority to adjudicate the complaint filed by Ms. Lukashewski, the complaint will be dismissed for lack of subject matter jurisdiction.

CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the subject matter of this proceeding.

2. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

3. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

4. As the Commission is without authority to adjudicate the complaint filed at this docket, the complaint must be dismissed for lack of subject matter jurisdiction.

