

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fortunato Vangeli	:	
	:	
v.	:	F-2020-3021497
	:	
Clearview Electric, Inc.	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

Complainant alleges there are incorrect charges on his bill, and he would like a payment agreement. For relief he seeks monetary compensation. This decision sustains Respondent’s preliminary objection asserting insufficient specificity of a pleading. This decision dismisses the Complaint for lack of subject matter jurisdiction and failure to allege a violation of a Commission statute, regulation or order upon which relief may granted.

HISTORY OF THE PROCEEDING

On July 12, 2020, Complainant Fortunato Vangeli (Complainant or Mr. Vangeli) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Clearview Electric, Inc. (Respondent or Clearview or company). Utilizing the Commission’s standard complaint form, Complainant checked two boxes: There are incorrect charges on my bill; I would like a payment arrangement. Complaint ¶4. As relief, Complainant requests “monetary compensation.”

On September 14, 2020, Respondent filed Preliminary Objections (P.O.).

Respondent avers in pertinent part as follows:

1. Clearview is an electric generation supplier (“EGS”), licensed by the Commission to supply electricity to retail customers throughout Pennsylvania, at Docket No. A-2010-2152506.

....

3. Complainant checked two boxes in Paragraph 4 indicating that he would like a payment agreement and alleging that incorrect charges are on his bill. In the requested relief section in Paragraph 5, he notes that he is seeking monetary compensation.

4. The Complaint contains no further detail or allegations. As a result, Clearview is at a loss to determine which bill(s) Complainant believes contain incorrect charges or why he believes he is entitled to monetary compensation. With respect to his request for a payment agreement, he is no longer a customer of Clearview, and payment agreements are only available from electric distribution companies. Therefore, Clearview is unable to respond to or prepare a defense to the Complaint.

5. Making it even more difficult to surmise what “problem” Complainant is complaining about is the fact that Clearview supplied electricity to Complainant for eight years and recently issued a courtesy check to him to resolve a dispute regarding his enrollment.

6. The Complaint contains insufficient specificity to allow Clearview to ascertain what it is alleged to have done in violation of the Public Utility Code, Commission regulations or Commission order. Accordingly, the Complaint should be dismissed.

P.O. ¶¶ 1, 3-6.

Respondent served its P.O. upon Complainant on September 14, 2020, together with a Notice to Plead.¹ Complainant did not file an Answer to the P.O. within the time prescribed by the Commission’s regulations.²

¹ Citing the Commission’s regulations at 52 Pa.Code § 5.101(e)(1)-(2), Respondent asserted it did not simultaneously file an Answer to the Complaint since such is not required until further directed by the presiding officer or the Commission, or unless the Complainant filed an Amended Complaint. P.O. at 1.

² An answer to a preliminary objection shall be filed within 10 days of the date of service of the objection. 52 Pa.Code § 5.101(b).

By Notice dated October 8, 2020, the Parties were informed that the P.O. were assigned to me for ruling.

FINDINGS OF FACT

1. Complainant in this case is Fortunato Vangeli.
2. Respondent in this case is Clearview Electric, Inc.
3. Respondent is an electric generation supplier (EGS), licensed by the Commission to supply electricity to retail customers throughout Pennsylvania, at Docket No. A-2010-2152506.
4. On July 12, 2020, Complainant filed a Complaint with the Commission against Respondent.
5. On September 14, 2020, Respondent filed Preliminary Objections to the Complaint.
6. Complainant did not file an Answer to the Preliminary Objections.

DISCUSSION

Complaints

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

Complainant checked two boxes on the Commission’s standard complaint form: (1) “There are incorrect charges on my bill.” (2) “I want a payment agreement.” Complainant does not give any explanation for his payment agreement request. Concerning an incorrect charges allegation, the standard complaint form directs a complainant as follows:

Provide dates that are important and an explanation about any amount or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

The directive immediately follows the line: “There are incorrect charges on my bill.” The Complaint does not provide any information or explanation about the charges claimed to be incorrect. For relief, the Complaint only states “monetary compensation.” Complaint ¶5.

Objection — Insufficient Specificity of a Pleading

Respondent objects that the Complaint contains no details. Respondent claims it is at a loss to determine which bill(s) Complainant believes contain incorrect charges or why Complainant believes he is entitled to monetary compensation. Respondent alleges it supplied electricity to Complainant for eight years, 2012 to 2020, and issued him a courtesy check for \$2,828.01 on February 28, 2020, to resolve an enrollment dispute; however, Complainant is no longer a customer.³ P.O. ¶¶ 18-20. Respondent further maintains the Complaint does not contain a clear and concise statement of an act or omission by the company about which Complainant is complaining. Respondent argues the Complaint’s lack of specificity does not enable the company to defend against the Complaint. Concerning Complainant’s request for a payment arrangement, Respondent argues payment arrangements are only available from an electric distribution company.

³ Whether Clearview issued Mr. Vangeli a courtesy check or whether he is no longer a customer of Clearview are allegations raising questions of fact that cannot be considered or resolved upon a preliminary motion. However, these allegations are not determinative of the decision in this case.

Commission Jurisdiction

Before examining Clearview's objection that the Complaint lacks specificity, subject matter jurisdiction must be discussed. In every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of the dispute. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it under the 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. *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).

Lack of Subject Matter Jurisdiction

As explained below, the Commission lacks subject matter jurisdiction over Mr. Vangeli's requested remedies: a payment arrangement and monetary compensation. First, Mr. Vangeli's payment arrangement request will be addressed.

Section 1405 of the Code providing for payment arrangements reads as follows:

§ 1405. Payment arrangements.

(a) General rule.—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between **a public utility**, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a). (emphasis added).

Since the Commission’s authority to establish a payment arrangement is limited to a public utility and a customer or an applicant for utility service, Clearview’s status as a public utility must be addressed. In *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm’n*, 870 A.2d 901 (Pa. 2005), the Pennsylvania Supreme Court held that the definition of “public utility” at 66 Pa.C.S. § 102 does not include EGSs except for the limited purposes set forth in 66 Pa.C.S. § 2809, regarding licensing requirements and 66 Pa.C.S. § 2810, regarding revenue neutral reconciliation. The Pennsylvania Supreme Court noted that the Commission could forbear from regulating EGSs, pursuant to 66 Pa.C.S. § 2809(e), if it determined that the requirements of 66 Pa.C.S. § 2809 were unnecessary due to competition among the EGSs. Under certain circumstances, as later discussed, the Commission may order an EGS to issue a credit or refund; however, the exceptions noted in *Delmarva* do not apply to the present case. Therefore, Clearview, an electric generation supplier, is not a public utility for the purposes of a payment arrangement. Accordingly, the Commission lacks subject matter jurisdiction to grant Mr. Vangeli a payment arrangement.

Turning to Mr. Vangeli’s request for monetary compensation, again the Commission lacks subject matter jurisdiction to grant Mr. Vangeli monetary relief. The courts have held the Commission does not have jurisdiction to award monetary damages. See *In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002). In *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977), the Pennsylvania Supreme Court quoted with approval the following:

‘The courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility’s performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts.’

Id. at 795, n.6 (quoting *Behrend v. Bell Tel. Co.*, 363 A.2d 1152, 1158 (Pa. Super. 1976).

Complainant cannot recover monetary compensation at this administrative agency. Requests for monetary compensation should be made before a court of common pleas or a district magistrate. Accordingly, the Commission lacks subject matter jurisdiction to grant Mr. Vangeli monetary compensation.

Preliminary Objections

Clearview objects that Mr. Vangeli's allegation that there are incorrect charges on his bill lacks specificity sufficient to enable the company to file an answer. Hence Clearview requests dismissal of the Complaint.

Preliminary objections to a formal complaint are available to a party under the Commission's Rules for Administrative Practice and Procedure.

Section 5.101(a)(3) of the Commission's Rules provides in relevant part:

(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:

....

(3) Insufficient specificity of a pleading.

52 Pa.Code § 5.101(a)(3).

Commission procedure regarding the disposition of preliminary objections is comparable to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of*

Envtl. 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 has adopted this standard. *Montague v. Philadelphia Elec. Co.*, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference, fairly, deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true. *Id.* The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa.Cmwlth. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dept. of Auditor General v. State Employees Retirement System*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003) citing, *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

Assuming for decisional purposes only, that there are “incorrect charges” on Mr. Vangeli’s bill(s), Clearview is correct that the allegation, standing alone, is not sufficiently specific to enable the company to file an Answer. Therefore, Clearview’s objection will be sustained for insufficient specificity of the pleading.

Hearing Not Necessary

Generally, when a preliminary objection is sustained for lack of specificity of the pleading the non-moving party will be given the opportunity to file an amended complaint, unless granting permission to amend a Complaint would be a futile exercise. *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982).

Additionally, the Commission’s regulations provide for dismissal of a complaint without a hearing if, in the Commission’s opinion, a hearing is not necessary in the public interest. 52 Pa.Code § 5.22(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing *Lehigh*

Valley Power Comm. v. Pa. Pub. Util. Comm'n, 128 Pa.Cmwlth. 259, 563 A.2d 548 (1989),
Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993).
The Commission must view the complaint in the light most favorable to a complainant and
should dismiss the complaint only if it appears that a complainant would not be entitled to relief
under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v.*
Equitable Gas Co., 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (1994).

In the present case, the incorrect charges allegation by reasonable implication is
based upon the rates charged to Mr. Vangeli by Clearview. In *Nadav v. Respond Power, LLC*,
Docket No. C-2014-2429159 (Opinion and Order date December 19, 2014) (*Nadvav*), the
Commission held it did not have jurisdiction to regulate the rates charged by an electric
generation supplier to a customer.

In *Nadav*, the Commission went on to explain its limited jurisdiction over electric
generations suppliers:

In this regard, it is important to note that we have interpreted
Section 2807(d)(1) of the Public Utility Code, 66 Pa.C.S.
§ 2809(d)(1), to find that a refund is an appropriate remedy when a
customer's supplier has been changed without the customer's
affirmative consent. Additionally, our Regulations require an EGS
to provide a full refund to customers of all generation charges
resulting from an unauthorized switch. 52 Pa.Code § 57.177.

Nadav at 6-7.

In *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order
entered December 18, 2014), the Commission concluded under its general powers to enforce the
Code, 66 Pa.C.S. § 501, it had the authority to direct an EGS to adjust a bill to an EGS patron
based on a finding of, *inter alia*, a violation of the Code, Commission regulation, or other
provision over which the Commission has authority to administer.

Here, Mr. Vangeli does not request a refund or bill adjustment. He does not
allege there was an unauthorized switch of his electric service. Notably, Mr. Vangeli could have

filed a response to Clearview's P.O. clarifying or explaining the incorrect charges. In the alternative, he could have filed an amended complaint. However, he did not file a response or an amended complaint. More importantly as discussed above, the Commission does not have jurisdiction to regulate Clearview's rates, to issue a payment arrangement involving an electric generation supplier or to award monetary damages. Thus, there is no allegation from which it can be inferred that Clearview violated the Code, a Commission regulation or Commission order upon which relief may be granted. Consequently, I am compelled to conclude that granting Mr. Vangeli leave to amend his complaint would be a futile exercise and that convening a hearing is not necessary in the public interest.

Ruling

Mr. Vangeli's Complaint fails to allege a violation, or claimed violation of any law by Clearview, which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. Accordingly, the Complaint will be dismissed without prejudice.

CONCLUSIONS OF LAW

1. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa.Code § 5.101.

2. Under Section 102 of the Public Utility Code, an EGS is not a public utility, except for the limited purposes described in Sections 2809 (relating to requirements for EGSs) and 2810 (relating to revenue neutral reconciliation) of the Public Utility Code. 52 Pa.Code § 5.101.

3. The Commission lacks jurisdiction to issue a payment arrangement between an electric generation supplier and a customer or applicant for a public utility's services. 66 Pa.C.S. § 1405(a).

4. The Commission lacks the authority to award monetary damages. *In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977).

5. The Public Utility Code provides that the Commission may refrain from applying requirements of the Public Utility Code that are unnecessary due to competition among EGSs. However, the Commission shall impose requirements to regulate EGSs for limited purposes: to ensure that the present quality of service provided by electric utilities does not deteriorate, to assure that adequate reserve margins of electric supply are maintained, and to assure that standards and billing practices for residential utility service are maintained. 66 Pa.C.S. § 2809(e).

6. The Commission does not have jurisdiction to regulate the rates charged by an electric generation supplier to a customer. *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159 (Opinion and Order December 19, 2014).

7. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 52 Pa.Code § 5.22(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Clearview Electric, Inc. are sustained against the Complaint filed by Fortunato Vangeli at Docket No. F-2020-3021497.

2. That the Complaint of Fortunato Vangeli against Clearview Electric, Inc. at Docket No. F-2020-3021497 is dismissed without prejudice.

