

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cathy Drake	:	
	:	
v.	:	F-2020-3022173
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objection of Duquesne Light Company and dismisses the Complaint of Cathy Drake at Docket No. F-2020-3022173 due to legal insufficiency of the pleading.

HISTORY OF THE PROCEEDING

On August 27, 2020, Cathy Drake (Complainant or Ms. Drake) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Duquesne Light) alleging that her landlady’s son, “Rich,” and the Complainant’s daughter, Denise Beluscak, entered her previous residence and used electricity without her permission, when she was at work.¹ As relief, Complainant requests

¹ This Complaint is a timely appeal from a decision of the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3719381 dated March 11, 2020, which denied the Complainant’s informal complaint.

that Respondent make those individuals pay for the electricity they used at her previous residence.

On October 19, 2020, Respondent filed an Answer to the Complaint averring that the Complainant was the named account holder at 506 3rd Street, Apartment 10, North Versailles, PA 15137 from April 11, 2018 through April 29, 2019 and at 407 Lebanon Manor Drive, West Mifflin, PA 15122 from September 9, 2019 through May 28, 2020. To the extent Complainant claims others were in her residence(s) without her present, Duquesne Light denies this allegation and states that it is without knowledge or information sufficient to form a belief on such claims. In addition, the Respondent denies the remaining material averments set forth in the Complaint.

On October 19, 2020, Respondent also filed a Preliminary Objection to Ms. Drake's Complaint on the grounds that the Complaint is legally insufficient because it fails to identify any alleged violation of a Commission rule or regulation.

The Preliminary Objection contained a Notice to Plead, requiring Complainant to file a response within ten days of service. Complainant did not file a response to the Preliminary Objection.

On November 23, 2020, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

Respondent's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed below, the Objection will be granted.

FINDINGS OF FACT

1. Complainant is Cathy Drake.
2. Respondent is Duquesne Light Company.

3. On August 27, 2020, Complainant filed a Formal Complaint alleging that her landlady's son, Rich, and the Complainant's daughter, Denise Beluscak, entered her previous residence and used electricity without her permission, when she was at work.

4. As relief, Complainant requests that Respondent make "Rich" and Denise Beluscak pay for the electricity they used at Complainant's previous residence.

5. On October 19, 2020, Respondent filed an Answer to the Complaint averring that the Complainant was the named account holder at 506 3rd Street, Apartment 10, North Versailles, PA 15137 from April 11, 2018 through April 29, 2019 and at 407 Lebanon Manor Drive, West Mifflin, PA 15122 from September 9, 2019 through May 28, 2020.

6. To the extent Complainant claims others were in her residence(s) without her present, Respondent denies this allegation and states that it is without knowledge or information sufficient to form a belief on such claims.

7. The Respondent denies the remaining material averments set forth in the Complaint.

8. On October 19, 2020, Respondent filed a Preliminary Objection to Ms. Drake's Complaint on the grounds that the Complaint is legally insufficient because it fails to identify any alleged violation of a Commission rule or regulation.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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)(1)-(7).

Commission procedure regarding the disposition of preliminary objections is similar 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 Servs., Inc. v. Pa. Dept. of Env'tl. Res., 406 A.2d 1020 (Pa. 1979); Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Phila. 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. Cnty. 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.Cmwlt. 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 Emps. Retirement Sys., 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa.Cmwlt. 2002)).

In order to be legally sufficient, a complaint must set forth an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or

claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. Drake v. Pa. Elec. Co., Docket No. C-2014-2413771 (Final Order entered June 12, 2014); 66 Pa.C.S. § 701.

In the present case, Ms. Drake alleges that her landlady's son, "Rich," and the Complainant's daughter, Denise Beluscak, entered her previous residence at 506 3rd Street, Apartment 10, North Versailles, PA, and used electricity without her permission, when she was at work. As relief, Complainant requests that Respondent make those individuals pay for the electricity they used at the previous residence. Complaint ¶¶ 4-5.

Even accepting as true all well-pleaded material facts and reasonable inferences, the Complaint does not raise a violation of the Public Utility Code, Commission Order or regulation, or any rule contained within the Company's Commission-approved tariff. As the customer of record in whose name the residential service account is listed, Ms. Drake is responsible for the balance that accrued at the service address, regardless of whether she was physically present. 66 Pa.C.S. § 1403.

Therefore, Complainant fails to state a claim for which the Commission can grant a relief against Respondent. The Complaint is legally insufficient and will be dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

For the reasons set forth above, I shall grant Respondent's Preliminary Objection and dismiss Ms. Drake's Complaint.

Section 703 of the Public Utility Code, 66 Pa. C.S. § 703(b), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. See also 52 Pa. Code § 5.21(d). A hearing in this case would be a fruitless exercise and therefore is not necessary or in the public interest.

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code § 5.101.
2. 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 Traveler Servs., Inc. v. Pa. Dept. of Env'tl. Res., 406 A.2d 1020 (Pa. 1979).
3. 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).
4. In order to be legally sufficient, a complaint must set forth an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. Drake v. Pa. Elec. Co., Docket No. C-2014-2413771 (Final Order entered June 12, 2014); 66 Pa.C.S. § 701.
5. As the customer of record, Complainant is responsible for the balance that accrued at the service address, regardless of whether she was physically present. 66 Pa.C.S. § 1403.
6. Section 703 of the Public Utility Code, 66 Pa. C.S. § 703(b), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing, is not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Duquesne Light Company seeking dismissal of Complaint filed by Cathy Drake, Docket No. F-2020-3022173, is granted.
2. The Formal Complaint filed by Cathy Drake against Duquesne Light Company, Docket No. F-2020-3022173 is dismissed.
3. That the record at Docket No. F-2020-3022173 is marked closed.

Date: January 4, 2020

_____/s/
Eranda Vero
Administrative Law Judge