

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria DeRitis	:	
	:	
v.	:	C-2021-3025476
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Company’s Preliminary Objections and dismisses the Complaint of Maria DeRitis against Philadelphia Gas Works seeking a refund of the premium she paid for Philadelphia Gas Works’ Parts and Labor Plan for lack of subject matter jurisdiction.

HISTORY OF THE PROCEEDING

On April 26, 2021, Maria DeRitis (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther,” next to which she wrote in the following:

I paid \$252.95 for a PGW Parts and Labor Plan for my Gas House Heater & Electric Central Air. My heater stopped working and PGW sent out a serviceman to check out the problem. He told me “the blower was shot” and that the plan didn’t cover repairs. I then called PGW multiple times, but they repeatedly denied my request for a refund of my paid premium. I am a single and retired 69 year old

female on a fixed income. I had no idea that my heater had any underlying problems, let alone an ominous one that ultimately would not be covered by PGW's Parts & Labor Plan. I had to use space heaters to keep my pets and myself warm until I was able to get a new heater. PGW has the ability to refund my premium under their plan's disclosure. I feel that PGW should in good faith do so. The plan ultimately provided me with no benefit and left me without needed money that I could have used to pay my bills.

As relief, the Complainant requested "a full refund of the \$252.95 premium that I paid for the PGW Parts & Labor Plan."

On May 19, 2021, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent admitted that on November 24, 2020, the Complainant purchased the Parts and Labor plan for the house heater and central air at 2632 St. Christopher Drive, Philadelphia, PA (service address). The Respondent further admitted: that the start date for coverage was December 9, 2020; that the Complainant contacted PGW for heater service and scheduled an appointment for December 12, 2020; that on December 12, 2020, a technician visited the property to service the heater and discovered a bad blower motor circuit board; that the technician determined that the failure of the blower motor circuit board predated the Complainant's purchase of the plan; and that the bad blower motor circuit board is considered a pre-existing condition, and as such, is not covered by the plan.

As New Matter, the Respondent averred that the sole basis of this Complaint is a repair contract/warranty dispute. The Respondent maintained that since this case involves a purely private contractual dispute between a public utility and a customer relating to a parts and labor plan, it involves merely a supplemental service incidental to the utility's primary obligation to provide gas service to the public, and that the Commission has no jurisdiction to rule on the validity of this private agreement. The Respondent endorsed its New Matter with a Notice to Plead advising the Complainant that she had twenty (20) days from the date of service to file a response. The Complainant's response to New Matter was due on or before June 8, 2021.

On the same date, the Respondent 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 were endorsed with a Notice to Plead

advising the Complainant had ten (10) days to respond to the Preliminary Objections. The Complainant's response to the Preliminary Objections was due on or before May 31, 2021.

The Complainant did not file a responsive pleading to either Respondent's New Matter or Preliminary Objections.

By Motion Judge Assignment Notice dated June 10, 2021, the Preliminary Objections were assigned to me for disposition.

For the reasons set forth below, PGW's Preliminary Objections are granted, and the Complaint is dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Maria DeRitis.
2. The Respondent in this case is Philadelphia Gas Works.
3. On April 26, 2021, the Complainant filed a formal Complaint alleging that the Respondent violated the terms of her Parts and Labor Plan and seeking a refund of the \$252.95 premium she paid for the plan.
4. On May 19, 2021, the Respondent filed an Answer and New Matter to the Complaint.
5. Also on May 19, 2021, the Respondent 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.
6. The Complainant did not file responsive pleadings to the Respondent's New Matter or Preliminary Objections.

DISCUSSION

The Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 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 v. State Emps. Retirement Sys.*, 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 the purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps. Retirement Bd.*, 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).

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 Cnty. Port Auth. v. Pa. Pub. Util. Comm'n*, 427 Pa. 562, 237 A.2d 602 (1967); *Behrend v. Bell Tele. Co. 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. Elec. 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, Nolan v. Pa. Power & Light Co.*, 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 Auth., 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) (*Anderson*). 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:

Servicing 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)).

Anderson 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, 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. Phila. 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. Phila. Gas Works*, Docket No. F-00825712 (Order entered August 30, 2002); *Ottaviano v. Phila. 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 Complaint of Maria DeRitis against Philadelphia Gas Works at Docket No. C-2021-3025476 is dismissed; and
3. That the docket at Docket No. C-2021-3025476 be marked closed.

Date: July 9, 2021

Christopher P. Pell
Deputy Chief Administrative Law Judge