**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pro-Ko Properties, Inc. :

 :

 v. : C-2022-3032078

 :

PPL Electric Utilities Corporation :

**ORDER**

**GRANTING PRELIMINARY OBJECTIONS**

On April 21, 2022, Pro-Ko Properties, Inc.[[1]](#footnote-1) (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL). Complainant averred that it called PPL seven weeks prior to the filing of its complaint, and its electric service had not yet been turned on. Complainant further averred it was placed on a “42-minute hold” when it called PPL for updates regarding its service. Complainant requested $3,000+ for damages due to PPL’s failure to activate service; that PPL turn Complainant’s power on; that PPL change customer service policies that result in 7+ week activation; that PPL change customer service policies that result in 42-minute wait times on calls to speak with an agent; and that the Commission terminate PPL’s contract and award a new supplier if PPL failed to address Complainant’s requests. Complainant attached to its complaint an email dated April 20, 2022 expressing concern to PPL regarding the amount of time Complainant was waiting for its electricity to be turned on, and outlining alleged damages sustained to date due to “delayed sales and marketing costs.”

The complaint was served on PPL on April 25, 2022. On May 16, 2022, PPL filed a timely answer to the complaint. In its answer, PPL denied that its response to Complainant’s request for service was inadequate. PPL averred that Complainant requested service on February 14, 2022, and PPL began providing electric service at the service address on April 25, 2022. PPL further averred that the Commission has no jurisdiction to award monetary damages. PPL requested that the complaint be denied in its entirety and with prejudice.

Also on May 16, 2022, PPL filed preliminary objections, accompanied by a notice to plead, in response to Complainant’s complaint. In its preliminary objections, PPL reiterated its argument that the Commission does not have authority to award damages and requested that Complainant’s request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2). Complainant did not file a response to PPL’s preliminary objections.

On June 10, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for August 16, 2022 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order that sets forth hearing information and the rules that will govern the proceeding will also be served in conjunction with this Order.

PPL’s preliminary objections are now ready for disposition. For the reasons discussed below, PPL’s preliminary objections will be granted. Complainant’s request for monetary damages will be stricken from its complaint. A hearing has been scheduled to allow Complainant to proceed with the remainder of its complaint[[2]](#footnote-2). Complainant will not be awarded monetary damages by the Commission as a result of this proceeding.

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:

(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 a proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

In this case, PPL’s preliminary objections assert the failure of a pleading to conform to Chapter 52 of the Pennsylvania Code or the inclusion of a scandalous or impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2).

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). A preliminary objection asserting failure of a pleading to conform to Chapter 52 of the Pennsylvania Code or the inclusion of a scandalous or impertinent matter pursuant to the Commission’s Rules of Practice and Procedure is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

PPL did not specify the specific portion of § 5.101(a)(2) that it was referencing in its preliminary objection, but based upon a careful review of the complaint, the complaint includes an impertinent matter to this proceeding; namely, its request for damages.

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania 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 Complainant and should dismiss the complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

 In this case, Complainant alleged that PPL is responsible for damages sustained due to the delay in beginning its electricity service. Complainant is seeking, among other things, reimbursement in the amount of $3,000+ for delayed sales and marketing costs.

 PPL’s preliminary objections will be granted because, even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Complainant, the Commission lacks jurisdiction to award monetary damages.

It is well settled that the Commission lacks the authority to award damages. The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See* Shedlosky v. Pa. Elec. Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *see also* Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977); *see also* Pettko v. Pa. Am. Water Co.*,* 39 A.3d 473 (Pa. Cmwlth. 2012). The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Id*.*

As a result, to the extent Complainant requests that the Commission award monetary damages, such a claim may be appropriate for a Court of Common Pleas, but it is impertinent to this proceeding. PPL’s preliminary objections will be granted with respect to Complainant’s request for monetary damages. When accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in this case in the light most favorable to Complainant, the fact remains that Complainant is not entitled to monetary damages from this Commission under any circumstances as a matter of law. Complainant’s request for monetary damages will be stricken from the complaint, and it will not be awarded monetary damages by the Commission as a result of this proceeding.

 The complaint filed by Complainant may proceed to a hearing for the adjudication of issues raised in the complaint over which the Commission does have jurisdiction to hear. This could include, for example, whether PPL’s actions with respect to the length of time that transpired between the date of Complainant’s service request and the date that service was initiated at Complainant’s service address were reasonable. *See* 66 Pa. C.S. § 1501 and 66 Pa. C.S. § 1406. Complainant is advised that to sustain its burden of proof at hearing, it must demonstrate by a preponderance of the evidence that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. Mill v. Comm’w., PA Public Utility Comm’n, 447 A.2d 1100 (1982); Edan Transportation Corp. v. PA Public Utility Comm’n*,* 623 A.2d 6 (1993); 2 Pa.C.S. § 704. This is a different standard than that used in addressing PPL’s preliminary objections. Complainant will be precluded from raising any arguments during a hearing that the Commission does not have jurisdiction over.

 Lastly, it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). Therefore, the parties are strongly urged to discuss this matter prior to the hearing and determine if the settlement of this case, in lieu of a judicial decision, is possible.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PPL Electric Utilities Corporation at docket number C-2022-3032078 on May 16, 2022 are hereby granted.
2. That the request for monetary damages contained in the complaint filed by Pro-Ko Properties, Inc. at docket number C-2022-3032078 is stricken from the complaint. Monetary damages will not be awarded by the Commission as a result of this proceeding.
3. That the remaining issues raised in the formal complaint filed by Pro-Ko Properties, Inc. at docket number C-2022-3032078 over which the Commission has jurisdiction may proceed to the hearing scheduled on Tuesday, August 16, 2022. The hearing will have a start time of 10:00 a.m.
4. That the parties must call the following toll-free number and enter the following PIN to participate in the hearing:

Toll-free Bridge Telephone Number: **866.802.1166**

 PIN: **65945489**

1. That the parties are strongly encouraged to engage in settlement discussions to potentially resolve the remaining issues prior to the hearing. To the extent that any progress is made, I ask the parties to please keep me apprised.

Date: June 10, 2022 /s/

 Charece Z. Collins

 Administrative Law Judge

**C-2022-3032078 – PRO-KO PROPERTIES, INC V. PPL ELECTRIC UTILITIES CORPORATION**\*JAMES T DAVENPORT
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1. On the complaint, the Complainant’s name is listed as “Jim Davenport & John Prokopchak/Pro-Ko Properties, Inc.” PPL indicates in its answer that the electric service is in the name of John Prokopchak. However, within the Complaint, Mr. Davenport and Mr. Prokopchak refer to themselves as business partners, the service address is different from the Complainant’s residential address, and the substance of the complaint appears to pertain to electricity for the business, Pro-Ko Properties, Inc. Therefore, we will currently proceed with the name of Pro-Ko Properties, Inc. for the Complainant. [↑](#footnote-ref-1)
2. As the prehearing order will indicate, because Complainant is a corporation, it will need to be represented by an attorney to proceed with the hearing. An attorney must enter an appearance on behalf of Complainant no later than July 13, 2022. [↑](#footnote-ref-2)