

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Williams	:	
	:	
v.	:	C-2022-3036864
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objections of PPL Electric Utilities Corporation and dismisses the formal complaint alleging harassing telephone calls by unnamed entities because Complainant is not a customer and fails to allege Respondent violated the Public Utility Code, a Commission order or regulation or tariff.

HISTORY OF THE PROCEEDING

On November 15, 2022, Richard Williams (Complainant or Mr. Williams) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (Respondent or PPL) and alleged he received telemarketing calls up to ten times per day from an entity that was not his utility company. Complainant listed the utility involved as, “PP&L, American Electric & Gas and First Choice Program.” Complainant requested the Commission make the telephone calls stop.

On December 8, 2022, PPL filed an Answer and New Matter, in addition to filing Preliminary Objections, in response to the formal complaint. The Answer and New Matter and the Preliminary Objections, both of which included a Notice to Plead (pursuant to 52 Pa.Code §§ 5.63, 5.101), were served upon Complainant via first-class mail on December 8, 2022.

In its answer, PPL denied all material allegations and alleged Complainant was not a customer. In addition, PPL noted Complainant listed a service address in Montrose, Susquehanna County, which area is outside of PPL's jurisdictional territory. PPL asserted that in Susquehanna County its service territory is limited to the Boroughs of Forest City and Union Dale, and the Townships of Clifford and Herrick. Specifically, PPL averred it does not provide electric distribution or default generation supply service to Complainant. PPL admitted it has spoken with Complainant about the alleged marketing calls and had referred the issues to its own fraud department but denied knowing which third party was making the alleged calls to Complainant.

In New Matter, PPL averred Mr. Williams is not an electric distribution and/or default generation supply customer of PPL, and PPL is not a party to third party contacts between Complainant and any electric generation supplier. PPL asserted Complainant lacks standing to file a formal complaint against PPL about its utility service because Complainant is not a customer of PPL and, further, Complainant has not alleged PPL violated any provision of the Public Utility Code, the Commission's regulations, a Commission order, or PPL's tariff.

Through its Preliminary Objections, PPL asserts Complainant lacks standing to pursue this formal complaint and the formal complaint fails to allege that PPL violated any provision of the Public Utility Code, the Commission's regulations, a Commission order, or PPL's tariff. PPL requests the Commission dismiss the formal complaint with prejudice because: (1) Complainant – as a non-customer - lacks standing to bring the formal complaint,

pursuant to 52 Pa.Code § 5.101(a)(7);¹ and (2) the formal complaint is legally insufficient, pursuant to 52 Pa.Code § 5.22(a)(4).²

Complainant did not respond to either the Answer and New Matter or the Preliminary Objections. On January 10, 2023, this matter was assigned to the undersigned for a ruling on the Preliminary Objections.

DISCUSSION

The Commission's practice as an administrative agency is analogous to Pennsylvania's civil practice regarding preliminary objections.³ A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure. In civil practice, preliminary objections requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt, and the Commission follows this same standard.⁴

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint, claiming violation of a Public Utility Code statute, Commission order or regulation, or tariff provision by a certificated public utility over which the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a formal complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a formal complaint.

¹ Pursuant to 52 Pa.Code § 5.101(a)(7), preliminary objections are available to a party if there is an objection to the standing of a party to participate in a legal proceeding as a party.

² Pursuant to 52 Pa.Code § 5.22(a)(4), a person filing a formal complaint must specify his/her interest in the subject matter, such as if the person is a customer, competitor, or similar person/entity.

³ *Equitable Small Transportation Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (*Equitable*).

⁴ *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa.Super. 1991). *Montague v. Philadelphia Elec. Co.*, 66 Pa. P.U.C. 24 (1988).

The regulation at 52 Pa.Code § 5.101(a) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa.Code § 5.101 serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.⁵

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.⁶ The Commission must act within, and cannot exceed, its jurisdiction and jurisdiction may not be conferred by the parties where none exists.⁷ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.⁸

Viewing the factual assertions in the formal complaint in this case in the light most favorable to Mr. Williams for purposes of disposing of the preliminary objections, Mr. Williams complains about receiving harassing telemarketing calls from a third-party entity which is not his utility company. Mr. Williams requests the Commission order the calling to stop. Mr. Williams does not indicate who has been calling but filed the formal complaint against PP&L, American Electric & Gas, and First Choice Program.

This formal complaint against PPL will be dismissed with prejudice because Mr. Williams lacks standing to file a formal complaint with the Commission against PPL. He does not allege how PPL violated any statute, regulation or order, he is not a customer, and he does not reside within PPL's service territory. Pursuant to 66 Pa.C.S. § 701 and 52 Pa.Code §

⁵ 66 Pa.C.S. § 703(b); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

⁶ *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁷ *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

⁸ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

5.22(a)(4), Complainant is not included within the class of individuals or entities which may file a formal complaint with the Commission against a public utility. Accordingly, the preliminary objections will be granted because Mr. Williams – as a non-customer - does not have legal standing to file a formal complaint against PPL, and he fails to allege PPL violated the Public Utility Code, the Commission’s regulations or orders, or its tariff provisions.

CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over the parties to this dispute. 66 Pa.C.S. § 701; 52 Pa.Code § 5.22.

2. The Commission does not have jurisdiction over this dispute, and Complainant lacks sufficient standing. 66 Pa.C.S. §701; 52 Pa.Code §§ 5.22, and 5.101(a)(1).

3. The formal complaint does not raise a claim that, if proven, would show Respondent failed in any way to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 52 Pa.Code § 5.101(a)(1) and 66 Pa.C.S. § 1501.

4. A hearing in this matter is not necessary and is not in the public interest. 52 Pa.Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of PPL Electric Utilities Corporation filed in the proceeding of Richard Williams v. PPL Electric Utilities Corporation, at Docket No. C-2022-3036864, are granted.

2. That the formal complaint of Richard Williams v. PPL Electric Utilities Corporation at Docket No. C-2022-3036864 is hereby dismissed for failure to state a claim upon which relief can be granted.

3. That the Secretary shall mark this proceeding as closed.

Date: January 19, 2023

/s/
Katrina L. Dunderdale
Administrative Law Judge