

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francene Tearpock-Martini	:	
	:	
v.	:	C-2023-3038237
	:	
Frontier Utilities Northeast, LLC	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the preliminary objection of Frontier Utilities Northeast, LLC and dismisses Frontier Utilities Northeast, LLC as respondent in this matter and amends the matter to include Frontier Communications as the respondent.

HISTORY OF THE PROCEEDING

On February 10, 2023, Francene Tearpock-Martini (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against a party Complainant identified as simply “Frontier.” In paragraph five of the Complaint, Complainant alleges that individuals from “SNAM Communications [working] for Frontier Communications” trespassed onto her property on December 1, 2022 without permission or prior notice and caused damage to a magnolia tree and other shrubbery while running fiber optic wired between utility poles owned by UGI Utilities, Inc. – Electric Division (“UGI Electric”). In paragraph three of the Complaint, Complainant checked the box indicting “electric” as the type of utility service at issue in this matter. The Complaint does not

specify the relief sought but appears to be requesting relief for damages to the property and cessation of any future trespassing. The Commission interpreted the party Complainant identified as “Frontier” in paragraph two of her Complaint to be Frontier Utilities Northeast, LLC (“Frontier Utilities”) and served it with the Complaint on February 13, 2023.

On March 2, 2023, Frontier Utilities filed an Answer requesting dismissal of the Complaint on the ground that the Complaint alleges actions by a telecommunications provider named Frontier Communications of Pennsylvania, LLC at Utility Code No. 311250 (“Frontier Communications”) as opposed to Frontier Utilities, which is an electric generation supplier (“EGS”). Frontier Utilities admits that the Commission served the Complaint on it but denies any involvement in running fiber optic wires on poles and denies that their function as an EGS entails utility pole activities.

Frontier Utilities also filed Preliminary Objections (“POs”) on March 2, 2023, and the POs were properly accompanied by a Notice to Plead. The POs assert that Complainant’s claims should be dismissed as to Frontier Utilities in this matter on the basis that the Complaint is legally insufficient as it fails to allege that Frontier Utilities has violated the Public Utility Code, the Commission’s regulations or a Commission Order in regard to its EGS service. Specifically, the POs assert that the allegations in the Complaint are targeted at alleged conduct of Frontier Communications and UGI Electric and that Frontier Utilities has no responsibility or control over those entities.

On March 7, 2023, Complainant filed a Reply to Frontier Utilities Northeast Preliminary Objections to Complaint (“Reply”). In the Reply, Complainant does not specifically admit or deny the numerical pleadings in the Frontier POs, but she reasserts that Frontier Communications workers trespassed on her property without prior notice on December 1, 2022, damaging a magnolia tree. Complainant states that she is a customer of “Frontier” for telephone service only and admits that she is not a customer of Frontier Utilities for electricity. Complainant requests that the case be amended to name Frontier Communications as the respondent. The case has been assigned to me and the Preliminary Objections are ripe for disposition.

FINDINGS OF FACT

1. Complainant is Francene Tearpock-Martini who resides at 56 South Main Street, Shickshinny, PA 18655.

2. On February 10, 2023, Complainant filed a Formal Complaint against a party simply identified as “Frontier” related to “electric” service and listed “Other – Trespass and damages to property running fiber optic wires on poles” as the reason for the Complaint. (Complaint ¶¶ 2-4).

3. The Complaint alleges that workers for “Frontier Communications” trespassed onto her property without permission or prior notice on December 1, 2022, and caused damage to a magnolia tree and other shrubbery while running fiber optic wires between utility poles. (Complaint ¶ 5).

4. The Complaint appears to request relief for damages to the property and cessation of any future trespassing. (Complaint ¶ 5).

5. The Commission interpreted that the intended respondent in this matter was Frontier Utilities Northeast, LLC and served Frontier Utilities Northeast, LLC with the Complaint on February 13, 2023.

6. On March 2, 2023, Frontier Utilities Northeast, LLC filed an Answer denying the material allegations of the Complaint and asserting that Complainant’s claims are targeted at “Frontier Communications [of Pennsylvania] ... at Utility Code No. 311250.” (Answer ¶ 2).

7. On March 2, 2023, Frontier Utilities Northeast, LLC filed Preliminary Objections seeking dismissal of the Complaint because the Complaint is legally insufficient.

8. On March 7, 2023, Complainant filed a reply to the Preliminary Objections.

9. Frontier Utilities Northeast, LLC and Frontier Communications of Pennsylvania, LLC are separate utilities offering different services and there is no indication that the two entities are associated with or otherwise affiliated with each other.

10. Frontier Utilities Northeast, LLC operates as an EGS in the Commonwealth and is regulated by the Commission.

11. Frontier Communications of Pennsylvania, LLC operates as telecommunications provider and is regulated by the Commission.

12. Complainant is not an electric generation supply customer of Frontier Utilities Northeast, LLC, but she is a customer of Frontier Communications of Pennsylvania, LLC for telephone service.

13. There are no allegations that Frontier Utilities Northeast, LLC is responsible for performing any work at Complainant's property on December 1, 2022.

14. The intended respondent in this matter was Frontier Communications of Pennsylvania, LLC. (Complainant's Reply, p.2).

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa. Code § 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). Commission regulations provide:

§ 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).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioner, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp's. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 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. Cmwlt. 2002). All the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emp's. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlt. 1997). The POs can be granted only if recovery or relief is not possible after all the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objections, using only those facts specifically admitted. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlt. 1985).

For the Complainant to prevail, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must also set forth an act done or

omitted to be done by respondent in violation of a law that the Commission has jurisdiction to administer. 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a).

The POs filed by Frontier Utilities assert that the matter should be dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4). The argument is based on the fact that the allegations in the Complaint are against Fronter Communications as opposed to Frontier Utilities. As previously described, the Complainant named “Frontier” as the respondent in this matter and alleged that Frontier Communications’ employees and/or its independent contractors trespassed on her property and caused damage. The Commission interpreted “Frontier” to be Frontier Utilities based on the Complainant marking “electric” as the utility at issue on the Complaint. It is uncontested that Frontier Utilities and Frontier Communications are separate entities that offer separate utility services. The Complainant does not make any allegations against Frontier Utilities and she denies being a customer of Frontier Utilities. In her Reply to Frontier Utilities Northeast Preliminary Objections to Complaint, the Complainant asks the Commission to amend the Complaint to name Frontier Communications as the correct respondent.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. §703(b); 52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993). This case does not currently involve disputed questions of fact. The parties agree that Frontier Utilities is not the correct respondent in this matter and that the allegations are targeted at Frontier Communications, which is a separate entity from Frontier Utility. It is proper for the Commission to dismiss a complaint when the wrong utility is named. *Hatchigian v. Phila. Gas Works*, Docket No. C-2015-2512918 (Final Order entered Jan. 28, 2016); *Stabley v. Phila. Gas Works*, No. F-2010-2186368 (Final Order entered Oct. 1, 2010). Moreover, the Complaint fails to allege that Frontier Utilities acted or omitted to act in violation of any law that the Commission has jurisdiction to administer.

Accordingly, a hearing in this case is not necessary. Frontier Utilities' Preliminary Objection will be sustained and the Complaint will be dismissed as to Frontier Utilities Northeast, LLC.¹

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary motions. 52 Pa. Code § 5.101(a).

2. In deciding Preliminary Objections, the Commission must accept all of the non-moving party's averments in the complaint as true. *Dept. of Auditor Gen. v. State Emp's. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *Ridge v. State Emp's. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

3. The Commission may only grant the Preliminary Objections of a party if recovery or relief is not possible after all the Complainant's averments are viewed as true. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

4. Where there is doubt as to recovery or relief, the Commission must refuse to sustain the Preliminary Objections. *Dept. of Auditor Gen. v. State Emp's. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

5. The Commission may dismiss a complaint where the Complainant has clearly named the wrong utility in the Complaint. *Hatchigian v. Phila. Gas Works*, Docket No. C-2015-2512918 (Final Order entered Jan. 28, 2016); *Stabley v. Phila. Gas Works*, No. F-2010-2186368 (Final Order entered Oct. 1, 2010).

6. Granting Preliminary Objections in favor of Frontier Utilities Northeast, LLC is appropriate in this proceeding because the Formal Complaint and subsequent filings

¹ On April 5, 2023, the Commission re-served the Complaint naming "Frontier" at Docket No. C-2023-3038237 on Frontier Communications of Pennsylvania at Utility Code 311250.

establish that the intended respondent is Frontier Communications of Pennsylvania, LLC, not Frontier Utilities Northeast, LLC. *Hatchigian v. Phila. Gas Works*, Docket No. C-2015-2512918 (Final Order entered Jan. 28, 2016); *Stabley v. Phila. Gas Works*, No. F-2010-2186368 (Final Order entered Oct. 1, 2010).

7. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

8. A hearing in the instant case is not necessary or in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Frontier Utilities Northeast, LLC to the Formal Complaint filed by Francene Tearpock-Martini at Docket No. C-2023-3038237 is granted.

2. That Frontier Utilities Northeast, LLC shall be dismissed as a respondent in the case at Docket No. C-2023-3038237.

3. That the case at Docket No. C-2023-3038237 shall remain open and the docket is hereby amended to name Frontier Communications of Pennsylvania, LLC as the named respondent.

4. That the Secretary of the Commission shall serve a copy of this Initial Decision as well as a copy of the Formal Complaint filed by Francene Tearpock-Martini at

