

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Douglas Smith	:	
	:	
v.	:	C-2024-3046013
	:	
PPL Electric Utilities Corporation	:	

**ORDER
GRANTING PRELIMINARY OBJECTION OF PPL ELECTRIC**

This Order grants the preliminary objection of PPL Electric Utilities Corporation (PPL Electric or Company) because the Pennsylvania Public Utility Commission (Commission) does not have the authority to award monetary damages as a remedy. Therefore, that portion of the Formal Complaint (Complaint) will be dismissed. However, this Order also directs that a hearing will be scheduled and held on the claims raised in the Formal Complaint and over the remedies which the Commission does have the authority to grant, as discussed below.

History of the Proceeding

On February 5, 2024, the Complainant, Douglas Smith, filed a Complaint against the Company and checked the box “other” as the reason for his Complaint. Mr. Smith avers he owns a residence in Cumberland County, Pennsylvania, and receives residential electric service from PPL. Mr. Douglas avers that in May 2022, he contacted PPL about having electric service installed in his detached garage so that he would be able to charge his electric vehicles, which he intended to purchase. Mr. Smith avers that his garage is located 132 feet from his residence.

Mr. Smith further avers that in anticipation of being able to charge his electric vehicles, he spent \$4,000 to electrify his garage. However, Mr. Smith alleges that he now cannot afford to charge his vehicle because PPL charges him a commercial rate of \$4.36125 per kW (kilowatt) for service to his garage which is much higher than the residential rate PPL charges

him for service to his residence. Further, Mr. Smith alleges that PPL never informed him he would be charged this commercial rate.

As a result, Mr. Smith alleges that PPL is incorrectly and unreasonably charging him a commercial rate for electric service to his garage under the circumstances of this case. Mr. Smith further alleges that PPL provided him unreasonable service because no one from PPL advised him that service to his garage would be labeled as non-residential. Mr. Smith also complains that, consistent with the lack of information provided by PPL, he reasonably expected to be charged a residential rate. Mr. Smith further averred that PPL’s “splashy” webpage about how PPL “is [concerned] about the environment” is misleading. (Complaint ¶ 5).

Finally, Mr. Smith avers that had he known PPL would have charged him the commercial rate, he would not have paid an electrician to have his garage electrified and requested that service be connected. (Complaint ¶¶ 4, 5.) As relief, the Complainant states that he “would like reimbursed for the amount I paid to electrify the garage and now cannot afford to use to charge my vehicle. That amount is about \$4,000.” (Complaint ¶ 5.) Mr. Smith also avers that he would pay a “reasonable rate” which is not the commercial rate PPL charges him. (*Id.*).

On February 26, 2024, PPL timely filed an Answer and a Preliminary Objection. In its Answer, PPL denied the material allegations and conclusions of law in the Complaint. Specifically, PPL denied that there are incorrect charges on Mr. Smith’s bill and he was correctly charged the commercial rate. PPL avers that the detached garage is not, pursuant to its applicable rules, a “residential dwelling”—i.e., “a living space consisting of at least permanent provisions for shelter, dining, sleeping, cooking and sanitation when all such amenities are served through the same meter.” PPL avers that the Complainant has a separate meter serving his home; hence, his garage does not meet the “residential dwelling” definition. PPL also denied that it provided unreasonable service to Mr. Smith or its webpage is misleading.

In its Preliminary Objection, the Company requests that the portion of the Complaint pertaining to a request for monetary damages—i.e., the reimbursement of \$4,000 the Complainant paid to electrify his garage, be summarily dismissed. PPL avers that under Section

5.101(a)(2) of the Commission’s regulations, a request for damages constitutes impertinent matter which should be dismissed because the Commission does not have the authority to award monetary damages. *See*, 52 Pa. Code § 5.101(a)(2).

On March 1, 2024, in response to PPL’s Preliminary Objection, the Complainant filed a three-page document, docketed as “additional information to the formal complaint” (Reply). In his Reply, Mr. Smith provides more details as to his contacts with PPL concerning his request for electric service to his garage, including his phone calls with a customer service representative and a meeting in his garage with a PPL technician prior to having his garage electrified. Mr. Smith again complains of PPL’s lack of transparency with respect to pricing and PPL’s failure to tell him that he would be charged a commercial rate after he electrified his garage. Mr. Smith avers that it should be illegal for PPL to charge him a commercial rate, and that he would have “killed the project” if he knew. (Reply ¶ 12).

On April 3, 2024, a Motion Judge Assignment Notice was issued informing the parties that I was responsible for resolving any issues which may arise during the preliminary phase of this proceeding and a hearing would be scheduled, if necessary. PPL’s preliminary objection is now ready for disposition.

Legal Standards

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections and provides:

§ 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) (emphasis added).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 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). All of 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 Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Therefore, the primary focus is on whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Id.*

Disposition

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility company is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (Code), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding

of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with 66 Pa.C.S. § 3301 or other provisions of the Code.

In the instant case, Mr. Smith alleges in his Complaint that PPL is incorrectly and unreasonably charging him a commercial rate for electric service to his garage under the circumstances of this case, which PPL disputes. Mr. Smith also alleges that PPL provided him with unreasonable service in the events and communication leading up to his being charged a commercial rate, which PPL disputes. These claims of incorrect billing and unreasonable service are cognizable under the Code and Commission Regulations.¹ Therefore, since there is a factual dispute as to these allegations, the Complainant should be afforded the opportunity to present evidence on his claims and prove them by a preponderance of the evidence.

However, even *assuming arguendo* that Mr. Smith proves that the Company violated the Code, Commission regulation or order or a violation of its Commission-approved tariff, the Commission cannot award Mr. Smith monetary compensation as relief. Although this Commission has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Commission only has the powers and authority granted to it by the General Assembly in the Code. Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (“*Feingold*”); *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

Rather, monetary damage payments must be pursued and ordered by a court of competent jurisdiction, such as a county court of common pleas or magisterial district justice, not the Commission. *Feingold*. A finding, if any, that PPL violated a Commission Order, regulation or statute, may result in the imposition of a civil penalty, but does not require it, consistent with

¹ For example, *see* 66 Pa. C.S. Section § 1501 (providing that every public utility must provide reasonable service); Chapter 56 of the Commission regulations (providing standards and billing practices for residential utility service); *Kossmann v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (holding that a Company’s Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer); and *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981) (holding where a complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably).

66 Pa.C.S. § 3301 or other provision of the Code. Further, it should be noted that a fine, if any, that is imposed on PPL is payable to the Commonwealth of Pennsylvania, not the customer—Mr. Smith, in this instance. However, this Order also clarifies that the Commission may, within its authority, order a correction of incorrect billing if that claim is proven by the Complainant.

Therefore, to the extent that Mr. Smith seeks compensatory damages of \$4,000 for reimbursement to electrify his garage, PPL’s preliminary objection will be sustained because the Commission does not have the authority to award monetary damages.

Finally, a hearing will be scheduled by a separate Hearing Notice on the claims raised in the Complaint and over which remedies the Commission does have authority.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PPL Electric Utilities Corporation, at Docket No. C-2024-3046013, which requests that the Complainant’s request for monetary damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2) is hereby GRANTED.

2. That by separate Hearing Notice, an evidentiary hearing will be scheduled on the claims raised by the Complainant, Douglas Smith, in his Formal Complaint at Docket No. Docket No. C-2024-3046013.

Date: April 29, 2024

/s/
Gail M. Chiodo
Administrative Law Judge

C-2024-3046013 - DOUGLAS SMITH v. PPL ELECTRIC UTILITIES CORP

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