

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NCP Group, LLC

v.

Inspire Energy Holdings, LLC

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C-2024-3045836

**ORDER**  
**SUSTAINING IN PART, AND DENYING IN PART,**  
**RESPONDENT'S PRELIMINARY OBJECTIONS**

**HISTORY OF THE PROCEEDING**

On January 29, 2024, NCP Group, LLC (“Complainant”) filed a Formal Complaint against Inspire Energy Holdings, LLC (“Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). On the Complaint form, Complainant checked the boxes indicating that the Respondent was threatening to or has already shut off its service, and that there were incorrect charges on its bill. More specifically, Complainant alleged: (1) that it entered into a 12-month contract with Respondent in December 2021, the terms of which provided a flat supply rate of \$104.99 per month, (2) that in December 2022, the supply contract was renewed for an additional 12-month term, (3) that it received a notice in June 2023 which informed it of a renewal which was out of cycle per the supply contract but did not indicate any noticeable change to the contract, and (4) that in October 2023 Respondent began to bill Complainant on a per kWh basis, contrary to the terms of the 12-month supply contract which had not yet expired.

For relief, Complainant requested: (1) that the Commission fine Respondent for its violations of Commission rules and its intentional fraudulent practices against consumers, and (2) that the Commission order Respondent to correct all billings to reflect the contract rate.

On February 20, 2024, Respondent filed an Answer with New Matter to the Complaint. Respondent in its Answer admitted or denied the various allegations of the Complaint. More specifically, Respondent asserted that on December 23, 2021, Complainant was enrolled with Respondent in a 12-month residential supply contract with a flat (fixed) supply rate of \$104.99 per month. After expiration of the contract on January 8, 2023, Respondent continued to bill Complainant at the flat rate on month-to-month basis while it reviewed Complainant's account as Complainant's usage was not consistent with a true residential account. On June 29 and July 24, 2023, Respondent sent Complainant notices stating that Complainant's contract would renew under new terms for 12 months if no action was taken by Complainant. Complainant took no action; thus, its supply contract was renewed for 12 months at a fixed rate of \$0.1289/kWh effective August 29, 2023. Complainant's account was returned to default service on October 4, 2023.

In its New Matter, properly endorsed with a Notice to Plead, Respondent repeated many of the assertions in its Answer. In addition, Respondent alleged that Complainant, as an LLC, must be represented by an attorney, and that the Commission lacks jurisdiction over alleged breach of contract disputes and supplier rates.

Attached to the Answer and New Matter is the December 23, 2021, consumer contract/written disclosure statement between Complainant and Respondent.

Also on February 20, 2024, Respondent filed Preliminary Objections. Respondent sought dismissal of the Complaint based on lack of Commission jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1), arguing that the Commission lacks jurisdiction: (1) over contract disputes, (2) to order refunds of supply charges, (3) to award damages, (4) over the tort of fraud, and (5) over this matter due to Complainant's failure to be represented by an attorney. Respondent also sought dismissal of the Complaint, pursuant to 52 Pa. Code § 5.101(a)(3), arguing that the Complaint is insufficiently specific, and pursuant to 52 Pa. Code § 5.101(a)(4), arguing that the Complaint is legally insufficient.

Following the filing of its Answer with New Matter, and Preliminary Objections, Respondent filed a total of four letters to the Commission's Secretary Bureau, advising that it and

Complainant were engaged in settlement discussions, and that Respondent agreed to extensions of Complainant's responsive pleading deadlines.

On April 11, 2024, Eugene P. Tempesta, Esquire, entered his appearance on behalf of Complainant.

Also on April 11, 2024, Complainant, through its attorney, filed an Answer to the Preliminary Objections.

On April 22, 2024, Complainant filed a Reply to Respondent's New Matter.

On April 23, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer to this proceeding.

For the reasons discussed below, Respondent's Preliminary Objections will be granted in part, and denied in part.

## DISCUSSION

### *Legal Standards*

Respondent in this matter filed Preliminary Objections to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (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).

Here, Respondent's Preliminary Objections assert lack of Commission jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1), insufficient specificity of a pleading pursuant to 52 Pa. Code § 5.101(a)(3), and legal insufficiency of a pleading pursuant to 52 Pa. Code § 5.101(a)(4).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every 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 the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

*A. Lack of Commission Jurisdiction, 52 Pa. Code § 5.101(a)(1)*

Having explained the standards for granting preliminary objections, I will first discuss Respondent's Preliminary Objections arguing that the Commission lacks jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1).

The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code § 5.101(a)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa. Code § 5.101(a)(1) 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. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa.Cmwlth. 1989); *Lehigh Valley Power Committee 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 Authority v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

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. *Tod and Lisa Shedlosky v. Pennsylvania Electric 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). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super.

1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

*i. Contract disputes*

First, Respondent argues that the Commission lacks jurisdiction to interpret the terms and conditions of a contract between a competitive supplier and a customer.

Respondent, as an EGS is not a public utility except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation). 66 Pa.C.S. § 102. The statute at 66 Pa.C.S. § 2809(b) states that the Commission will issue a license to an EGS if it is found that the EGS is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission's regulations regarding standards and billing practices. As such, although the Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates charged by EGSs, the Commission does have subject matter jurisdiction to regulate certain aspects of the services provided by EGSs. The Commission can ensure that an EGS is abiding by the standards of conduct and disclosure, the marketing and sales Regulations, and the contract expiration/change-of-terms notice requirements; and that the rate billed by an EGS was calculated in accordance with those materials. *John R. Evans, Small Business Advocate v. FirstEnergy Solutions Corporation*, Docket No. P-2014-2421556 (Order entered Jan. 26, 2015).

Viewing the Complaint in the light most favorable to Complainant, Complainant argues in its Complaint that Respondent breached its agreement with Complainant by selling it electric generation supply on terms other than those set forth in the disclosure statement and agreement. The Commission's regulations at 52 Pa. Code § 54.43 sets forth standards of conduct and disclosure to which a licensed EGS, such as Respondent must adhere. For example, the regulation at 52 Pa. Code § 54.43(1) requires licensed EGSs to provide accurate information about their services, 52 Pa. Code § 54.43(c)

requires licensed EGSs to provide notification of change in conditions of service, and 52 Pa. Code § 54.43(f) makes the EGS licensee responsible for any fraudulent, deceptive or unlawful marketing or billing acts performed by the licensee, its employees, agents, or representatives. Therefore, Complainant's allegations that Respondent breached its agreement by selling it electric generation supply on terms contrary to the terms of the disclosure agreement may raise concerns that are within the Commission's jurisdiction.

In addition, Complainant argues that Respondent sent Complainant a notice in June 2023 which informed it of a renewal which was out of cycle per the supply contract but did not indicate any noticeable change to the contract. This allegation potentially raises concerns relating to the Commission's regulations at 52 Pa. Code § 54.5 (Disclosure statement for residential and small business customers) and 52 Pa. Code § 54.10 (Notice of contract expiration or change in terms for residential and small business customers).

In sum, the Complaint alleges facts that, when viewed in the light most favorable to Complainant, can be construed as violations by Respondent of regulations that the Commission has jurisdiction to administer. For the above reasons, Respondent's argument here will be rejected.

*ii. Refunds*

Second, Respondent argues that the Commission lacks jurisdiction to grant a refund of supply charges. In its Complaint, Complainant requested that the Commission "correct all billings to reflect the contract rate."

To the extent the Complaint could be read as requesting a refund or credit, the Commission lacks the authority to order a refund or credit since the Commission lacks authority to regulate EGS' rates, because as stated above, Respondent as an EGS is not a public utility except for the limited purposes of 66 Pa.C.S. §§ 2809 and 2810. *See Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (Pa. Cmwlth. 2020).

*iii. Damages*

Third, Respondent argues that the Commission lacks jurisdiction to award Complainant with damages.

Respondent is correct in that the Commission lacks jurisdiction to award monetary damages to a Complainant in adjudicating a complaint properly brought before this Commission. *See, Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995). To the extent the Complaint could be read as requesting monetary damages, the Commission lacks authority to award Complainant with damages.

However, I will note that the regulation at 52 Pa. Code § 54.42 provides that an EGS licensee shall comply with the applicable requirements of the Public Utility Code and Commission regulations and orders and that a license may be suspended or revoked, and fines may be imposed, for, amongst other things, the failure of the EGS to follow the principles set forth in 52 Pa. Code § 54.43. 52 Pa. Code § 54.42.

*iv. Tort of Fraud*

Fourth, Respondent argues that the Commission does not have jurisdiction to determine if a tort was committed. In its Complaint, Complainant alleged that Respondent's practices were "intentionally fraudulent" against Complainant.

The Commission has jurisdiction over alleged violations of its own regulations, which jurisdiction includes determining whether the Commission's regulations prohibiting fraudulent, deceptive, or unlawful billing acts by an EGS or its employees, agents, or representatives, pursuant to 52 Pa. Code § 54.43(f) cited above, have been violated by an EGS. Thus, I must conclude that the Commission can hear claims alleging fraudulent, deceptive, and/or unlawful conduct brought against Respondent under the Commission's regulations.

For the above reasons, Respondent's argument here will be rejected.

v. *Attorney Representation*

Lastly, Respondent argues that the Commission lacks jurisdiction over the Complaint because Complainant, as an LLC, is not represented by an attorney.

The Commission's regulations require that persons, such as LLC's, in adversarial proceedings be represented by an attorney. *See* 52 Pa. Code § 1.21(b). Prior to the filing of the Preliminary Objections, no attorney had entered his or her appearance on behalf of Complainant. After the filing of the Preliminary Objections, Eugene P. Tempesta, Esquire, entered his appearance on behalf of Complainant. Therefore, as Complainant is now represented by an attorney, Respondent's argument here will be rejected.

*B. Insufficient specificity of a pleading, 52 Pa. Code § 5.101(a)(3)*

Having discussed Respondent's Preliminary Objections arguing that the Commission lacks jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1), I will now discuss Respondent's argument that the Complaint is insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3).

The purpose of 52 Pa. Code § 5.101(a)(3), like the purpose of Pa. R.C.P. 1028(a)(3), is to insure that an adverse party's right and ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of the complaint. *Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 207 A.2d 776 (Pa. 1965); *Foster v. Peat Marwick Main & Co.*, 587 A.2d 382 (Pa. Cmwlth. 1991); *Paz v. Commonwealth, Dep't. Of Corrections*, 580 A.2d 452 (Pa. Cmwlth. 1990); *Green Cab Company v. Hajducho*, 50 Pa. PUC 745 (1977)

The pleader must disclose the material facts sufficient to enable the adverse party to prepare its case. The pleader should summarize the material facts essential to support its claim.

Evidence from which the material facts may be inferred should not be alleged. If the allegations in a complaint contain averments of all of the facts the complainant will need to prove in order to prevail and the allegations in the complaint are sufficiently specific so as to enable the respondent to prepare its defense, the allegations will withstand a preliminary objection challenging their specificity. *Baker v. Rangos*, 324 A.2d 498 (Pa. Super. 1974); *Landau v. Western Pennsylvania National Bank*, 282 A.2d 335 (Pa. 1971); *Smith v. Wagner*, 588 A.2d 1308 (Case 3) (Pa. Super.1991)

The contents required in a formal complaint are set forth in the Commission's regulations at 52 Pa. Code § 5.22. The regulation at 52 Pa. Code § 5.22(a)(5) requires a clear and concise statement of the act or omission being complained of by the complainant. The recitation of the facts comprising the act or omission must be sufficiently specific to apprise the respondent of the claim and to permit the respondent to prepare an answer and present a defense or a preliminary objection pursuant to 52 Pa. Code § 5.101.(a)(3) may be sustained.

In this matter, Complaint adequately informs Respondent so as to enable them to prepare answers and present defenses. The Complaint sets forth the date Complainant entered into a contract with Respondent, the date that the contract allegedly was renewed, and the date Respondent sent Complainant a notice which, according to the Complaint, did not indicate any noticeable change to the contract. The Complaint clearly sets forth the incident that gave rise to the filing of the Complaint, i.e., when Respondent began to charge Complainant a rate other than the fixed rate it was accustomed to. These facts are sufficient to enable Respondent to prepare answers and present defenses.

For the above reasons, Respondent's argument here will be rejected.

*C. Legal insufficiency of a pleading, 52 Pa. Code § 5.101(a)(4)*

Having discussed Respondent's Preliminary Objections arguing that the Complaint is insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3), I will now discuss Respondent's argument that the Complaint is legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4).

The provision at 52 Pa. Code § 5.101(a)(4): (1) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency; and (2) serves judicial economy by avoiding a hearing where no factual dispute exists, and the matter in dispute is purely a legal question. If no factual issue pertinent to the resolution of a cases exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557, 564 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006, 1008-9 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. PUC*, 103 A.2d 502, 507 (Pa. Super. 1954).

A preliminary objection based on legal insufficiency is referred to as a demurrer. “A court should sustain preliminary objections in the nature of a demurrer only where it appears from the face of the complaint that recovery upon the facts alleged is not permitted as a matter of law.” *220 Partnership v. Phila. Elec. Co.*, 650 A.2d 1094, 1096 (Pa. Super. 1994). “When considering a demurrer[,] a court cannot consider matters collateral to the complaint but must limit itself to such matters as appear therein.” *Id.*

Viewing the Complaint in the light most favorable to Complainant, the Complaint in this case meets the requirement for legal sufficiency. The Complaint sets forth an act or thing done by Respondent in violation, or claimed violation, of a law which the commission has jurisdiction to administer, or of any regulation or order of the commission. 66 Pa.C.S. § 701. In particular, as I discussed previously in this Order, the Commission can ensure that an EGS is abiding by the requirements of Chapter 54 of the Commission’s regulations which address the standards of conduct and disclosure for a licensee EGS, EGS contract expiration/change-of-terms notice requirements; and whether or not the rate billed by an EGS was calculated in accordance with these regulations. The allegations raised in the Complaint may implicate these Commission regulations that the Commission has jurisdiction to administer.

For the above reasons, Respondent's argument here will be rejected.

*Conclusion*

In conclusion, Respondent's Preliminary Objections will be sustained in part, and denied in part in the Ordering paragraphs below.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Inspire Energy Holdings LLC's Preliminary Objections filed in the matter of NCP Group LLC v. Inspire Energy Holdings LLC, Docket No. C-2024-3045836, are sustained in part, and denied in part.
2. That the portion of the Complaint in the matter of NCP Group LLC v. Inspire Energy Holdings LLC, Docket No. C-2024-3045836, seeking a refund and/or monetary damages is stricken.
3. That the portions of Inspire Energy Holdings LLC's Preliminary Objections that seek dismissal of the Complaint in its entirety, pursuant to 52 Pa. Code § 5.101(a)(1), 52 Pa. Code § 5.101(a)(3), and 52 Pa. Code § 5.101(a)(4), are denied.

Date: June 12, 2024

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/s/  
Alphonso Arnold III  
Administrative Law Judge

**C-2024-3045836 - NCP GROUP LLC v. INSPIRE ENERGY HOLDINGS LLC**

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