

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steven Bizon	:	
	:	
v.	:	C-2024-3048742
	:	
Duquesne Light Company	:	

**INTERIM ORDER
GRANTING DUQUESNE LIGHT COMPANY’S PRELIMINARY OBJECTION
AND TRANSFERRING MATTER TO MEDIATION UNIT**

On April 26, 2024, Steven Bizon filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission), against Duquesne Light Company (DLC, Company, or Respondent) regarding service at his residence at 701 Willruth Drive, Allison Park, PA (service location). Complainant alleged he experienced a power surge on February 28, 2024, and that DLC was refusing to pay for damages to his home. He further averred his residence experienced “multiple damages” from the power surge and that he had receipts for all the items he needed to replace. He argued, “They stated that a goose flew into a transformer. I get its not negligence on their fault but they still have insurance for situations like this. And this needs to be paid out by them. I shouldn’t lose money because of this situation.” He further argued, “On their website, they said they do not cover damages due to weather. This was not weather related so it should be covered by their insurance.” Complainant listed his damages as totaling \$3,930.00, which includes the replacement of two televisions, repairs to his HVAC and electrical systems, doggy day care for his dogs, and late fees on his mortgage.

On May 20, 2024, DLC filed an Answer to the Complaint as well as a Preliminary Objection. DLC admitted Complainant experienced an outage in February 2024, and explained he filed a damage claim which the Company denied. DLC argued it is not responsible for the damages claimed by Complainant because the outage was outside the Company’s control, *i.e.*, a

goose made contact with the Company's distribution lines, causing automatic circuit operations leading to a momentary-20 second outage at the service location.

In its Preliminary Objection, DLC argues the Complaint's request for damages should be stricken from the Complaint as an impertinent matter since the Commission lacks authority to award damages. DLC argues, Complainant's request for damages is an impertinent matter "in the sense that it is irrelevant to [the] cause of action" because the Commission lacks authority to award damages.

The Preliminary Objection included a Notice to Plead, advising Complainant of her ability to file a response within ten days of service. Complainant did not file a response.

It is now appropriate to rule on the Preliminary Objection.

Discussion

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. 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. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff'd per curiam*, 924

A.2d 1203 (Pa. 2007). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

The Commission's rules regarding procedural regulations allow a party to object to pleadings that fail to comply with the rules of administrative practice that include scandalous or impertinent matters. 52 Pa. Code § 5.102(a)(2). It is well established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of PA., Co. of Pa. PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978) (*Feingold*); see *Nagy v. Bell Tel Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

In *Feingold*, the Pennsylvania Supreme Court explained:

...the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

Feingold, 383 A.2d at 794.

Therefore, DLC's Preliminary Objection is granted, and the request for monetary damages is stricken from the Complaint. However, the allegation that DLC failed to provide reasonable service as required by 66 Pa. C.S § 1501 remains, and the Complaint is transferred to the OALJ's Mediation Unit.

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