

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barry Kaplan	:	
	:	
v.	:	F-2024-3050324
	:	
PPL Electric Utilities Corporation	:	

ORDER
GRANTING PRELIMINARY OBJECTIONS

On July 18, 2024, Barry Kaplan (Mr. Kaplan or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Company), Docket No. F-2024-3050324. Mr. Kaplan’s Formal Complaint was served on PPL on August 1, 2024. In his Formal Complaint, Mr. Kaplan states that the utility is threatening to shut off his service or has already shut off his service; there are incorrect charges on his bill; he is having a reliability, safety or quality problem with his utility service; his service was shut off without notice; and he had wires down and they were never connected. As relief, Mr. Kaplan requests a new refrigerator and payment for food.

On August 21, 2024, PPL filed an answer to Mr. Kaplan’s Formal Complaint. PPL admitted that Complainant’s service was terminated on May 1, 2024. PPL denies that termination of Complainant’s service was in violation of the Public Utility Code, the Commission’s regulations, or the Company’s Commission-approved tariff. PPL also denies that Mr. Kaplan’s electric service bills contain incorrect charges and that the Company has not provided the Complainant with reasonable service. PPL admits that on May 29, 2024 wires located at Mr. Kaplan’s service address were downed when branches fell and pulled on the lines. However, PPL denies the downed wires were PPL electric facilities.

Also on August 21, 2024, PPL filed preliminary objections to Mr. Kaplan’s Formal Complaint. In its preliminary objections, which included a notice to plead, PPL argued

that the Commission does not have the power to award monetary damages. Therefore, PPL asserts Mr. Kaplan's request for monetary damages, i.e., a new refrigerator and payment for food, is impertinent matter and should be stricken from the Formal Complaint, and Complainant should be prohibited from introducing evidence at a hearing regarding alleged damages.

On August 29, 2024, the Commission issued a motion judge assignment notice, assigning me to this proceeding.

No response to the preliminary objections has been received.

PPL's preliminary objections are now ready for disposition, and they will be granted as stated below. The request for money damages will be stricken from the Formal Complaint. Further, Mr. Kaplan will be prohibited from introducing at an evidentiary hearing any testimony or exhibits for the purpose of recouping alleged monetary damages.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (*Equitable*). Section 5.101(a) provides:

- (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 a proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Commw. of Pa. 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 Mr. Kaplan and should dismiss the complaint only if it appears that Mr. Kaplan would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; see also, *Interstate Traveler Services, Inc. v. Commw., Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979).

In this case, Mr. Kaplan requests a new refrigerator and payment for food. PPL's Preliminary Objections will be granted because, even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the Formal Complaint in the light most favorable Mr. Kaplan, it is clear that the Commission lacks jurisdiction to award monetary damages.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *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 the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by

strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* at 794.

As a result, to the extent Mr. Kaplan requests that the Commission award monetary damages, i.e., a new refrigerator and payment for food, such a claim may be appropriate for a Court of Common Pleas but is impertinent to this proceeding. PPL's preliminary objections will be granted regarding Mr. Kaplan's request for monetary damages. When accepting as true all well pleaded material facts in the complaint, as well as every reasonable inference from those facts, and viewing the Formal Complaint in this case in the light most favorable to Mr. Kaplan, it is clear that Ms. Kaplan is not entitled to monetary damages from this Commission under any circumstances as a matter of law. Mr. Kaplan's request for monetary damages will be stricken from the Formal Complaint because it is an impertinent matter. 52 Pa. Code § 5.101(a)(2).

Because Mr. Kaplan's request for monetary damages has been stricken from the Formal Complaint, to the extent Mr. Kaplan intends to introduce at an evidentiary hearing testimony or exhibits for the purpose of recouping alleged monetary damages, such testimony or exhibits will be prohibited. However, Mr. Kaplan is not prohibited from introducing testimony or exhibits if introduced only for the purpose of addressing any issues that are under the Commission's jurisdiction. This could include the issues of whether PPL properly terminated service to Mr. Kaplan's service address, whether there are incorrect charges on Mr. Kaplan's PPL bill, and whether PPL is furnishing and maintaining adequate, efficient, safe, and reasonable service and facilities. If it is found that PPL is not meeting such obligations, they may be subject to a civil penalty. Therefore, the Formal Complaint filed by Mr. Kaplan will proceed to a hearing for the adjudication of issues raised in the Formal Complaint over which the Commission does have jurisdiction to hear.

However, as set forth in this Order, Mr. Kaplan will be precluded from raising any arguments during a hearing that the Commission does not have jurisdiction over, e.g., monetary damages, and under no circumstances will any possible remedy include monetary

damages to be awarded to Mr. Kaplan. Additionally, Mr. Kaplan is advised that to sustain his burden of proof at hearing, he must demonstrate by a preponderance of the evidence that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PPL's preliminary objections.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PPL Electric Utilities Corporation at Docket Number F-2024-3050324 on August 21, 2024 are hereby granted.
2. That the request for monetary damages contained in the Formal Complaint filed by Barry Kaplan at Docket Number F-2024-3050324 is stricken.
3. That, at an evidentiary hearing, introduction of testimony or exhibits for the purpose of recouping alleged monetary damages is prohibited.

4. That the remaining issues raised in the Formal Complaint filed by Barry Kaplan at Docket Number F-2024-3050324 over which the Commission has jurisdiction will proceed to a hearing.

Date: September 4, 2024

/s/
John M. Coogan
Administrative Law Judge

F-2024-3050324 - BARRY KAPLAN v. PPL ELECTRIC UTILITIES CORP

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