

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Farrell	:	
	:	
v.	:	C-2022-3031049
	:	
Duquesne Light Company	:	

**ORDER GRANTING PRELIMINARY OBJECTIONS AND SUSTAINING THE
MOTION THAT THE REQUEST FOR DAMAGES BE STRICKEN FROM THE
COMPLAINT**

This Order is issued pursuant to the authority conferred to presiding officers by the Commission’s procedural regulations at 52 Pa. Code § 5.101(g)

On April 19, 2024, Anthony Farrell (Complainant) filed a formal Complaint with the Commission alleging that on or around January 2, 2024, a power surge occurred that destroyed appliances in his home. Complainant attributes the surge to failure to render adequate service on the part of Duquesne Light Company (DLC or Respondent) the Commission-certificated provider of electric distribution service to Complainant’s residence. Beyond this, Complainant indicated on the Complaint form that the utility has threatened to disconnect his service, and there are incorrect charges on his bills. Complainant requests a billing adjustment and reimbursement for damaged appliances and ruined food. He also asks that the voltage delivered to his home be monitored.

On May 13, 2024, DLC filed an Answer to the Complaint. In that Answer, DLC denied that it had failed to provide safe, adequate and reasonable service as required by the Public Utility Code (Code) and the rules and regulations of the Commission. DLC stated that it has issued a termination Notice on Complainant’s account for nonpayment and contending that Complainant has broken three prior payment arrangements. DLC stated that the proposed termination is consistent with the Code and the applicable rules and regulations of the

Commission. DLC stated that it has declined to reimburse Complainant for his claimed losses as DLC was not responsible for those losses. DLC also denied misbilling Complainant. DLC explained the steps that it had taken to address Complainant's billing concerns, including modification to a step-down transformer after monitoring the voltage flow to Complainant's residence. DLC stated that it has been responsive to all of Complainant's inquiries and concerns. DLC asked that the Complaint be dismissed in its entirety, with prejudice.

On May 13, 2024, DLC also filed preliminary Objections to the Complaint, properly endorsed with a Notice to Plead, asking that Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2) as impertinent matter given that the Commission does not have the statutory authority to order reimbursement for claimed damages.

Complainant filed no Answer or responsive pleading to the preliminary Objections.

Legal Standards

The grounds for a Preliminary Objection are set forth in the Commission's procedural regulations:

§ 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).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

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, et al v. SERS, et al.*, 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).

DLC's Preliminary Objections

This Order does not consider the facts asserted in the Complaint or DLC's Answer to those assertions beyond those relevant to the Commission's statutory authority. This Order is limited to a ruling on that matter of law raised by DLC. For the following reasons

DLC's Preliminary Objections are granted and the Motion that Complainant's request for damages be stricken from the Complaint is sustained.¹

In sum, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. In any court, 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).

As DLC asserts in its Preliminary Objections, 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.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *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 such 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. 4

DLC is also correct that a prayer for damages which are not legally recoverable in the cause of action constitutes "impertinent matter" in the sense that it is irrelevant to the cause of action and is correctly challenged through a motion to strike the requested relief as impertinent matter. *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

¹ While DLC does not couch its request to strike as a Motion, that is, in fact, what that request amounts to.

The Complainant's requested relief in the form of damages is irrelevant to the instant cause of action and therefore is, "impertinent matter." Complainant's request for damages must be stricken within the use and meaning of Commission's regulation at 52 Pa. Code § 5.101(a)(2);² that is, failure of a pleading to comply with the procedural requirements of the Commission.

Whether Complainant can prove by a preponderance of the evidence that DLC has failed to meet the requirement of providing safe, adequate and reasonable service is a matter that *is* within the Commission's jurisdiction by virtue of Section 1501 of the Code, which states in pertinent part:

Character of service and facilities. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. §1501.

The statute at 66 Pa. C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977) aff'd 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Code at 66 Pa. C.S. §1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan*

² Any civil penalty that is imposed on a utility by the Commission as the result of a finding that the utility has not complied with the Code or the regulations of the Commission does not constitute an award to a Complainant. Such a penalty is paid to the General Fund of the Commonwealth of Pennsylvania. 66 Pa. C.S. § 3301(a).

C-2024-3048603 - ANTHONY FARRELL v. DUQUESNE LIGHT COMPANY

ANTHONY FARRELL
13 MARCHMONT STREET
PITTSBURGH PA 15205
412.302.4496

mfarrell312@yahoo.com

Served via eService December 10, 2024

MEGAN E RULLI ESQUIRE
POST & SCHELL
17 NORTH SECOND STREET
12TH FLOOR
HARRISBURG PA 17101

717.612.6012

717.472.0466

mrulli@postschell.com

Served via eService December 10, 2024

(Counsel for DLC)