

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jane Merolla	:	
	:	
v.	:	C-2024-3052131
	:	
UGI Utilities, Inc. – Gas Division	:	

INTERIM ORDER SUSTAINING PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On November 15, 2024, Jane Merolla (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. – Gas Division (UGI, Respondent or Company). In the Complaint, the Complainant alleged that UGI shut off her gas service without notice. As relief, the Complainant requested service reinstatement, reimbursement for hotel stays and attorney fees, and relief from an alleged imposed deposit of \$593.08.

On December 5, 2024, the Respondent filed an Answer and New Matter along with a Notice to Plead. In its Answer, UGI admits in part and denies in part the averments in the Complaint. Specifically, the Respondent denied that UGI is responsible for the damages claimed by the Complainant. In its New Matter, UGI avers that the Complainant has failed to state a claim upon which relief may be granted because to the extent that the Complainant seeks an award of monetary damages against UGI, such relief is beyond the jurisdiction of the Commission.

The Complainant’s Answer to UGI’s New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainant did not file an Answer to UGI’s New Matter.

Also on December 5, 2024, the Respondent filed Preliminary Objections to the Complaint along with a Notice to Plead. In its Preliminary Objections, the Respondent seeks dismissal of the portions of the Complaint seeking reimbursement for damages, i.e. hotel stay, and attorney fees based on the argument that the Commission lacks authority to award damages.

The Complainant's Answer to UGI's Preliminary Objections was due within ten days of the date of service of the Preliminary Objections. 52 Pa. Code § 5.101. The Complainant did not file an Answer to UGI's Preliminary Objections.

By Initial Call-In Telephonic Hearing Notice dated January 13, 2025, a telephonic hearing was scheduled for February 28, 2025, at 10:00 a.m., and the matter was assigned to me.

For the reasons set forth below, UGI's Preliminary Objections will be granted and any portion of the Complaint seeking damages and/or attorney fees will be stricken from the Complaint as impertinent matter. The hearing scheduled for February 28, 2025, shall proceed solely to address whether UGI provided reasonable service.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). 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).

Commission regulations provide:

§ 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.

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.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, as relief, the Complainant requests reimbursement for hotel stays and attorney fees allegedly incurred when her gas service was terminated. In its Preliminary Objections, the Respondent argues that the Commission lacks authority to award such damages and requests that these portions of the Complaint be dismissed.

As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the “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 of Pa.*, 383 A.2d 1191 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). *Behrend v. Bell of PA*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. P.U.C.*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978).

Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *See, DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa.Cmwlt. 1995).

However, while the Commission does not have jurisdiction to award damages, it does not follow that the Commission lacks jurisdiction to hear a complaint that seeks damages. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative Law Judge and the Commission might conclude that the utility violated 66 Pa. C.S. § 1501 by failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. *See Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket Number A-00113019C0203 (October 14, 2003), Opinion and Order adopted March 4, 2004, entered March 11, 2004, 2004 Pa. PUC LEXIS 19.

Additionally, in a complaint against a public utility that seeks monetary damages arising from a failure to provide safe, adequate, reasonable, or efficient service, the Supreme Court has approved of a bifurcated procedure. In *De Francesco v. Western Pennsylvania Water Co.*, 453 A.2d 595 (Pa. 1982), the Supreme Court stated:

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. See also, *Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

De Francesco v. Western Pennsylvania Water Co., 453 A.2d 595 (Pa. 1982).

Thus, service issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982). Consequently, the Commission retains jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Based on the foregoing, the Respondent's Preliminary Objections will be granted and any portion of the Complaint seeking damages and/or attorney fees will be stricken from the Complaint as impertinent matter under 52 Pa.Code § 5.101(a)(2). Accordingly, the hearing scheduled for February 28, 2025, shall proceed solely to address whether the Respondent provided reasonable service pursuant to 66 Pa. C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by UGI Utilities, Inc. – Gas Division, in the matter of Jane Merolla v. UGI Utilities, Inc. – Gas Division, at Docket No. C-2024-3052131 are sustained.

2. That any portion of the Complaint seeking damages and/or attorney fees are stricken from the Complaint as impertinent matter.

3. That the hearing scheduled for February 28, 2025, shall proceed solely to address whether UGI Utilities, Inc. – Gas Division provided reasonable service to the Complainant.

Date: January 23, 2025

_____/s/
F. Joseph Brady
Administrative Law Judge

C-2024-3052131 - JANE MEROLLA v. UGI UTILITIES INC GAS DIVISION

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