

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tammi Porterfield	:	
	:	
v.	:	C-2024-3052505
	:	
FirstEnergy Pennsylvania Electric Company	:	

FIRST INTERIM ORDER
Concerning Respondent's
Preliminary Objections

Before
Katrina L. Dunderdale
Administrative Law Judge

HISTORY OF THE PROCEEDING

On December 13, 2024, Tammi Porterfield (Complainant or Ms. Porterfield) filed a Formal Complaint (Complaint) against FirstEnergy Pennsylvania Electric Company (Respondent or FE PA) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged there was a reliability, safety or quality problem with her electric service when FE PA damaged her personal property during a temporary repair to outside wiring on October 17, 2024, resulting in damage to the furnace and the stove. Ms. Porterfield asked the Commission to order FE PA to reimburse her for the damage to the furnace and stove for the damage FE PA did to her home.

On January 2, 2025, Respondent filed and served its Answer, in addition to serving its Preliminary Objections, endorsed with a Notice to Plead. In its Answer, FE PA generally denied Complainant' allegations but admitted it provides electric service to the service address and performed a temporary repair on October 17, 2024. FE PA denied it is responsible to reimburse Complainant for the alleged damages and denied it failed to provide adequate

customer service. FE PA averred the Commission lacks jurisdiction to consider and grant damages, and the Commission should dismiss the Complaint.

In its Preliminary Objections, filed pursuant to 52 Pa.Code § 5.101(a) and with a Notice to Plead, FE PA averred the Commission lacks jurisdiction to grant or award any monetary compensation for damages. Respondent averred Complainant did not request relief which the Commission can grant, and the Commission should dismiss the Complaint.

On February 4, 2025, the Commission's Office of Administrative Law Judge (OALJ) issued the Motion Judge Assignment Notice, assigning this matter to the presiding officer for the purpose of resolving any issues that arise during the preliminary phase in the proceeding. This matter is now ripe for a final disposition on Respondent's Preliminary Objections.

DISCUSSION

This Interim Order grants in part the Preliminary Objections of FE PA to the extent the Complaint alleges claims related to monetary damages because the awarding of monetary damages are outside the jurisdiction of the Commission. This Interim Order denies in part the Preliminary Objections of FE PA to the extent the Complaint alleges FE PA failed to provide safe, adequate, reliable and reasonable service in the maintenance and repair of its facilities and equipment, resulting in a customer service deficiency, when providing electric service to Complainant.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Motions.¹ Commission preliminary motion practice is similar to Pennsylvania civil practice respecting the filing of preliminary objections.² Commission

¹ 52 Pa.Code §§ 5.101 and 5.103.

² *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (1994).

regulations permit the filing of a preliminary motion questioning the jurisdiction of the Commission.³ In ruling on a motion to dismiss, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true.⁴ The motion may be granted only if the moving party prevails as a matter of law.⁵

Preliminary Objections

Preliminary objections, under the Commission's regulations, are available to parties and allow for objections to be filed in response to any pleading except a motion or prior preliminary objections. A party filing preliminary objections must include a notice to plead, must state specifically the legal and factual grounds relied upon and limit the objections 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 Chapter 5, Title 52 of the Pennsylvania Code, or include 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).

³ 52 Pa.Code §§ 5.101 and 5.103.

⁴ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (1985); *Commw. of Pa. v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlth. 1988).

⁵ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

The party against whom preliminary objections are filed may file an answer to the preliminary objections but the answer must be filed within ten days of the date when the preliminary objections are served.⁶ Then the presiding officer will decide the preliminary objections within thirty days of the date the preliminary objection is assigned to the presiding officer.⁷

The moving party may not rely on its own factual assertions, but must accept, for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.⁸ Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true.⁹ The preliminary objection may be granted only if the moving party prevails as a matter of law.¹⁰ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.¹¹

The Commission has the discretion to “dismiss any complaint without hearing if, in its opinion, a hearing is not necessary in the public interest.”¹² A hearing is necessary only to resolve disputed questions of fact and, when the question presented is solely one of law, the

⁶ 52 Pa.Code § 5.101(f)(1).

⁷ 52 Pa.Code § 5.101(g).

⁸ *County of Allegheny v. Cmwlth. of Pa.*, supra.

⁹ Id.

¹⁰ *Roc v. Flaherty*, supra.

¹¹ *Dept. 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)).

¹² 66 Pa.C.S. § 703(b). See also 52 Pa.Code § 5.21(d).

Commission need not hold a hearing.¹³ The public interest does not require a hearing in a case which would be a fruitless exercise and, therefore, not necessary or in the public interest.¹⁴

Pursuant to Section 501 of the Code, 66 Pa.C.S. § 501, the Commission must “enforce, execute and carry out, by its regulations, orders or otherwise” all the provisions of the Code. Section 701 of the Code, 66 Pa.C.S. § 701, allows any person, having an interest in the subject matter, to file a Complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer.¹⁵

Disposition

In this proceeding, Complainant requests the Commission order FE PA to reimburse her for the costs to repair or replace the property damaged during the power surge caused by Respondent. Complainant contends these damages were the result of poor customer service by Respondent. Complainant asserts FE PA should have to provide reasonable and adequate electric service which is safe and does not damage her property.

In contrast, FE PA avers the Complaint does not specify a cause of action upon which the Commission can grant relief because Complainant only specifies reimbursement for replacement of the damaged appliances and the cost of paying an electrician to diagnose the problem. FE PA filed these preliminary objections because the regulations permit FE PA to request dismissal of a pleading for lack of jurisdiction.¹⁶ Respondent is correct when it states the Commission cannot exceed its jurisdiction and must act within it.¹⁷ Jurisdiction may not be

¹³ *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (1989). See also *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (1993).

¹⁴ *Musisko v. Pennsylvania American Water Company*, Docket No. C-2008-2061663 (Final Order entered May 13, 2009).

¹⁵ 52 Pa.Code § 5.21(a).

¹⁶ 52 Pa.Code § 5.101(a)(1).

¹⁷ *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

conferred by the parties where none exists.¹⁸ The Commission has initial jurisdiction over “matters involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates.”¹⁹ Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.²⁰

The Commission lacks jurisdiction over payment for damages suffered and, to the extent Complainant requests monetary damages, Respondent’s Preliminary Objections will be granted and Complainant’s request for money damages will be dismissed in part without a hearing because this request is beyond the scope of the Commission’s jurisdiction.

However, the Commission retains jurisdiction over any allegation concerning the safety and reliability of the utility service provided by the utility. This allegation forms the basis of Ms. Porterfield’s complaint. That portion of the Complaint – which alleges Respondent provided poor safety and reliability resulting in a major surge event – remains a valid subject matter for consideration by the Commission. The facts which Ms. Porterfield allege are sufficient to show, if proven, that FE PA failed to provide reasonable and adequate customer service by failing to provide safe and reliable electric service. Whether Complainant can prove these allegations is not material to the disposition of these Preliminary Objections.

When there is a factual dispute concerning the safety of the public utility’s product or services, the proceeding cannot be dismissed on the grounds a complainant failed to allege an issue within the Commission’s jurisdiction. In fact, a complainant which alleges a public utility failed to provide safe, reliable and adequate service has alleged an issue within the Commission’s jurisdiction. That issue – which remains herein – is the failure to provide safe and reliable electric service.

¹⁸ *Roberts v. Martorano*, 235 A.2d 602 (1967).

¹⁹ *DeFrancesco et al. v. Western Pennsylvania Water Company*, 435 A.2d 614, 616 (Pa.Super. 1981) vacated and remanded on other grounds, 435 A.2d 595 (1982).

²⁰ *Hughes v. Pa. State Police*, 619 A.2d 390 (1992), *alloc. denied*, 637 A.2d 293 (1993).

Accepting as true all well-pleaded facts in the Complaint, I find Complainant alleged sufficient facts that, if proven, would justify the issuance of an Initial Decision which finds FE PA failed to provide safe and reliable electric service, in contravention to 66 Pa.C.S. § 1501. Therefore, there is a sufficient basis to provide Complainant with the opportunity to proceed with her Complaint, and an opportunity to present evidence, if any there is, which would support the allegations.

The preliminary objections will be granted in part and denied in part in the Ordering Paragraphs below. Following the issuance of this Interim Order, the proceeding may proceed to an initial hearing.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this dispute.
2. The Commission has jurisdiction over the subject matter of this dispute to the extent the Complaint involves allegations of a failure by Respondent to provide Complainant with safe and reliable electric service plus reasonable and adequate customer service, pursuant to 66 Pa.C.S. § 1501.
3. The Complaint raises a claim that, if proven, would show Respondent failed in some way to furnish and maintain adequate, efficient, safe and reasonable service and facilities, pursuant to 66 Pa.C.S. § 1501.
4. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt and only if the moving party prevails as a matter of law. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); and *Roc v. Flaherty*, 527 A.2d 211 (Pa.Cmwlth. 1985).

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TAMMI PORTERFIELD
204 DUSTY TRAIL LANE
BERLIN PA 15530
814.701.1099
tporterfield1990@outlook.com
Served via eService

TORI L GIESLER
FIRSTENERGY SERVICE COMPANY
2800 POTTSVILLE PIKE
READING PA 19605
610.921.6658
paregulatorycomplaints@firstenergycorp.com
Served via eService

ANGELINA UMSTEAD
FIRSTENERGY
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612-6001
610.921.6202
aumstead@firstenergycorp.com
Served via eService
(Counsel for FirstEnergy Pennsylvania Electric Company)