

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren and Bill Thompson	:	
	:	
v.	:	C-2024-3052318
	:	
Duquesne Light Company	:	

**INTERIM ORDER SUSTAINING PRELIMINARY OBJECTION
AND REFERRING PROCEEDING TO MEDIATION**

On November 26, 2024, Lauren and Bill Thompson (Complainants) filed a Formal Complaint (Complaint) against Duquesne Light Company (Duquesne or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainants placed checkmarks in the boxes marked “I am having a reliability, safety or quality problem with my utility service” and “[o]ther.” In an attachment, the Complainants offered details regarding problems they experienced that they alleged were the result of Duquesne’s service. Under the “[r]equested relief” section of the Complaint form, the Complainants stated “Duquesne Light has replaced our faulty transformer that broke a lot of our major utilities/appliances, however, they are not assuming responsibility for the repayment of the majority of these items.”

On December 17, 2024, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent admitted that the Complainants experienced outages at the service address in June and August 2024 and that they reported these outages to the company. The Respondent denied that these outages constituted unreasonable or unreliable service. The Respondent admitted that it replaced the transformer serving the Complainants on August 22, 2024 but denied that the transformer damaged the Complainants’ major appliances.

As New Matter, the Respondent asserted that the Complainants’ claims and requests for relief are barred, in part, by the three-year statute of limitations set forth in the Public Utility Code at 66 Pa. C.S. § 3314(a). The Respondent averred that, since the Complaint was filed on

November 27, 2024, any claims related to unreliable service arising prior to November 27, 2021 are outside the statute of limitations and must be dismissed. The Respondent endorsed its New Matter with a Notice to Plead advising the Complainants they had twenty days to file a responsive pleading to its New Matter.

Separately on December 17, 2024, the Respondent filed a Preliminary Objection to the Complaint, noting that it is well established that the Commission does not have authority to order a public utility to pay damages as requested by the Complainants. The Respondent requested that the portions of the Complaint pertaining to a request for monetary reimbursement to compensate for losses be dismissed as impertinent matter pursuant to 52 Pa. Code § 5.101(a)(2). The Respondent endorsed its Preliminary Objection with a Notice to Plead advising the Complainants they had ten days to file a responsive pleading to its Preliminary Objection.

On December 27, 2024, the Complainants filed a response to the Respondent's New Matter, averring that the argument that some of their allegations are barred by the three-year statute of limitations is unfounded.

On December 27, 2024, the Complainants filed a response to the Respondent's Preliminary Objection opposing the Respondent's request to dismiss the portions of the Complaint requesting financial compensation.

By Initial Call-In Telephonic Hearing Notice dated January 7, 2025, an initial call-in telephonic hearing was scheduled for March 26, 2025 at 10:00 a.m., and the matter, including Duquesne's Preliminary Objection, was assigned to me.

For the reasons set forth below, the Respondent's Preliminary Objection is sustained, the portion of the Complainants' Complaint seeking damages will be stricken from the Complaint as impertinent matter, and this matter will be referred to the Office of Administrative Law Judge's Mediation unit for the Commission's mediation review process.

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.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).

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, the Complainants alleged that the Respondent replaced a faulty transformer that broke or damaged a number of their "major utilities/appliances." The Complainants maintained that the Respondent should assume "responsibility for the repayment of the majority of these items."

In its Answer, the Respondent admitted that it replaced the transformer serving the Complainants on August 22, 2024 but denied that the transformer damaged the Complainants' major appliances. In its Preliminary Objection, the Respondent argued that the Commission does not have the authority to order a public utility to pay damages. The Respondent asserted that the Complainants' request for damages is impertinent matter and should be dismissed pursuant to 52 Pa.Code § 5.101(a)(2).

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.Cmwlth. 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.Cmwlth. 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.

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). The Commission clearly has jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainants.

Although the Complainants requested relief in the form of monetary damages, they also alleged that the Respondent's service caused the problems they experienced, namely, damaged or broken appliances. Therefore, I shall sustain the Respondent's Preliminary Objection and dismiss the portion of the Complaint requesting damages as impertinent matter under 52 Pa.Code § 5.101(a)(2). However, the remaining issues regarding whether the Respondent provided the Complainants with reasonable and adequate service must still be addressed.

It is the policy of the Commission to encourage settlements. 52 Pa.Code § 5.231. Also, it is Commission policy to encourage mediation during which the parties may attempt to resolve the case with the aid of a mediator. 52 Pa.Code §§ 69.391– 69.397. The mediator, a neutral staff member within the Mediation Unit of the Commission's Office of Administrative Law Judge, does not give advice, represent any party, evaluate, or make a decision. Instead, the mediator assists the parties in their efforts to come to an agreement thereby avoiding the time, expense, and uncertainty of litigation. Mediation is an informal process where the parties can discuss a full range of settlement options beyond those which can be ordered by the Commission in the formal adjudication process. In its Answer, the Respondent indicated that the Commission's mediation process is an appropriate forum to address and resolve the issues raised in the Complaint. The Complainants, in their response to the Respondent's New Matter, advised that they are open to Mediation. Accordingly, the hearing scheduled for March 26, 2025 will be cancelled, and the remaining issues in this matter will be referred to the Commission's Mediation unit for the Commission's mediation review process.

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