**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Maromonte :

:

v. : C-2015-2468911

:

Peoples Natural Gas Company LLC :

Equitable Division :

**ORDER SUSTAINING PRELIMINARY OBJECTION**

On February 25, 2015, Kevin Maromonte (Complainant) filed a formal complaint (complaint) against Peoples Natural Gas Company LLC – Equitable Division (Peoples or Respondent). Complainant alleges that Peoples is responsible for damage to a rental property owned by Complainant due to gas service being shut off in error.

Complainant alleges that on January 9, 2015, he received a call from a tenant occupying half of a duplex rental property owned by Complainant at 675 Sixth Street, Oakmont, PA 15139. The tenant notified Complainant that their portion of the duplex was being flooded by water coming down from the unoccupied portion of the duplex above (affected property). Complainant alleges he immediately dispatched a plumber to shut off the water and mitigate damages.

The plumber allegedly told Complainant that the pipes in the affected property had frozen and burst. Complainant states he was surprised that the pipes had frozen and burst because he ordinarily leaves the thermostat set at 68 degrees in unoccupied properties.

When Complainant asked the plumber to check the furnace setting the plumber informed Complainant that the gas had been shut off for the affected property. This was the first time Complainant was aware that Peoples had shut off the gas for the affected property. The damage that occurred to the duplex includes pipes bursting in the second floor bathroom, a collapsed ceiling, badly warped wooden floors, and flooding.

Complainant states that he owns multiple rental properties which all receive gas service from Peoples. He alleges that he has a documented agreement with Peoples to have gas service automatically transferred to his name when a tenant cancels service for one of his rental properties, so as to ensure that there is never a disruption in service.

Complainant called Peoples on January 12, 2015, and alleges that a Peoples customer service representative confirmed during a recorded telephone conversation that Complainant had a valid transfer-of-service agreement with Peoples in place at the time the damage occurred and that gas should not have been shut off to the affected property. When Complainant filed a claim, however, Peoples denied his claim.

Complainant has attached to the complaint an email from Respondent sent to Complainant in which Peoples denies the claim Complainant filed with Peoples. The email contains a timeline of events relating to Complainant’s affected property and claim, as compiled by Peoples.

Complainant alleges that the email shows that Peoples shut off gas service to the affected property 16 days after processing Complainant’s Owner Agreement for automatic transferal of service into Complainant’s name in the event a tenant requests termination of service prior to vacating the premises. Complainant notes that the email shows Peoples received Complainant’s Owner Agreement on May 13, 2014, and processed the same on May 14, 2014; and that gas was turned off at the affected property on May 30, 2014 pursuant to a request for shut off of service by a previous tenant of the affected property, dated April 28, 2014.

Complainant has also marked up the email with handwritten comments to emphasize points of disagreement with Peoples’ depiction of events. Specifically, Complainant responds to Peoples’ statement that Complainant should have noticed that there was no gas bill issued for the affected property for a period of seven months. Complainant notes that he receives over one hundred bills monthly for his rental properties, comprising 14 houses with 60 rental units, and he did not notice that the bill for the affected property was missing.

Based on Peoples’ alleged admission of error, Complainant seeks a total of $6,303.28 from Peoples to compensate Complainant for the expense of repairing damage to the affected property.

Peoples filed an answer in which it denies responsibility for the damage to Complainant’s affected property. Peoples notes that it conducted an investigation and informed Complainant that it believes it is not responsible for the damage. Peoples states that Complainant seeks monetary damages, which the Commission is unable to grant. Peoples also states that it did not shut off gas improperly, and notes that Complainant failed to notice that the gas to the affected property was shut off for a period of seven months. Respondent seeks dismissal of the case.

On March 16, 2015, contemporaneously with filing its answer, Peoples filed preliminary objections with notice to plead. The preliminary objections allege that the remedy sought is beyond the jurisdiction of the Commission because the Commission lacks authority to grant Complainant’s request for damages. Therefore, Peoples moves to strike the Complainant’s request for compensation as impertinent matter, and states that Complainant’s claim should be addressed in the Court of Common Pleas.

On March 26, 2015, Complainant filed a response to Respondent’s preliminary objections. Complainant reiterates that Respondent’s processing of the Owner Agreement is flawed, and resulted in gas being shut off at the affected property over two weeks after the Owner Agreement was received and processed by Peoples. Complainant names Carl Orangis as the Peoples customer service representative with whom he spoke on January 12, 2015, who allegedly confirmed Respondent’s improper termination of gas service despite the existence of a valid Owner Agreement.

Complainant also states that he has no choice but to use Peoples’ services due to the location of his rental properties, and is concerned that there is a risk that similar events will occur at these other properties if Respondent’s process of handling Owner Agreements is repeated.

Complainant also notes that his damages are increasing at a rate of $850 per month since the affected property is uninhabitable until Peoples pays him the money needed to make repairs necessary to return the affected property to a habitable condition. Complainant states that he has a proceeding pending in the Court of Common Pleas to recover monetary damages from Respondent.

On March 23, 2015, the matter was assigned to me by Motion Judge Assignment Notice.

For the reasons set forth below, I will grant the preliminary objections in part and strike the portion of the complaint requesting monetary damages.

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.

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52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. Dept. of Auditor General, et al v. SERS, et al., 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; P.J.S. v. Pa. State Ethics Comm’n*,* 669 A.2d 1105 (Pa.Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. 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) 2002 Pa. Commw. LEXIS 580. 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 Board, 690 A.2d 1312 (Pa.Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Therefore, the preliminary objections 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 objections, using only those facts specifically admitted.

Here, the Respondent’s preliminary objections assert lack of Commission jurisdiction pursuant to 52 Pa.Code §§ 5.101(a)(1). The Respondent’s preliminary objections argue that the Commission should dismiss the complaint because the ability to award damages is beyond the subject matter jurisdiction of the Commission; and that since the Commission lacks authority to award monetary damages, the portion of the Complainant’s complaint seeking monetary damages should be stricken as impertinent matter. This is not entirely correct.

The Respondent is confusing the Commission’s power or authority with the Commission’s subject matter jurisdiction. The difference was explained by the Pennsylvania Supreme Court in Riedel v. The Human Relations Comm’n of the City Of Reading, 739 A.2d 121, 124 (Pa. 1999):

Jurisdiction and power are not interchangeable although judges and lawyers often confuse them - Hellertown Borough Referendum Case, 354 Pa. 255, 47 A.2d 273 (1946). Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result. Delaware River Port Auth. v. PA Public Utility Commission, 408 Pa. 169, 178, 182 A.2d 682, 686 (1962); see also Beltrami Enterprises, Inc. v. Commonwealth of PA, Dep't of Environmental Resources, 159 Pa. Commw. 72, 632 A.2d 989, 993 (Pa. Commw. 1993) (fact that administrative agency may not have power to afford relief in particular case presented is of no moment to determination of its jurisdiction over general subject matter of controversy).

See also, In Re: Melograne, 812 A.2d 1164 (Pa. 2002); Bell Telephone Co. of Pa. v. Philadelphia Warwick Co., 50 A.2d 684 (Pa. 1947).

A request for relief that is not legally available in the cause of action pleaded is “impertinent matter” in the sense that it is irrelevant to that cause of action. A preliminary objection in the nature of a motion to strike off impertinent matter is the appropriate method to challenge an erroneous prayer for damages. Hudock v. Donegal Mut. Ins. Co. 264 A.2d 688 (Pa. 1970). The Respondent’s preliminary objections correctly asserted the inclusion of impertinent matter in the complaint pursuant the 52 Pa.C.S. § 5.101(a)(2). Therefore, any language in Respondent’s preliminary objections addressing subject matter jurisdiction is unnecessary.

The facts alleged in the Complainants’ complaint, if proven true, could constitute possible unreasonable service by the Respondent in violation of 66 Pa. Code § 1501. The Commission has jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers. The Commission has exclusive jurisdiction over matters involving the reasonableness, adequacy and sufficiency of services rendered by a public utility. Behrend v. Bell Telephone Co. of Pennsylvania, 431 Pa. 63, 243 A.2d 346 (1968), Gasparro v. Pa. Pub. Util. Comm'n, 814 A.2d 1282 (Pa.Cmwlth. 2003), Bell Telephone Co. of Pennsylvania v. Sanner, 375 A.2d 93 (Pa.Super. 1977). In the event that the Respondent’s actions in this case constituted unreasonable service pursuant to 66 Pa. Code § 1501, a civil penalty may be appropriate, pursuant to 66 Pa. C.S. §3301.

However, even if the facts alleged in the Complainant’s complaint were proven to be true, the Commission could not award the relief requested by the Complainant. The Complainant’s request that the Respondent reimburse the Complainant for the cost of repairing the damage to his affected property is a request for compensation and is beyond the authority the General Assembly has granted to the Commission.

Although it has general jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Public Utility Code simply does not grant the Commission the authority to award damages in this case. There is no question that the Commission lacks authority to award damages. Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994); Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371 (Pa. 1980); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977); Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa. Super. 1991); Poorbaugh v. Pa. Pub. Util. Comm’n., 666 A.2d 744 (Pa. Cmwlth. 1995). It is therefore appropriate to strike off the Complainant’s request for damages as impertinent matter, pursuant to 52 Pa.C.S. § 5.101(a)(2).

The Complainant also indicates that Peoples is responsible for the damages caused to the Complainant’s affected property. To the extent that the Complainant is requesting that the Commission determine that the Respondent was negligent, the Commission lacks the authority to make such a determination. The Commission can only make a determination as to whether the Respondent’s conduct violated the Public Utility Code or Commission regulations, not whether its conduct was negligent. It is the province of the courts, not the Commission, to make determinations of negligence or other causes of action that do not require the Commission’s specialized knowledge. Such cases can be fully and adequately addressed before the courts. DeFrancesco v. Western Pennsylvania Water Co*.*, 499 Pa. 374 (1982).

As stated earlier, the facts alleged in the Complainant’s complaint, if proven true, could constitute possible unreasonable service by the Respondent in violation of the Public Utility Code or Commission regulations. The Respondent’s answer contests the portions of the complaint alleging unreasonable service. There is therefore a dispute of facts regarding these allegations. A hearing will be necessary to resolve the dispute of facts regarding the complaint’s allegations of unreasonable service.

As set forth above, the Commission lacks the authority to award damages to the Complainant. Sustaining the Respondent’s preliminary objections by striking the relief requested as impertinent matter is appropriate under the circumstances. I note that Complainant has taken action to recover damages through the Court of Common Pleas, which is an appropriate venue for seeking that remedy.

I will strike that portion of the complaint requesting monetary damages. I will direct that the remaining issues raised in the complaint be set for hearing. I will issue the following order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Peoples Natural Gas Company LLC – Equitable Division at Docket No. C-2015-2468911 are sustained.

2. That the request for relief in the form of monetary damages set forth in the complaint of Kevin Maromonte at Docket C-2015-2468911 is stricken.

3. That the remaining issues set forth in the complaint of Kevin Maromonte at Docket C-2015-2468911 shall be scheduled for a hearing before an administrative law judge.

Dated: March 31, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David A. Salapa

Administrative Law Judge

**C-2015-2468911 - KEVIN MAROMONTE v. PEOPLES NATURAL GAS COMPANY-EQUITABLE** KEVIN MAROMONTE924 STATE ROUTE 130TRAFFORD PA 15085412.607.1210***-ACCEPTS ELECTRONIC SERVICE-***

JENNIFER PETRISEK ESQUIREPEOPLES NATURAL GAS COMPANY LLC - EQUITABLE DIVISION375 NORTH SHORE DRIVE SUITE 600PITTSBURGH PA 15212412.208.6834***-ACCEPTS ELECTRONIC SERVICE-***