**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aurelia K. Gibson :

:

v. : C-2015-2471736

:

Pennsylvania Electric Company :

**ORDER SUSTAINING PRELIMINARY OBJECTIONS**

On February 23, 2015, Aurelia K. Gibson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). The complaint alleges that a power outage caused damage to the Complainant’s gas range.

The complaint asserts that the Complainant experienced a power outage on August 19 or 20, 2014 which damaged the electric control panel on her gas range. According to the complaint, the estimated cost of the panel is $320. The Complainant filed a claim with the Respondent and received a response stating that the Respondent was not responsible for the interruption of service and that an equipment failure occurred at pole number CP02-21 causing the outage. The Complaint further asserts that the Respondent is to supply electricity and that the electric bills are paid in full and in a timely manner. As relief, the Complainant wants to know who is responsible for the outage.

On April 2, 2015, the Respondent filed an answer with new matter and preliminary objections admitting some of the allegations and generally denying the remainder. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint. The answer also admits that an equipment failure occurred on August 19, 2014 causing approximately 1,278 customers, including the Complainant, to experience a forty minute outage. The answer states that the equipment failure was sudden, unforeseen, and not caused by any negligent conduct by the Respondent. Finally, the answer admits that the Complainant filed a claim with the Respondent and that the Respondent denied liability for the replacement of an electronic control panel for a stove due to the outage being a result of a non-preventable equipment failure.

The new matter incorporates the information contained in the answer and contends that the complaint contains a request for damages which the Commission does not have the authority or jurisdiction to award. The new matter requests that the complaint be dismissed.

The Respondent’s first preliminary objection asserts that the statement in the complaint, “I want to know who is responsible for this outage,” is essentially a request for monetary damages which should be dismissed as impertinent matter because the Commission does not have the power to award damages. The second preliminary objection asserts that the Commission does not have jurisdiction over actions alleging that a utility caused harm to a customer’s property.

The preliminary objections request that the Commission strike the Complainant’s request for money damages; expressly prohibit the Complainant from introducing testimony or exhibits at the hearing regarding damages; and grant the Respondent such other relief as may be just and reasonable .

By notice dated April 27, 2015, the Commission notified the parties that it had assigned the case to me as motion judge.

As of the date of this order, the Complainant has not filed an answer to the Respondent’s preliminary objections. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections in part and deny them in part.

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

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.

Here, the Respondent’s first preliminary objection asserts that the Complainant’s request for damages should be stricken as impertinent matter pursuant to 52 Pa.Code § 5.101(a)(2). I agree and will strike any request for damages insofar as the complaint can be read as a request for compensation for any alleged damage to the Complainant’s gas range. 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).

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. 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).

While the Commission has jurisdiction over service disputes, 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. Any request that the Respondent reimburse the Complainant for damage to the gas range is a request for compensation and is beyond the authority the General Assembly has granted to the Commission.

The Respondent’s second preliminary objection asserts the Commission does not have jurisdiction over actions alleging that a utility caused harm to a customer’s property and requests that the Complainant be prohibited from introducing testimony or exhibits at the hearing regarding damages. This preliminary objection and accompanying request are denied.

The Respondent’s preliminary objection argues that because the Commission lacks authority to award monetary damages, it also lacks the jurisdiction to hear allegations of a utility causing harm to a customer’s property. 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).

The Commission has jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers. The facts alleged in the Complainant’s complaint, if proven true, could constitute unreasonable service in violation of the Public Utility Code or Commission regulations. In that event, a civil penalty may be appropriate, pursuant to 66 Pa. C.S. §3301 as well as an order to cease and desist from future violations of the Public Utility Code or Commission regulations. The Respondent contests the portions of the complaint alleging its responsibility for the power outage. There is therefore a dispute of facts regarding these allegations. A hearing will be necessary to resolve the dispute of facts regarding the Complainant’s allegations of unreasonable service.

As set forth above, the Commission lacks the authority to award damages to the Complainant. Sustaining the Respondent’s first preliminary objection by striking the request for damages as impertinent matter is appropriate under the circumstances. Also as set forth above, the Commission has jurisdiction over disputes between a utility and its customers concerning unreasonable service. Therefore the Respondent’s second preliminary objection is denied.

I will strike that portion of the complaint insofar as it is requesting monetary damages. I will direct that the remaining issues raised in the complaint be scheduled for a hearing and I will issue the following order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection regarding damages filed by Pennsylvania Electric Company at Docket No. C-2015-2471736 is sustained.

2. That the request for relief in the form of monetary damages set forth in the complaint of Aurelia K. Gibson at Docket No. C-2015-2471736 is stricken.

3. That the remaining issues set forth in the complaint of Aurelia K. Gibson at Docket No. C-2015-2471736 be scheduled for hearing before an administrative law judge.

Date: May 8, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David A. Salapa

Administrative Law Judge

**C-2015-2471736 - AURELIA K GIBSON v. PENNSYLVANIA ELECTRIC COMPANY**

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