



**National Fuel**

---

**Christopher M. Trejchel**  
*Assistant General Counsel*

June 18, 2012

**VIA ELECTRONIC FILING & U.S. MAIL**

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RE: Walter Krupski v.  
National Fuel Gas  
Distribution Corporation  
Docket No. C-2012-2306974

Dear Secretary Chiavetta:

Enclosed please find National Fuel Gas Distribution Corporation's *Notice to Plead* and *Preliminary Objections* regarding the above-referenced *Formal Complaint*.

Very truly yours,

Christopher M. Trejchel  
(814) 871-8060

CMT/cjc

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

WALTER KRUPSKI,	:	
	:	<b>NOTICE TO PLEAD</b>
Complainant,	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	
DISTRIBUTION CORPORATION,	:	DOCKET NO. C-2012-2306974
	:	
Respondent.	:	

---

**NOTICE TO COMPLAINANT TO ANSWER OR RESPOND**

**TO: WALTER KRUPSKI**

**TAKE NOTICE:**

1. Pursuant to 52 Pa. Code § 5.101(f), you have 10 days from the date of service to respond to these *Preliminary Objections*.
2. Your answer must be in writing and in numbered paragraphs to correspond with the *Preliminary Objections*, and address the legal and factual grounds relied on.
3. Failure to respond to these *Preliminary Objections* may constitute an admission on your part of any factual assertions made herein.
4. Your answer should be filed with the **Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265** (original and 3 copies).



---

Christopher M. Trejchel  
Pa. I.D. No. 84513  
Attorney for National Fuel Gas  
Distribution Corporation  
P.O. Box 2081  
Erie, PA 16512

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

WALTER KRUPSKI,	:	
	:	<b>PRELIMINARY OBJECTIONS</b>
Complainant,	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	
DISTRIBUTION CORPORATION,	:	DOCKET NO. C-2012-2306974
	:	
Respondent.	:	

---

**PRELIMINARY OBJECTIONS OF  
NATIONAL FUEL GAS DISTRIBUTION CORPORATION**

AND NOW COMES, National Fuel Gas Distribution Corporation (“Respondent”), by and through its undersigned counsel, and files these *Preliminary Objections* to the *Formal Complaint* of Walter Krupski (“Complainant”) pursuant to 52 Pa. Code § 5.101 and in support thereof avers as follows<sup>1</sup>:

1) The *Formal Complaint* fails to raise substantive issues over which the Commission has subject matter jurisdiction.

a) On May 24, 2012, the Complainant filed a formal complaint with the Commission in which he alleges that he is entitled to royalty payments for an alleged well on his property that he alleges is owned/operated by Respondent.

b) Notably, the Complaint does not allege any violation of the Public Utility Code or a rule, regulation or order of the Commission. Rather, the Complaint makes a generic reference to a royalty claim, which is in the nature of breach of contract or trespass. Private tort and contract

---

<sup>1</sup> Although Respondent believes the arguments raised herein are appropriate for Preliminary Objections, should the Commission disagree, Respondent asks that these arguments be considered in the nature of a Motion to Strike under 52 Pa. Code § 5.103.

claims, such as royalty disputes, are traditionally disposed of by courts of law and do not require the administrative expertise of the Commission.

c) The Commission lacks jurisdiction to award monetary damages to complainants. “It is clear that the remedial and enforcement powers vested in the PUC by the Public Utility Law were designed to allow the PUC to enforce its orders and regulations **but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a complainant.**” *Feingold v. Bell of Pennsylvania*, 383 A. 2d 791, 795 (Pa. 1977). (emphasis added)

d) Any alleged breach of an agreement that is unrelated to utility service and for which the Complainant is seeking monetary damages, particularly a claim for payment of royalties from production from an alleged gas well, would require a finder of fact to determine whether: a well exists, Respondent owns/operates the well, Complainant has a vested royalty interest in such well, royalties are payable, the applicable time period, production amounts, and if royalties are payable a determination of the royalty amount. None of these issues relate to any statute, rule or regulation that is enforced by the Commission or that otherwise requires the unique experience and expertise of the Commission. As a result, Complainant’s claims should be addressed by the Court of Common Pleas and are outside the subject matter jurisdiction of the Commission.

e) As noted in the Complaint, the property in question is vacant, and apparently has been vacant for some time, and as such does not receive gas utility service from Respondent. Also, Complainant’s allegations that Respondent failed to register the alleged well with the Pennsylvania Department of Environmental Protection (“DEP”) and his allegations that operation of the alleged well violated some unspecified State and Federal laws are clearly issues to be addressed by and fall under the jurisdictional authority of the DEP, not the Commission. Where, as here, the dispute does not call into question any subject for which the Commission

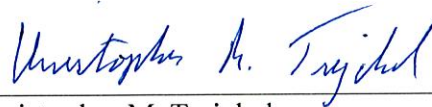
was granted express authority to regulate by the General Assembly, the Commission does not have jurisdiction over the subject matter of the dispute.

f) Additionally, due to the Commission's lack of statutory/regulatory authority over the gas production and royalty allegations that make up the total substance of the Complaint, Complainant's claims are impertinent and should be stricken under 52 Pa. Code § 5.101(a)(2).

g) The Commission should dismiss with prejudice the Complainant's Complaint, particularly, Complainant's demand for monetary damages in accordance with 52 Pa. Code § 5.101(a)(1) and (2).

WHEREFORE, National Fuel Gas Distribution Corporation requests that the Commission grant these *Preliminary Objections* and dismiss the *Formal Complaint*.

Respectfully submitted,



---

Christopher M. Trejchel  
Pa. I.D. No. 84513  
Attorney for National Fuel Gas  
Distribution Corporation  
P.O. Box 2081  
Erie, PA 16512  
(814) 871-8060  
[trejchelc@natfuel.com](mailto:trejchelc@natfuel.com)

## VERIFICATION

Robert A. Grill, Assistant Manager for National Fuel Gas Distribution Corporation, being authorized to do so, verifies that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands false statements therein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Robert A. Grill

Date: 6-18-12

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

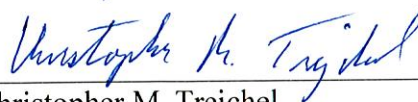
WALTER KRUPSKI,	:	
	:	<b>PROOF OF SERVICE</b>
Complainant,	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	
DISTRIBUTION CORPORATION,	:	DOCKET NO. C-2012-2306974
	:	
Respondent.	:	

---

I hereby certify that I have this day served a true copy of the foregoing document upon the participant, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Walter Krupski  
81 Cardott Street  
Ridgway, PA 15853

NATIONAL FUEL GAS  
DISTRIBUTION CORPORATION



---

Christopher M. Trejchel  
Pa. I.D. No. 84513  
Attorney for National Fuel Gas  
Distribution Corporation  
P.O. Box 2081  
Erie, PA 16512  
(814) 871-8060  
[trejchelc@natfuel.com](mailto:trejchelc@natfuel.com)

Dated: June 18, 2012