

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

George G. Harper,

Complainant,

vs.

Docket No. C-2013-2367148

Pennsylvania Utility Company,

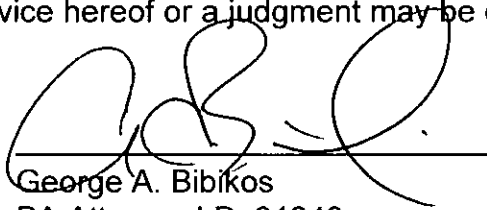
Respondent.

NOTICE TO PLEAD

To: Mr. George G. Harper
1001 Long Lake Rd.
Tamiment, PA 18371

You are hereby notified to file a **written response** to the enclosed Preliminary Objection **within 10 days** from the date of service hereof or a judgment may be entered against you.

K&L Gates LLP
17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(717) 231-4500
(717) 231-4501 (Fax)



George A. Bibikos
PA Attorney I.D. 91249

Counsel for Pennsylvania Utility Company

Dated: June 24, 2013

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George G. Harper,

Complainant,

vs.

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Pennsylvania Utility Company,

Respondent.

**PRELIMINARY OBJECTION OF PENNSYLVANIA UTILITY COMPANY TO THE
COMPLAINT OF MR. GEORGE G. HARPER**

Pursuant to 52 Pa. Code § 5.101, Pennsylvania Utility Company, Inc. (the "Company"), submits the following preliminary objection to the formal complaint ("Complaint") filed by Mr. George G. Harper ("Mr. Harper" or "Complainant") in the above matter. In support, the Company states as follows:

I. INTRODUCTION

The Commission should dismiss the Complaint because, accepting everything Mr. Harper alleges as true, the Commission lacks jurisdiction to rule on the issues Mr. Harper has raised and cannot grant the relief he requests.

First, Mr. Harper alleges that the pH levels of his water are too high. Even if Mr. Harper is correct (which the Company presumes solely for purposes of this preliminary objection), it is well settled that the Commission lacks jurisdiction over water quality, which is an environmental matter specifically regulated by statutes administered by the Pennsylvania Department of Environmental Protection ("DEP") and the U.S. Environmental Protection Agency ("EPA"), not the Commission.

Second, Mr. Harper requests that the Commission award compensation to Mr. Harper for alleged damage to his dishwasher and hot water heater that he allegedly replaced as a result of high pH levels. Even if Mr. Harper is correct (which, again, the

Company presumes solely for the sake of argument), it is well settled that the Commission lacks jurisdiction to award money damages, which is a power reserved specifically to the courts, not the Commission.

Third, Mr. Harper makes improper and untrue comments about the demeanor of the Company's manager and requests as relief that the Commission should replace her. Again, assuming for purposes of argument that Mr. Harper's improper statements are true (the Company denies them), the Commission has no authority to order the replacement of managers of public utilities.

Finally, the Complaint should be dismissed because it does not allege facts or legal issues with sufficient specificity to state any claim for relief. Mr. Harper requests an explanation why his water bill is essentially the same each quarter even though he vacates the premises for two months and turns the water off during that time. However, Mr. Harper alleges no facts demonstrating that the bill is somehow incorrect. Without specific allegations that there is a basis for a complaint against the Company for which the Commission can order relief, Mr. Harper cannot state a claim.

For these reasons and the reasons that follow, the Commission should dismiss the Complaint with prejudice.

II. BACKGROUND

1. Mr. Harper is a water customer of the Company. See Complaint ¶ 1.
2. In his formal Complaint, Mr. Harper alleges he is "having a reliability, safety or quality problem" with his utility service. Complaint ¶ 4.
3. Mr. Harper alleges that there is "too much pH in water. Too much acidity can ruin electrical equipment as it did to [his] dishwasher and hot water heater." Complaint ¶ 4.

4. Mr. Harper alleges he contacted the Company once before filing the Complaint but allegedly was unable to do so because the manager "is very nasty." Complaint ¶ 7.

5. Mr. Harper requests as relief the following:

- a. The manager of the Company "should be replaced";
- b. "The pH problem needs to be corrected";
- c. "Compensation in some form for the dishwasher and hot water heater that had to be replaced"; and
- d. An explanation "why [his] bill is the same each quarter even when [he goes] away for two months. The water was turned off at the main."

Complaint ¶ 5.

III. PRELIMINARY OBJECTION

6. The Company incorporates the preceding paragraphs.

7. Section 5.101 of the Commission's regulations, 52 Pa. Code § 5.101, provides in pertinent part as follows:

(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

. . . .

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

52 Pa. Code § 5.101(a)(1), (3)-(4).

8. As described below, the Commission should sustain the Company's preliminary objection and dismiss the Complaint because the Commission lacks

jurisdiction over the Complaint and is unable to grant the relief Mr. Harper requests even if his allegations were true.

A. The Commission lacks jurisdiction to regulate pH levels.

9. The Company incorporates the preceding paragraphs.

10. Mr. Harper questions the pH levels of his water.

11. In *Rovin v. Pa. P.U.C.*, 502 A.2d 785, 787 (Pa. Cmwlth. 1986) and *Country Place Waste Treatment Co. v. Pa. P.U.C.*, 654 A.2d 72, 75-76 (Pa. Cmwlth. 1995), the Commonwealth Court held that the Commission lacked jurisdiction over issues involving air and water quality, which are environmental matters specifically regulated by statutes administered by other state and federal agencies, not the Commission.

12. Pursuant to Section 5 of the Act of May 1, 1984, P.L. 206, as amended, 35 P.S. §§ 721.1-721.17, and in particular 35 P.S. § 721.5, “the task of preserving water quality and monitoring for contaminants is within the authority of the [DEP].” *Polites v. Pa. P.U.C.*, 928 A.2d 388, 391 (Pa. Cmwlth. 2007).

13. Even if Mr. Harper is correct that his pH levels are high (which the Company presumes solely for purposes of this preliminary objection), any matters affecting water quality, such as pH levels, are within DEP’s and EPA’s jurisdiction, not the Commission’s.

14. Accordingly, the Commission should sustain the Company’s preliminary objection and dismiss the Complaint.

B. The Commission lacks jurisdiction to award money damages.

15. The Company incorporates the preceding paragraphs.

16. Mr. Harper requests that the Commission award damages for alleged replacement of a dishwasher and hot water heater as a result of allegedly high pH levels.

17. It is well settled that the Commission lacks jurisdiction to award damages. *Feingold v. Bell of Pa.*, 477 Pa. 1, 8-9, 383 A.2d 791, 794-95 (1977); *Elkin v. Bell Tel. Co. of Pa.*, 491 Pa. 123, 131, 420 A.2d 371, 375 (1980).

18. Even if the Commission had jurisdiction to regulate water quality and Mr. Harper proved that high levels of pH resulted in acidity that damaged his property, the Commission does not have jurisdiction to award such damages; only the courts do.

19. Accordingly, the Commission should sustain the Company's preliminary objection and dismiss the Complaint.

C. The Commission lacks jurisdiction to replace managers of public utilities.

20. The Company incorporates the preceding paragraphs.

21. Mr. Harper makes several improper and untrue allegations regarding the demeanor of the Company's manager and requests that the Commission replace her.

22. It is well settled that the Commission lacks jurisdiction to make decisions regarding the management personnel of public utilities. *Metro. Edison Co. v. Pa. P.U.C.*, 437 A.2d 76, 80-81 (Pa. Cmwlth. 1981).

23. Even if Mr. Harper's allegations were correct, they would not form a basis for the Commission to replace a manager of a public utility because the Commission has no such authority.

24. Accordingly, the Commission should sustain the Company's preliminary objection and dismiss the Complaint.

D. The Complaint does not allege facts or legal issues with sufficient specificity to state any claim for relief.

25. The Company incorporates the preceding paragraphs.

26. Mr. Harper requests an explanation why his water bill is essentially the same each quarter even though he vacates the premises for two months and turns the water off during that time.

27. However, Mr. Harper alleges no facts with sufficient specificity demonstrating that the bill is somehow incorrect.

28. Without specific allegations that there is a basis for a complaint against the Company for which the Commission can order relief, Mr. Harper cannot state a claim.

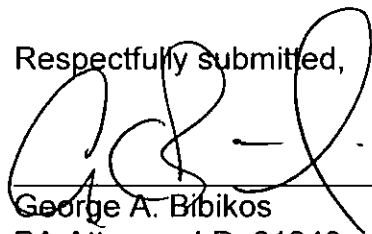
29. Accordingly, the Commission should sustain the Company's preliminary objection and dismiss the Complaint.

CONCLUSION

WHEREFORE, the Commission should dismiss the Complaint with prejudice and order such other relief as the Commission deems just and reasonable.

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17 North Second Street, 18th Floor
Harrisburg, PA 17101-1507
(717) 231-4500
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Respectfully submitted,



George A. Bibikos
PA Attorney I.D. 91249
george.bibikos@klgates.com

Counsel for Pennsylvania Utility
Company

Dated: June 24, 2013

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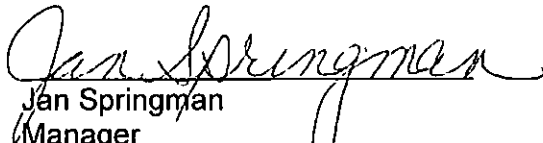
Respondent.

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VERIFICATION

I, Jan Springman, hereby state that the facts above set forth by the Company are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 6/20/13


Jan Springman
Manager
Pennsylvania Utility Company, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing documents upon the individuals listed, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1923

Via U.S. Mail

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, F West
P.O. Box 3265
Harrisburg, PA 17105-3265

Via U.S. Mail

Mr. George G. Harper
1001 Long Lake Rd.
Tamiment, PA 18371

Via U.S. Mail

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George A. Bibikos
PA Attorney I.D. 91249

Counsel for Pennsylvania Utility Company

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