

“Complainants”) all against Utilities, Inc. – Westgate (“UIW” or “Company” or “Respondent”). The Formal Complaints alleged problems in the quality of the water from being hard, being unpalatable and containing salt content to causing corrosion and damage to pipes and fixtures resulting in financial expenditures for plumbing supplements and corrective measures by UIW customers.

On October 7, 2005, counsel for UIW filed an Answer and Motion to Dismiss the Formal Complaints (“Motion”) referenced above. The Company stated that it is working informally on alternatives in delivering water service with the Office of Consumer Advocate (“OCA”) and with certain informal complainants who filed with the Bureau of Consumer Services regarding issues that appear similar to the issues raised in the instant complaints. Respondent notes that it was recognized by the Pennsylvania Department of Environmental Protection (“DEP”) for meeting certain requirements in 2004 and the Complainants’ claims are broad without any tangible evidence or documentation to support their claims. UIW cited precedent to argue that Complainants’ claims are insufficient in substance and thus, fail to establish a right to relief. 52 Pa. Code 5.101(a)(3) and *Yesteryear Corp. v. Philadelphia Electric Co.*, 1992 Pa. P.U.C. LEXIS 106, Aug. 26, 1992, Docket No. F-9245681.

On October 17, 2005, the OCA on behalf of the Complainants, filed a response to the Motion. The OCA disputed that the claims were insufficient in substance and argued that the Formal Complaints collectively question “whether [UIW] is providing water that is ‘suitable for all household purposes,’ as required by Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501 and pertinent regulations.” OCA Answer ¶ 3. The OCA cited Commission precedent for orders against water utilities for violations similar to those found alleged by the Complainants.

The OCA argued that the Formal Complaints raise a strong inference that the water provided by UIW violates one or more of the secondary Maximum Contaminant Levels (“MCL”) established pursuant to the federal and state Safe Drinking Water Act, 42 U.S.C.A. § 300f, *et seq.*, 35 P.S. § 721.5 (“SDWA”). The Commission’s regulations for water utilities incorporate by reference all relevant DEP regulations that apply to Pennsylvania water providers, including

regulated utilities. 52 Pa. Code §§ 65.17-65.18. Consequently, OCA reasoned that whenever a regulated utility violates a DEP water quality regulation, that utility also violates Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501 and the regulations associated with that section.

The OCA stated that it is procedurally inappropriate to attach evidence to a formal complaint and asserted that any position to the contrary is without merit. The OCA noted that it has conducted water tests that show substantial violations of at least one secondary MCL, which it will supply as evidence for the record. The OCA referred to the concession of UIW in that there is no bright line of demarcation between the Commission's jurisdiction in adequacy and reasonableness of water service and DEP's jurisdiction regarding water quality standards. However, the OCA requested that the argument be rejected to affirm that the PUC can order remedies regarding the water quality of any regulated water utility. The OCA confirmed that UIW has a cost analysis in progress some of which it has shared with the OCA; however, the customers of UIW are not satisfied as evidenced by the Formal Complaints. For the foregoing reasons, the OCA objected to the Motion.

Lastly, the OCA requests under Commission regulation 52 Pa. Code § 5.81 that the Formal Complaints be consolidated with Joint Application of Penn Estates, *et al.*, Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004 and A-210093F0002 and OCA's Protest to Joint Application of Penn Estates, *et al.*, submitted on behalf of UIW customers. This request will be addressed in a separate Order.

Pursuant to 52 Pa. Code § 5.101(a)(3), UIW has sought to dismiss a pleading that it alleged is insufficient as to substance. The OCA as required under 52 Pa. Code § 5.101(d) filed an answer within ten (10) days of service of the motion. This motion is ripe for decision.

The Respondent concedes that the Complaints raise claims regarding water quality; yet, Respondent notes that not one formal complaint regarding water quality was raised during UIW's last base rate case which concluded in 2004. This is not an adequate means to demonstrate insufficient substance to a pleading. In 2004 the Complainants could have been outside the service

territory or the Complainants could have been hopeful that some informal talks and inquiries would remedy their situation or the Complainants could have not yet reached a degree of unreasonableness in the service and water quality delivered by the Respondent. Regardless, facts are needed to determine whether the lack of a complaint regarding water quality in the 2004 base rate case is relevant. Comparable to *Clinical Trial Service v. Audubon Water Co.*, Docket No. C-20016403 (Feb. 5, 2003), whether there was a public input hearing that Complainants did not participate in and notice of the 2004 decision to which the Complainants did not except to has not been developed to support the Motion. As to whether a sound foundation exists to demonstrate insufficient substance in this pleading, I find that it does not.

In presenting its arguments Respondent concedes that there is not a bright demarcation line between the Commission's jurisdiction regarding the adequacy and reasonableness of service and DEP's jurisdiction in water quality standards. *Clinical Trial Services*, Docket No. C-20016403 (Feb. 5, 2003). UIW also concedes that the Commission has jurisdiction under Section 1501 of the Public Utility Code for violation by regulated public utilities of water quality standards. Consequently, any recognition of the Respondent meeting performance requirements during the previous year by DEP does not preclude a determination that said recognition is lacking for the current year.

I find persuasive the precedent in *Clinical Trial Services*, which holds that the PUC is responsible for administering the SDWA regarding a public water utility's provisioning of safe, adequate and reasonable service to the public and that the overlap of the jurisdiction between the Commission and DEP regarding water quality has benefited the water industry and the public. Docket No. C-20016403 at 6, entered February 5, 2003. I find that the Commission has since ruled favorably regarding the inclusion and viability of complaints similar to the Formal Complaints at issue. See for example, *Susan Balla et al. v. Redstone Water Co.*, Docket No. C-00992270, entered June 23, 2005.

Furthermore, UIW's attempt to discredit the claims of the Complainants because the support evidence is not attached to the complaints is misplaced. Upon entering the evidentiary

hearing if record evidence is insufficient to support the allegations at issue, it is then appropriate to move for dismissal of the complaint.

I find that UIW has not provided the adequate foundation for a determination of dismissing the Formal Complaints as defined within the Pennsylvania Public Utility Commission's regulations. Consequently, as UIW did not meet its burden to provide a basis for dismissal, the Motion to Dismiss is denied.

By letter filed November 4, 2005, UIW requested that additional Formal Complaints, Lisa and David Balash at Docket No. C-20055406; Kris and Joe Saveri at Docket No. C-20055470; Frederick M. Ronca at Docket No. C-20055494; and Irwin A. Popowsky at Docket No. C-20055509 all against Utilities, Inc.—Westgate be consolidated with the Vincent V. Horvath *et al.* v. Utilities, Inc.—Westgate at Docket Nos. C-20055305, *et al.* UIW stated pursuant to 52 Pa. Code § 5.81, the Commission has the authority with or without motion to order the consolidation of proceedings to avoid unnecessary cost and delay. The UIW declares that all of the complaints present common questions of law and fact regarding alleged water quality issues in UIW's service territory and this is the rationale for the requested consolidation. The UIW also requested that its Answer and Motion dated October 7, 2005, be deemed to address the collection of complaints at issue.

By letter filed November 9, 2005, the OCA responded to UIW's November 4, 2005 request regarding the following additional Formal Complaints: Lisa and David Balash at Docket No. C-20055406; Kris and Joe Saveri at Docket No. C-20055470; Frederick M. Ronca at Docket No. C-20055494; and Irwin A. Popowsky at Docket No. C-20055509 all against Utilities, Inc.—Westgate. In the interest of economy, the OCA requested that its October 17, 2005 pleading in response to UIW's Motion, include these aforementioned Formal Complaints as well.

I find that the consolidation request should be granted to include those Formal Complaints recognized by UIW in its November 4, 2005 filing. The rationale being that the

complaints have common facts and questions of law regarding UIW's quality of water. Furthermore, the actions of OCA imply that it does not oppose the consolidation request.

THEREFORE,

IT IS ORDERED:

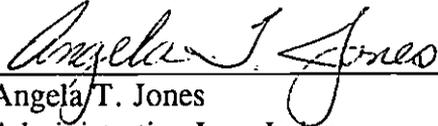
1. That the Motion to Dismiss filed by Utilities, Inc.–Westgate regarding the Formal Complaints of Vincent C. Horvath, *et al.* v. Utilities, Inc.–Westgate at Docket Nos. C-20055305, C-20055316, C-20055317, C-20055318, C-20055319, C-20055320, C-20055321, C-20055324, C-20055346, C-20055374 and C-20055392 is denied.

2. That the Motion to Dismiss filed by Utilities, Inc.–Westgate regarding the Formal Complaints of Lisa and David Balash, *et al.* v. Utilities, Inc.–Westgate at Docket Nos. C-20055406, C-20055470, C-20055494 and C-20055509 is denied.

3. That the Motion to Consolidate the Formal Complaints of Vincent C. Horvath, *et al.* v. Utilities, Inc.–Westgate at Docket Nos. C-20055305, C-20055316, C-20055317, C-20055318, C-20055319, C-20055320, C-20055321, C-20055324, C-20055346, C-20055374 and C-20055392 with the Formal Complaints of Lisa and David Balash, *et al.* v. Utilities, Inc.–Westgate at Docket Nos. C-20055406, C-20055470, C-20055494 and C-20055509 filed by Utilities, Inc. – Westgate is granted.

4. That this matter is set for hearing as scheduled.

Date: November 15, 2005


Angela T. Jones
Administrative Law Judge