



October 5, 2015

VIA ELECTRONIC FILING AND U.S. MAIL

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

RE: Ronald Wiser v. National Fuel Gas and Seneca Resources Corporation
Docket No. C-2015-2508856

Dear Secretary Chiavetta:

Enclosed please find Seneca Resources Corporation's *Preliminary Objections* regarding the *Formal Complaint* filed in the above-referenced matter.

Very truly yours,

A handwritten signature in blue ink that reads "Christopher M. Trejchel".

Christopher M. Trejchel
Assistant General Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD WISER,

Complainant

v.

NATIONAL FUEL GAS

And

SENECA RESOURCES CORPORATION,

Respondents

NOTICE TO PLEAD

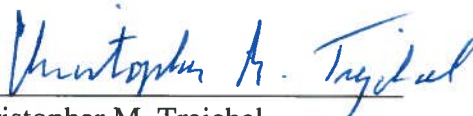
DOCKET NO. C-2015-2508856

NOTICE TO COMPLAINANT TO ANSWER OR RESPOND

TO: RONALD WISER

TAKE NOTICE:

1. Pursuant to 52 Pa. Code § 5.101(f), you have ten (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**.



Christopher M. Trejchel
Pa. I.D. No. 84513
Attorney for Seneca Resources Corporation
5800 Corporate Drive, Suite 300
Pittsburgh, PA 15237
(412) 548-2537
trejchelc@srcx.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD WISER,	:	
	:	PRELIMINARY OBJECTIONS
Complainant	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	
	:	
And	:	
	:	
SENECA RESOURCES CORPORATION,	:	
	:	DOCKET NO. C-2015-2508856
Respondents	:	

**PRELIMINARY OBJECTIONS OF
SENECA RESOURCES CORPORATION**

AND NOW COMES, Seneca Resources Corporation (“Respondent”), by and through its undersigned counsel, and files these *Preliminary Objections* to the *Formal Complaint* of Ronald Wisner (“Complainant”) pursuant to 52 Pa. Code § 5.101 and in support thereof avers as follows:

- 1) The *Formal Complaint* raises substantive issues over which the Commission does not have subject matter jurisdiction:
 - a) On or about October 6, 2015, the Complainant filed his *Formal Complaint*.
 - b) Specifically, Complainant alleges that he is entitled to continued free gas under an oil and gas lease, that Respondent has violated that oil and gas lease, and that Complainant is entitled to monetary damages.
 - c) The oil and gas lease in question is that certain lease entered August 11, 1914 by and between H. C. McLaine and Clarion Gas Company and recorded in Clarion County, PA at Deed Book 30, Page 48; and subsequently amended via instrument dated

February 21, 1951 and recorded in Clarion County, PA at Deed Book 65, Page 443 (collectively referred to hereinafter as the “Lease”). A true and correct copy of the lease and the amendment thereto is attached hereto as Exhibit A.

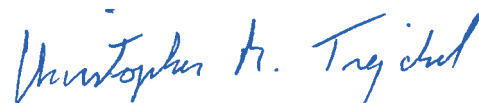
- d) The Lease is identified in Respondent’s records as Lease #12007.
- e) Complainant is a successor in part to the interests of H.C. McLaine.
- f) Respondent is the successor-in-interest to Clarion Gas Company.
- g) The Lease is a private contract between parties and does not involve public utility services.
- h) Respondent is not a public utility.
- i) The reservation of “free gas” pursuant to the Lease does not involve public utility service subject to the Commission’s rules and regulations.
- j) Complainant’s complaints regarding losing the “free gas” reservation under the Lease is a private contractual dispute between the Complainant and Respondent regarding property rights under the Lease rather than public utility service.
- k) The Commission is a creature of legislation that can only exercise those powers that have been specifically conferred upon it by statute. See, Feingold v. Bell of Pennsylvania, 383 A.2d 791, 795 (Pa. 1977).
- l) The Commission lacks subject matter jurisdiction to interpret terms and conditions in private contracts and to adjudicate contractual disputes over property interests arising between a lessor and a lessee under an oil and gas lease. See generally, Adams v. P.U.C., 819 A.2d 631 (Pa. Commw. 2003) (a case factually similar to the present case wherein the Commission dismissed the complaint for lack of jurisdiction which was affirmed by the Commonwealth Court); *Allport Water Authority v. Winburne Water*

Co., 393 A.2d 673, 675 (Pa. Super. 1978); and *Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 at 5-6 (Opinion and Order entered July 11, 2003).

- m) Complainant also demands relief in the sum of \$20,000 or gas-in-kind for “free gas” that allegedly was not provided between 1975 to 1989.
- n) 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*, at 795. (emphasis added)
- o) Complainant’s allegations of breach of contract for which it is seeking money damages, gas-in-kind and/or specific performance should be determined by the Court of Common Pleas and is outside the subject matter jurisdiction of the Commission.
- p) Accordingly, for the reasons set forth above, the *Formal Complaint* should be dismissed with prejudice for lack of Commission jurisdiction.

WHEREFORE, Seneca Resources Corporation respectfully requests that the Commission grant these *Preliminary Objections* and dismiss the *Formal Complaint* with prejudice.

Respectfully submitted,



Christopher M. Trejchel
Pa. I.D. No. 84513
Attorney for Seneca Resources Corporation
5800 Corporate Drive, Suite 300
Pittsburgh, PA 15237
(412) 548-2537
trejchelc@srcx.com

VERIFICATION

Cathy Laporte, *Sr. Land Analyst*, for Seneca Resources 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 her knowledge, information and belief. The undersigned further states that she understands false statements therein are made subject to the penalties of 18 Pa. C.S.A § 4904 relating to unsworn falsification to authorities.



Cathy Laporte

11/5/15
Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD WISER,

Complainant

v.

NATIONAL FUEL GAS

And

SENECA RESOURCES CORPORATION,

Respondents

CERTIFICATE OF SERVICE

DOCKET NO. C-2015-2508856

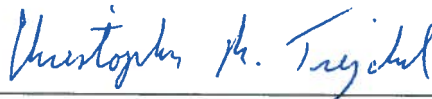
I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Ronald Wisser
431 Five Pointe Road
Sligo, PA 16255

National Fuel Gas
P.O. Box 2081
Erie, PA 16512

SENECA RESOURCES CORPORATION

Date: Nov. 5, 2015



Christopher M. Trejchel
Pa. I.D. No. 84513
Attorney for Seneca Resources Corporation
5800 Corporate Drive, Suite 300
Pittsburgh, PA 15237
(412) 548-2537
trejchelc@srcx.com

See Book 420 page 576 for acknowledgment of lease 3/28/94 Gregory K. McLaughlin

H.C.Mc LAINE

TO

CLARION GAS CO

AGREEMENT, Made and entered into the 11 day of August A.D.1914, by and between H.C,McLaine of Reidsburg, County of Clarion and State of Penna, party of the first part and Clarion Gas Company party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of one dollar to him in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements herein contained, on the part of the said party of the second part, to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let unto the said party of the second part, its successors or assigns, for the sole and only purpose of mining and operating for oil and gas and of laying pipe lined and of building tanks, stations and structures thereon to take care of the said products, All that certain tract of land situate in the Township of Monroe, County of Clarion and State of Penna. being part of lot Number-bounded substantially as follows: On the north by lands of A.Fox, F.P.McLaine et al. On the east by lands of H.Harriger et al. On the south by lands of T.W.Fox Jos Hamm On the west by lands of V.L.Myers Mrs C.E.Myers Containing one hundred sixty three acres, more or less and being same land conveyed to the first part--by-----, reserving, however therefrom 300 feet around the buildings on which no wells shall be drilled by either party except by mutual consent; also reserving from any well drilled on said premises, gas sufficient for lighting and heating one dwelling house and to run one 4 horse power gas engine for his own private use situate on said premises, where gas is produced and used therefrom; they to lay and maintain their own lines, burn said gas at their own risk, with gas saving appliances subject to the approval of the lessee and assume responsibility for variation of pressures.

It is agreed that this lease shall remain in force for the term of one year from this date, and as long thereafter as oil or gas, or either of them is produced therefrom by the said party of the second part, its successors or assigns.

In Consideration of the premises the said party of the second part covenants and agrees as follows:

- 1st. To deliver to the credit of the first party, his heirs or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one eighth part (1/8) part of all oil produced and saved from the leased premises.
- 2nd. To pay one hundred dollars per year for the gas from each and every gas well drilled on said premises, the product from which is marketed and used off the premises. or shut in, said payment to be made on each well within sixty days after commencing to use the gas therefrom, as aforesaid, and to be paid yearly thereafter while the gas from said well is so used or shut in.
- 3rd. To locate all wells so as to interfere as little as possible with the cultivated portions of the farm.
- 4th. To complete a well on said premises within Thirty five days from the date hereof, or pay to the said parties of the first part thereafter in advance the sum of Forty & 75/100 (\$40.75) Dollars for each three months such completion is delayed, and it is agreed that the completion of a well shall be and operate as a full liquidation of all rental on 41 acres under this provision during the remainder of the term of this lease; also that such payments may be made direct to the lessor or mailed to him at Sligo, Pa. each well drilled to hold 41 acres free from land rental.

It is agreed that the second party is to have the privilege of using sufficient water and gas from the premises to run all necessary machinery, and at any time to remove all machinery and fixtures placed on said premises; and further, upon the payment of One dollars at any time, to the party of the first part, his heirs, executors, administrators or assigns, said party of the second part, its successors or assigns shall have the right to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine and this lease become absolutely null and void.

In Witness Whereof, the parties to this agreement have hereunto set their hands and seals the day and year first above written.

Witness:

J.C.Gilmore

(Cor.Seal)

H.C.McLaine (seal)
Clarion Gas Co. (seal)
J.B.Crawford,
Vice President.

State of Pennsylvania.
County of Clarion (ss.

On the 11 day of August A.D.1914, before me, the subscriber a Notary Public in and for said State, residing at Oil City, Pa. personally appeared H.C.McLaine to me known to be the person named in, and who executed the foregoing instrument, and in due form of law acknowledged the same to be his act and deed, for the uses and purposes therein mentioned and desired that it might be recorded as such.

Witness my hand and official seal.

My commission expires Feb.21st, 1915.

(Notarial Seal)

J.C.Gilmore (seal)
Notary Public.

Recorded August 24th, 1914.

F.D.Hays, Recorder.

Exhibit "A"

Know All Men By These Presents

WHEREAS, by agreement of lease bearing date the 11th day of August A. D. 19 14, and recorded in the Recorder's Office of Clarion County, Penna., in Deed Book, Volume 30 at Page 48 H. C. McLaine

leased to Clarion Gas Company for oil and gas purposes, a tract of land comprising 163 acres situate in the Township of Monroe County of Clarion and State of Pennsylvania, upon which the United Natural Gas Company is operating a gas well known as U. N. G. Co. Well No. 3951, and




WHEREAS, the production of gas from the said well has so decreased that the said United Natural Gas Company does not feel justified in continuing its operation under the terms of the aforesaid agreement of lease which requires an annual rental of One Hundred and No/100 (\$ 100.00) Dollars for each gas well operated thereunder, and

WHEREAS, Walter M. Rickard and Jessie L. Rickard who are the present owners of the said leased premises prefer to modify the aforesaid agreement to the extent of reducing the annual rental on the said Well No. 3951 from One Hundred and No/100 (\$ 100.00) Dollars to Fifty and No/100 (\$ 50.00) Dollars rather than have the said well abandoned at this time, which modification is satisfactory to the said United Natural Gas Company.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and the sum of One (\$1.00) Dollar to them in hand paid by the said United Natural Gas Company, a Pennsylvania corporation of Oil City, Pennsylvania, the receipt of which is hereby acknowledged Walter M. Rickard and Jessie L. Rickard, his wife have modified and by these presents do modify that certain agreement of lease made and entered into the 11th day of August, 1914, by and between H.C. McLaine and Clarion Gas Company and recorded in the Recorder's Office of Clarion County, Penna., in Deed Book, Volume 30, at Page 48 to the extent of reducing the annual rental for Well No. 3951 drilled thereunder, from One Hundred and No/100 (\$ 100.00) Dollars to Fifty and No/100 (\$ 50.00) Dollars from and after the 11th day of October, A. D. 19 51.

IN WITNESS WHEREOF, we have hereunto set our hand and seals this 21st day of February, A. D. 19 51.

WITNESS:

Walter M. Rickard 
Jessie L. Rickard 


STATE OF PENNSYLVANIA, }
COUNTY OF ELK } ss:

On this 21st day of February A. D. 19 51 before me, a