

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michael A. Della Vecchia

v.

Aqua Pennsylvania, Inc.

DOCUMENT
FOLDER

C-20065751

ORDER DENYING MOTION TO DISMISS

RECEIVED

MAR 14 2006

DOCKETED
MAR 16 2006

Before
Veronica A. Smith
Chief Administrative Law Judge

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On January 3, 2006, Michael A. DellaVecchia (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Respondent). Complainant alleges that Aqua PA is not accommodating his work schedule in arranging a time to connect his meter. Complainant filed his Complaint using the Commission's Formal Complaint form and, in response to paragraph 4A, checked off the following: (1) there is a reliability, safety or quality problem with my utility service; (2) I received a notice that my utility service is being terminated; and (3) other. As relief, Complainant requests the Commission direct Respondent to connect the meter at a time when he does not have to miss work.

On February 6, 2006¹, Respondent filed its Answer with New Matter and Motion to Dismiss stating that it exchanged Complainant's meter on January 12, 2006, and moving to dismiss the Complaint on the basis that it is moot.

According to Commission records, as of February 28, 2006, no response to the New Matter² or the Motion³ had been filed. Accordingly, the relevant facts set forth in the New Matter

¹ The Complaint was served on January 19, 2006.

² Pursuant to 52 Pa. Code § 5.26(c), a reply to the New Matter was due by February 27, 2006

are deemed admitted.⁴ The Motion was assigned to me by Motion Judge Assignment Notice dated February 14, 2006 and is procedurally ready for a ruling.

When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

For the reasons set forth below, the Motion must be denied.

Complainant alleged that Respondent is unwilling to provide the necessary service to his meter during a time when Complainant does not have to miss work. Respondent moved to dismiss the Complaint on the basis that it provided the necessary service to Complainant's meter on January 12, 2006, rendering the Complaint moot.

¹ Pursuant to 52 Pa. Code § 5.101(d), a response to the Motion was due by February 16, 2006.

⁴ The Commission's regulation states: "A reply to new matter shall be filed within twenty (20) days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code § 5.62(c).

Respondent is required by statute to furnish and maintain adequate, efficient, safe and reasonable service. *See* 66 Pa.C.S.A. § 1501. Complainant did check off on the Complaint form that his Complaint relates to a problem with his utility service. Respondent states that it changed Complainant's meter thereby correcting the problem. However, just changing the meter does not negate the possibility that Complainant may have a valid complaint regarding the level of service provided by Respondent⁵. Therefore, viewing the Complaint in a light most favorable to the Complainant, Respondent's Motion to Dismiss must be denied.

A hearing in the instant case is necessary and in the public interest. Section 5.21(d) of the Commission's regulations reads, in pertinent part:

(d) The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy, or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 575 Pa. 698, 836 A.2d 123 (2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 128 Pa. Commw. 259, 563 A.2d 548 (1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 154 Pa. Commw. 21, 623 A.2d 6 (1993). This case involves a disputed question of fact, i.e. whether the service provided by Respondent was adequate, efficient, safe and reasonable. Complainant is advised that he bears the burden of proof at the hearing and must present evidence sufficient to demonstrate that the Respondent has violated the Public Utility Code or a regulation or order of the Commission. 66 Pa. C.S.A. §332(a).

⁵ The fact that Complainant has not withdrawn his Complaint would tend to indicate that his concerns have not been completely addressed

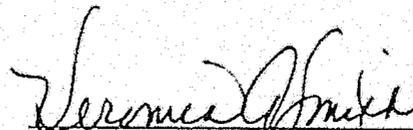
ORDER

THEREFORE,

IT IS ORDERED:

1. That Aqua Pennsylvania, Inc.'s Motion to Dismiss the Complaint filed by Michael A. DellaVecchia, at Docket No. C-20065751 is denied.
2. That this matter be set for hearing.

Dated: March 10, 2006



Veronica A. Smith
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
March 14, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-20065751

(SEE ATTACHED LIST)

Michael A. DellaVecchia v. Aqua Pennsylvania, Inc.

Meter Dispute

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing

Date: Tuesday, April 18, 2006

Time: 10:00 a.m.

Location: In an available hearing room
Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

Presiding: Administrative Law Judge Charles E. Rainey, Jr.
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: 215.560.2105
Fax: 215.560.3133

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DOCKETED
MAR 21 2006

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Rainey
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section
Calendar File