

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Carol Kirkpatrick

v.

T.W. Phillips Gas & Oil Co.

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:  
:  
:

C-20065955

INTERIM ORDER GRANTING, IN PART, AND  
DENYING, IN PART, THE PRELIMINARY  
MOTION TO DISMISS COMPLAINT

**DOCKETED**  
OCT 19 2006

DOCUMENT  
FOLDER

BACKGROUND

On March 3, 2006, Carol Kirkpatrick (Ms. Kirkpatrick) filed a formal complaint against T.W. Phillips Gas & Oil Co. (TWP). The complaint was docketed at the above number. TWP filed its answer and new matter to the complaint on March 24, 2006. That same day, TWP filed a Preliminary Motion for the dismissal of Ms. Kirkpatrick's complaint for lack of jurisdiction, insufficiency as to form and insufficiency as to substance. A review of the docket entries for this case indicates that Ms. Kirkpatrick has not filed an answer to either the new matter of TWP or its Preliminary Motion. The hearing in this case is scheduled to be held, by telephone, on May 2, 2006.

DISCUSSION

**BTL**

The Commission's Rules of Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §5.101. The filing of preliminary motions in Commission proceedings is similar or analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435, entered July 18, 1994. *See, also*, Rule 1028, Pennsylvania Rules of Civil Procedure.

Preliminary objections in civil practice seeking the dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24, 26-27 (1988):

The Pennsylvania Supreme Court has held that cases should be dismissed on preliminary objections only when dismissal is clearly warranted and free from doubt,...Likewise, this Commission has indicated that a Complaint is dismissed only where such dismissal is clear and free from all doubt. This is especially true when dealing with individuals appearing before the Commission *pro se* who may lack the legal skills necessary to carefully frame the issues in a complaint. (Citation omitted).

The Commission may not rely on the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well-pleaded, material facts of the non-moving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Company of Pennsylvania*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this proceeding in the light most favorable to Ms. Kirkpatrick and should dismiss the complaint only if it appears that she would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors, supra*.

#### Subject Matter Jurisdiction

Ms. Kirkpatrick referenced in her complaint an "Isovitsch bill" and a "Danik bill", and attached copies of these bills to her complaint. In its motion, TWP asserts that the Commission lacks subject matter jurisdiction with respect to matters pertaining to these bills. It is TWP position that issues pertaining to these bills were the subject of a civil proceeding filed by Ms. Kirkpatrick against TWP in Magisterial District No. 50-3-05, at Docket No. CV-0000491-04. The civil proceeding resulted in a judgment in favor of Ms. Kirkpatrick and against TWP, which judgment has been satisfied. Exhibits A and B to the Preliminary Motion.

It is my opinion that TWP is correct in its request to have the complaint in this proceeding dismissed to the extent it raises or seeks to raise issues pertaining to the Isovitsch and Danik bills in this case. Ms. Kirkpatrick litigated those bills in a civil proceeding, received a judgment in her favor, and that judgment has been satisfied. Under the legal doctrines of *res adjudicate*, or collateral estoppel, Ms. Kirkpatrick cannot, in this proceeding, attempt to relitigate matters pertaining to those bills.

Accordingly, the motion to dismiss will be granted as to issues pertaining to the Isovitsch and Danik bills, and testimony or exhibits pertaining to these bills will not be permitted at the hearing of May 2, 2006.

#### Sufficiency As To Form And Substance

Other than the assertions in the preliminary motion pertaining to the two bills, the representations in the motion pertaining to the form and substance of the complaint are:

2. ...the Formal Complaint fails to set forth any substantive claim against T.W. Phillips and does not allege that T.W. Phillips has violated any law, regulation or order which the Commission has jurisdiction to administer.

3. The Formal Complaint contains no discernible, substantive complaint or averment of fact with respect to any incorrect charges on any bill issued by T.W. Phillips to Complainant for her gas service. The Formal Complaint is so insufficient as to substance as to be impossible to respond to.

4. The Formal Complaint simply refers, without any explanation or direction whatsoever, to four attachments, none of which present any discernable averments of fact to which T.W. Phillips can be expected to respond. The principal attachment consists of four handwritten pages of numbers and narratives, which contain no directions for the reader, identify no specific allegation of billing error or other complaint and is otherwise so disorganized and confusing as to preclude any reasonable response. The Formal Complaint is so insufficient as to form as to be impossible for T.W. Phillips to respond to.

Accepting, as I must, all well-pleaded, material facts of Ms. Kirkpatrick and viewing the complaint in this proceeding in the light most favorable to Ms. Kirkpatrick, it is clear that, at the least, Ms. Kirkpatrick is disputing TWP's calculation of late-payment charges on her gas service account, as well as the amount of the balance on her account. For example, on the third handwritten page attached to the copy of her complaint in my file is the following mathematical calculation:

\$9,230.32				
<u>- 8,084.83</u>				
\$1,045.49				
- 127.60	12.76	matching	fund	denied for 10....
- 153.12	12.76	"	"	" " 12....
- 153.12	12.76	"	"	" " ".....
<u>- 25.52</u>	12.76	"	"	" " ".....
\$ 586.13				

The \$586.13 is the amount Ms. Kirkpatrick thinks should be the balance on her account at January 20, 2006. On the fourth handwritten page attached to the copy of her complaint in my file is this statement:

8. This stupid delay cost me a matching credit of 12.76/mo for 40 mos. equaling \$459.36 as well.

The figure \$459.36 is the sum of the four deductions shown above.

In light of this review of the complaint and attachments thereto, it is my opinion that the dismissal of the complaint for insufficiency of form or substance is neither clearly warranted nor free from all doubt. *Cf., Montague, supra.* Accordingly, the preliminary motion will be denied as to these issues.

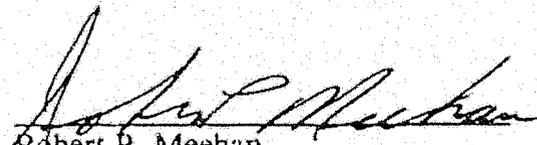
ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary motion of T.W. Phillips Gas & Oil Co., for the dismissal of the complaint filed against it by Carol Kirkpatrick, at Docket No. C-20065955, is granted for lack of jurisdiction as to the Isovitsch and Danik bills.

2. That the preliminary motion of T.W. Phillips Gas & Oil Co., for the dismissal of the complaint filed against it by Carol Kirkpatrick, at Docket No. C-20065955, is denied in all other respects.

  
Robert P. Meehan  
Administrative Law Judge

Date: April 12, 2006



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
April 20, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20065955

(SEE LETTER DATED 3/30/06)

Carol Kirkpatrick v. T. W. Phillips Gas & Oil Company

Billing Dispute / Requests Payment Arrangement

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial Telephonic Hearing on the above-captioned case previously scheduled for Tuesday, May 2, 2006, has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Telephonic Hearing

Date: Tuesday, May 23, 2006

Time: 10:00 a.m.

Location: 11th floor hearing room  
Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

Presiding: Administrative Law Judge Robert P. Meehan  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
Telephone: 412.565.3550  
Fax: 412.565.5692

DOCUMENT  
FOLDER

**DOCKETED**  
APR 25 2006

Please mark your records accordingly.

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

At the above date and time, the Presiding Officer will contact the parties as follows:

Carol Kirkpatrick	724-282-8281
Joe Kubit, Esquire	724-285-4776
Jay W. Dawson, Esquire	714-287-2751

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 5 days before the hearing.

*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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 Meehan  
Cherie Pyle, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

**OALJ Hearing Report**

Please Check Those Blocks Which Apply

Docket No:	C-20065955		YES	NO
Case Name:	Carol Kirkpatrick v. T. W. Phillips Gas and Oil Co.	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Pittsburgh	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date:	May 23, 2006	Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ALJ:	Robert P. Meehan	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Estimated Add'l Days:		
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:	<i>Record to close on my order after receipt of transcript</i>	

**RECEIVED**

JUN - 2 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
Carol Kirkpatrick Telephone: 724-282-8281	122 West Pearl Street Butler City PA 16001	Self
Jay W. Dawson, Esquire Telephone: 724-287-2751	205 North Main Street Butler City PA 16001	T.W. Phillips Gas and Oil Co.
<i>Joseph E. Kubit, Esq.</i> Telephone: <i>724-285-4776</i>	<i>518 N. Main St.</i> <i>Butler City PA 16001</i>	<i>Complainant</i>

Check this box if additional parties or attendees appear on back of form

*[Signature]*

*Juliette Hoffman*  
Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.