

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Quesenberry, Jr.	:	
	:	
v.	:	C-2017-2623495
	:	
Transource Pennsylvania, LLC	:	

INITIAL DECISION
SUSTAINING PRELIMINARY OBJECTIONS
AND DISMISSING COMPLAINT WITHOUT PREJUDICE

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

James Quesenberry, Jr. filed a Complaint against Transource Pennsylvania, LLC (Transource) with the Pennsylvania Public Utility Commission (Commission), alleging that Transource “may be building a new transmission line across my farm” and requesting that the Commission stop that project. This Initial Decision dismisses the Complaint because Mr. Queensberry’s case is not yet ripe for judicial consideration, as Transource has not yet submitted transmission line siting applications to the Commission. Only after Transource submits its applications to the Commission will it become clear exactly where Transource intends to place its transmission lines and whether such placement would actually be on Mr. Quesenberry’s farm. Although the Complaint is dismissed, it is dismissed without prejudice and Mr. Quesenberry can re-file a Complaint or take other action before the Commission as appropriate, in the event that Transource ultimately seeks Commission approval to place transmission lines on Mr. Quesenberry’s farm.

HISTORY OF THE PROCEEDING

On August 30, 2017, Mr. Quesenberry filed a Complaint with the Commission against Transource, alleging that Transource “may be building a new transmission line across my farm” and requesting that the Commission stop that project. The Complaint was served on Transource by the Commission’s Secretary on September 8, 2017.

On October 2, 2017, Transource filed an Answer with New Matter to the Complaint, along with Preliminary Objections to the Complaint. Responses to the New Matter and Preliminary Objections were due within 20 days per Commission Regulations. Mr. Quesenberry did not file a response to either the New Matter or the Preliminary Objections.

In the Preliminary Objections, Transource asserts that the Complaint should be dismissed because it is not currently ripe for consideration. Transource also asserts that it has yet to submit its proposed transmission line routes to the Commission and that Transource has not yet made its own decision as to where it will propose to run the transmission lines.

By Motion Judge Assignment Notice issued on November 7, 2017, the parties were advised that the Preliminary Objections had been assigned to me for a ruling. The Preliminary Objections are now ripe for consideration. For the reasons discussed below, the Preliminary Objections will be sustained and the Complaint will be dismissed without prejudice.

FINDINGS OF FACT

1. The Complainant in this case is James Quesenberry, Jr. who resides at 6544 Anderson Road, Stewartstown, PA 17363.
2. The Respondent in this case is Transource Pennsylvania, LLC.
3. On August 30, 2017, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission.

4. The Complaint was served on the Respondent by the Commission on September 8, 2017.

5. On October 2, 2017, the Respondent filed an Answer with New Matter to the Complaint, along with Preliminary Objections to the Complaint.

6. The Complainant's responses to the New Matter and Preliminary Objections were due no later than October 25, 2017.

7. The Complainant did not file a response to either the New Matter or the Preliminary Objections.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.
7. Standing of a party to participate in the proceeding.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting 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 Environment 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 (1988).

The Commission may not rely upon 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 nonmoving party, as well as every inference deducible from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the Complaint in this case in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission Regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming a violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

Transource argues the issues raised in the Complaint about the possible transmission line placement over the Complainant's farmland are not ripe for adjudication, because Transource has not made any final decision regarding proposed transmission line siting and has not submitted any siting plans to the Commission for approval.

Transource rightfully contends a case must be ripe for adjudication before it can be heard. Woods Schools v. Department of Education, 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986); Sgarlat v. Board of Adjustment of Kingston Borough, 407 Pa. 324, 180 A.2d 769 (1962). There must be actual, palpable injury before a case will be ripe for adjudication. Concerned Taxpayers v. Commonwealth of Pennsylvania, 33 Pa. Commonwealth Ct. 518, 382 A.2d 490 (1978). Hence, hypothetical or abstract questions are precluded. Raezer v. Raezer, 428 Pa. 163, 236 A.2d 513 (1968); Silver v. Zoning Board of Adjustment, 381 Pa. 41, 112 A.2d 84 (1955). This requirement applies with equal force to formal proceedings before administrative agencies. Process Gas Consumers Group v. Pa. Pub. Util. Comm'n, 84 Pa. Commonwealth Ct. 76, 480 A.2d 1273 (1984).

The doctrine of ripeness ensures a court or administrative agency actually has a case or controversy before it for adjudication. The requirement of ripeness assures that a court or administrative agency does not render advisory opinions on merely hypothetical questions.

In the Complaint, Mr. Quesenberry is alleging possible harm to his land if Transource is allowed to place transmission lines over his land. However, the Complaint fails to allege that any such plans are currently pending before the Commission, or that any such plans have even been proposed to the Commission by Transource.

Viewing the Complaint in the light most favorable to the Complainant, it is clear that this case is not yet ripe for adjudication and that the Commission therefore lacks jurisdiction to hear this case at this particular point in time. Accordingly, the Complaint is dismissed at this juncture. However, the Complaint is dismissed without prejudice so that the Complainant may re-file his Complaint, or take other appropriate legal action before the Commission, in the event that Transource ultimately proposes to run transmission lines over the Complainant's land or otherwise submits a proposal to the Commission that would impact the Complainant's rights under the laws and regulations administered by the Commission.

CONCLUSIONS OF LAW

1. Preliminary objections in civil practice requesting 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 Environment 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 (1988).

2. A case must be ripe for adjudication before it can be heard. Woods Schools v. Department of Education, 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986); Sgarlat v. Board of Adjustment of Kingston Borough, 407 Pa. 324, 180 A.2d 769 (1962).

3. There must be actual, palpable injury before a case will be ripe for adjudication. Concerned Taxpayers v. Commonwealth of Pennsylvania, 33 Pa. Commonwealth Ct. 518, 382 A.2d 490 (1978). Hence, hypothetical or abstract questions are precluded. Raezer v. Raezer, 428 Pa. 163, 236 A.2d 513 (1968); Silver v. Zoning Board of Adjustment, 381 Pa. 41, 112 A.2d 84 (1955).

4. This requirement applies with equal force to formal proceedings before administrative agencies. Process Gas Consumers Group v. Pa. Pub. Util. Comm'n, 84 Pa. Commonwealth Ct. 76, 480 A.2d 1273 (1984).

5. There is currently no legal dispute between the parties that is ripe for consideration by the Commission. Woods Schools v. Department of Education, 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986); Sgarlat v. Board of Adjustment of Kingston Borough, 407 Pa. 324, 180 A.2d 769 (1962).

6. The Commission currently lacks jurisdiction over the parties and the subject matter of this dispute, and it is therefore appropriate to grant the Respondent's Preliminary Objections. 52 Pa.Code § 5.101(a)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed at Docket No. C-2017-2623495 by Transource Pennsylvania, LLC are hereby sustained.
2. That the Complaint of James Quesenberry, Jr. at Docket No. C-2017-2623495 against Transource Pennsylvania, LLC is dismissed without prejudice.
3. That the docket at Docket No. C-2017-2623495 is marked closed.

Date: November 29, 2017

/s/
Andrew M. Calvelli
Administrative Law Judge