

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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JASON PAUL,

Complainant,

Complaint Docket No.: C-2019-3007458

v.

CNX MIDSTREAM PARTNERS LP

Respondent.

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**NOTICE TO PLEAD**

TO: Complainant, Jason Paul:

You are hereby notified to file a written response to these Preliminary Objections within ten (10) days of the date of service with the Public Utility Commission.

  
\_\_\_\_\_  
J.R. Hall, Esquire

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**PRELIMINARY OBJECTIONS TO COMPLAINT PURSUANT TO 52 PA.  
CODE § 5.101(a)(1) and (3)**

AND NOW comes the Respondent, CNX Gas Company LLC (“CNX”), improperly identified in the Complaint as CNX Midstream Partners LP, by and through its attorneys, Dickie, McCamey & Chilcote, P.C., and pursuant to 52 Pa. Code. § 5.101(a)(1) and (3), asserts the following Preliminary Objections to Complaint:

**STATEMENT OF THE CASE**

1. Per his Complaint with the Pennsylvania Public Utility Commission (“PUC”), Jason Paul (“Complainant”) alleges CNX<sup>1</sup> is “stealing gas to which [he has a] legal [sic] claim to ...” (Compl. § 4.)

2. This notion is purportedly grounded upon the theory that gas was produced by CNX from Complainant’s one (1) acre property from 2002 through 2018 in contravention of “Agreement # 11023500” which is neither described in the Complaint nor otherwise appended thereto. (*Id.* at § 5.)

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<sup>1</sup> Complainant misidentifies CNX as “CNX Midstream Partners LP.” CNX Gas Company LLC is the oil and gas operator that is purportedly the subject of the Complaint.

3. Although the Complaint is vague, it appears that Complainant seeks recovery of oil and gas royalties, and in this regard, seeks an award of \$2,000.00. (*Id.*)

4. The Complaint should be dismissed with prejudice as the PUC lacks jurisdiction. Alternatively, Complainant should be required to file a more specific pleading.

#### ARGUMENT AND AUTHORITY

##### A. *Lack of Commission Jurisdiction—52 Pa. Code § 5.101(a)(1)*

5. Codified at 66 Pa. C.S.A. §§ 101 *et seq.*, the Public Utility Code confers the Public Utility Commission (“PUC”) with the power and authority to supervise and regulate all public utilities doing business within the Commonwealth. 66 Pa. C.S.A. § 501(b).

6. While the PUC is vested with exclusive authority over complex and technical service and engineering questions arising in the location, construction and maintenance of all public utility facilities, the power to regulate “does not encompass the power to award damages to a private litigant.” *Bell Tel. Co. v. Mayerson*, 1980 Pa. Dist. & Cnty. Dec. LEXIS 485, \*4-5 (Jan. 28, 1980) (citing *Feingold v. Bell of Pa*, 383 A.2d 791, 794 (Pa. 1977)). Instead, this “judicial remedy is left to the courts[,]” which “retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility’s performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts.” *Id.* at \*5.

7. Otherwise stated, “the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.” *Allport Water Authority v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978).

8. The instant Complaint includes no allegations of violations of any statute, rule or order of the PUC. Instead, Complainant seeks money damages. Accordingly, the PUC lacks jurisdiction.

**B. *Insufficient Specificity of a Pleading—52 Pa. Code § 5.101(a)(3).***

9. To assert a viable complaint with the PUC, a Complainant must set forth, *inter alia*, “a clear and concise statement of the act or omission being complained of ...” 52 Pa. Code. § 5.22(a)(5).

10. At a minimum, this requires a pleader to identify the act or omission taken by the utility about which the complainant complains insofar as to provide the utility sufficient information to prepare a coherent defense. *Schell v. Suez Water Pennsylvania, Inc.*, C-201-2566398 (Nov. 15, 2016).

11. Absent from Complainant’s Complaint is any averment of fact reasonably indicating “the act or thing done or omitted to be done” by CNX in contravention of any law or regulation which the PUC has jurisdiction to administer.

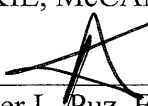
12. Instead, and at most, the Complaint asserts a legal conclusion that “gas” was “illegally taken” from Complainant’s property.

13. Such threadbare recitals fail to afford CNX sufficient information to prepare a coherent defense to Complainant’s claims. In the absence of such factual specificity, Complainant’s Complaint warrants dismissal as a matter of law.

WHEREFORE, CNX Midstream Partners LP, respectfully requests the Public Utilities Commission Dismiss Complainant’s Complaint, in its entirety and with prejudice, pursuant to 52 Pa. Code § 5.101(a)(1). Alternatively, Complainant should be required to file a more specific pleading.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By   
Rodger L. Puz, Esq.  
PA I.D. # 67216  
J.R. Hall, Esq.  
PA I.D. # 88296

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*Counsel for Respondent, CNX Gas Company  
LLC, incorrectly identified in the Complaint as  
CNX Midstream Partners LP*

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Preliminary Objections to Complainant's Complaint of Defendant, CNX Midstream Partners LP, and after entertaining appropriate response thereto and argument thereon, it is hereby ordered that said Preliminary Objections are sustained and Complainant's Complaint is dismissed, in its entirety and with prejudice, as a matter of law.

SO ORDERED,

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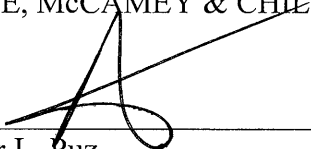
**CERTIFICATE OF SERVICE**

I, J.R. Hall, Esquire, hereby certify that a true and correct copy of the foregoing was served this 13<sup>th</sup> day of February, 2019, via First Class U.S. Mail, postage prepaid, upon the following individual identified below:

Jason R. Paul  
132 Cessna Hill Road  
Boswell, PA 15531

***Complainant***

DICKIE, McCAMEY & CHILCOTE, P.C.



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Rodger L. Puz  
PA I.D. # 67216  
J.R. Hall  
PA I.D. # 88296

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*Counsel for Respondent,  
CNX Gas Company LLC, incorrectly identified in the  
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