

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

JASON PAUL,

Complainant,

Complaint Docket No.: C-2019-3007458

v.

CNX MIDSTREAM PARTNERS LP

Respondent.

**BRIEF IN SUPPORT OF 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”), incorrectly 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 Brief in Support of Preliminary Objections to Complaint:

STATEMENT OF THE CASE

Per his Complaint to the Pennsylvania Public Utility Commission (“PUC”), Jason Paul (“Complainant”) alleges CNX¹ is “stealing gas to which [he has a] legel [sic] claim to ...” (Compl. § 4.) 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. Complainant references “Agreement # 11023500” which is neither described in the Complaint nor otherwise appended thereto. (*Id.* at § 5.) Although the Complaint is sparse with regard to factual allegations, it is clear that Complainant is *not* making any claim that CNX is in violation of any statute, rule or order or that CNX is otherwise engaged in acts subject to oversight and adjudication by the PUC as a

¹ 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.

provider of utilities to Complainant. Instead, it appears that Complainant seeks recovery of oil and gas royalties, and in this regard, seeks an award of \$2,000.00. (*Id.*)

For the reasons set forth herein, 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)

Codified at 66 Pa. C.S.A. §§ 101 *et seq.*, the Public Utility Code confers the Public Utility Commission (“PUC”):

[G]eneral administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

66 Pa. C.S.A. § 501(b).

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)). Indeed, 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.

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). Indeed, our Supreme Court has expressly and unequivocally rejected the notion that the PUC may adjudicate and award damages to private citizens:

Although the lower court accurately noted that the Public Utility Law provides that any person may complaint to the PUC about the actions of a public utility, a complaint by appellant to the PUC seeking damages could not have resulted in an award by the PUC even if that agency had determined the complaint to be meritorious. 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 cause of action for damages on behalf of a complainant..

Feingold v. Bell of Pennsylvania, 383 A.2d 791, 795 (Pa. 1977) (internal citations omitted).

To be sure, while the PUC may “impose civil penalties upon a utility which is found to be in violation of a statute, regulation or order[,]” it is “clear that the Commission lacks jurisdiction to award money damages.” *Schell v. Suez Water Pennsylvania, Inc.*, C-201-2566398 (Nov. 15, 2016); *see also Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371 (1980); *Poorbaugh v. Pa. Pub. Util. Comm’n*, 666 A.2d 744 (Pa.Cmwlt. 1995).

In short, Complainant’s Complaint does not include any allegations relating to any violation of a statute, regulation, or order, and instead seeks an award of money damages allegedly resulting from an unspecified taking of his “gas rights.” Accordingly, the PUC is without jurisdiction, and the Complaint should be dismissed, with prejudice.

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

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). To that end:

A formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” Commission’s regulations require that a complaint contain a clear statement of the relief sought. A complaint should contain information specific enough to allow the

respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense.

Schell v. Suez Water Pennsylvania, Inc., C-201-2566398 (Nov. 15, 2016).

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. Instead, and at most, the Complaint asserts a legal conclusion that "gas" was "illegally taken" from Complainant's property. 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, or alternatively, Complainant should be required to file a more specific Complaint.

CONCLUSION

WHEREFORE, CNX Gas Company LLC, incorrectly identified in the Complaint as CNX Midstream Partners LP, respectfully requests the Public Utilities Commission dismiss the 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 Complaint.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By 

Rodger L. Puz, Esq.

PA I.D. # 67216

J.R. Hall, Esq.

PA I.D. # 88296

Two PPG Place, Suite 400

Pittsburgh, PA 15222

Tele No.: (412) 281-7272

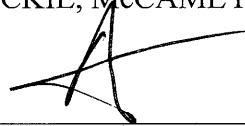
*Counsel for Respondent, CNX Gas Company
LLC, incorrectly identified in the Complaint as
CNX Midstream Partners LP*

CERTIFICATE OF SERVICE

I, J.R. Hall, Esquire, hereby certify that a true and correct copy of the foregoing was served this 13th 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.



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

Two PPG Place, Suite 400
Pittsburgh, PA 15222
Tele No.: (412) 281-7272

Counsel for Respondent