

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Christopher R. Williams,
Docket
Complainant,

Complaint
No. C-2019-3009868

VS.

UGI Utilities, Inc.,
Respondent.

Preliminary Objections

AND NOW comes Respondent, UGI Utilities, Inc., (UGI), pursuant to *52 Pa. Code*, Section 5.101 (a) (1) and (4), and files the following Preliminary Objections

A. Lack of Commission Jurisdiction

1. 52 Pa. Code § 5.101(a)(1) provides that a party to a proceeding may preliminarily object for lack of Commission jurisdiction.

2. In reviewing preliminary objections, only the facts in the pleadings filed by the non-moving party can be presumed to be true in order to determine whether recovery is possible.

Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources, 909 A2d 413 (Pa.Cmwlt. 2006) aff'd, 492 Pa. 304, 924 A.2d 1203 (2007).

3. Christopher R. Williams (“Complainant”) fails to allege any conduct on behalf of UGI related to any utility service provided by UGI to Complainant.

4. Complainant's averments are primarily related to work performed by J.F. Keily Construction Company.

5. Specifically, Complainant alleges that J.F. Keily Construction Company caused property and structural damage to the property of Complainant. This occurred while the company was conducting work on gas pipelines in the Milton Bureau. During this construction, they required the gas meter on Complainant's property to be relocated and structural damage was sustained.

6. No other allegations are pled by Complainant alleging that UGI committed some act and/or failed to act in any manner with regards to the general reasonableness, adequacy, or sufficiency of UGI's utility's service.

7. Complainant demands monetary damages in the amount of \$5,400.00 and/or cost of filing in the amount of \$250.00.

8. The Commission lacks jurisdiction to award damages as demanded by Complainant in his formal Complaint. See *In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977). *DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

9. The mandate pursuant to the Public Utility Law, 66 Pa. Cons. Stat. Ann. § 101 et seq., specifically 66 Pa. Cons. Stat. Ann. §§ 1504 and 1505, that the Public Utility Commission (the "Commission") have primary jurisdiction to determine when its rules had been disregarded, was not applicable where the controversy was not one in which the general reasonableness, adequacy, or sufficiency of a public utility's service was drawn into question. *De Francesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595, 1982 Pa. LEXIS 669 (Pa. 1982).

10. Under 66 Pa. Cons. Stat. § 501 et seq., the Commission has exclusive jurisdiction over the reasonableness, adequacy, and sufficiency of public utility services. *Bell Tel. Co. v. Uni-Lite, Inc.*, 294 Pa. Super. 89, 439 A.2d 763, 1982 Pa. Super. LEXIS 3114 (Pa. Super. Ct. 1982).

11. The Commission's authority to issue orders under Section 501(c) of the Public Utility Code is limited. *Susquehanna Area Reg'l Airport Auth. v. Pa. PUC*, No. 2516 C.D. 2005, 911 A.2d 612, 2006 Pa. Commw. LEXIS 618 at *15 (Pa. Commw. Ct. Nov. 21, 2006) ("SARAA v. PUC"). The power must be read in light of the enumerated powers set forth in the Public Utility Code. *Id.*; See also, *United Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission*, 676 A.2d 1244 (Pa. Cmwlth. 1996). The Commission's statutory authority to act in a given case must be clear. *West Penn Railways Co. v Public Utility Commission*, 135 Pa. Super. 89, 4 A.2d 545 (Pa. Super. 1939). Under Section 501(c), the Commission is limited to subjects covered in the Public Utility Code. *Springdale Township v. Allegheny County Board of Property Assessment, Appeals and Review*, 78 Pa. Commw. 100, 467 A.2d 74 (Pa. Cmwlth. 1983).

B. Legally Insufficiency of Pleading

12. Complainant fails to allege a legally sufficient cause of action.

13. 52 Pa. Code §5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency.

14. 52 Pa. Code §5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548, 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*,

540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

15. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code §5.22(a)(4).

16. Here, the complaint fails alleges any facts that could be construed as a violation by UGI of a statute, regulation or order which the Commission has jurisdiction to administer by failing to provide adequate, reasonable service and facilities.

17. Additionally, Complaint has attached and alleged that a Settlement and Release between Complainant and UGI wherein Complainant releases, acquits and forever discharges UGI from any and all causes of actions, claims, and demands, damages, costs, loss of service, expenses and compensation on account of or in any way growing out of any and all known and unknown property damage resulting or to result from a gas valve that was damaged on Complainant's property furnace as part of a service renewal that occurred on or about November 15, 2016.

18. Complainant further agreed to release and forever discharge UGI of and from all claims for contribution for the claims of others, which claims are specifically bargained, hereby including all present and future claims, demands, actions, third party actions at law or in equity of whatever nature.

19. Complainant has fails to sufficiently plead a cause of action which has not already been settled by the attached Settlement and Release.

C. Nonjoinder of a Necessary Party

20. 52 Pa. Code §5.101(a)(5) permits the filing of a preliminary objection to dismiss a pleading for lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

21. 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).

22. A necessary party is one “whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief.” *Pennsylvania Human Relations Commission v. School District of Philadelphia*, 167 Pa. Commw. 1, 14, 651 A.2d 177, 184 (1993); *In re Emery*, 138 Pa. Commw. 668, 673, 589 A.2d 283, 285 (1991); *York-Adams County Constables Association v. Court of Common Pleas of York County*, 81 Pa. Commw. 566, 569, 474 A.2d 79, 81 (1984); *Pennsylvania Assigned Claims Plan v. Insurance Commission of the Commonwealth*, 54 Pa. Commw. 93, 96-97, 420 A.2d 25, 27 (1980); *County of Allegheny v. Department of Public Welfare*, 31 Pa. Commw. 379, 383, 376 A.2d 290, 292 (1977), *aff’d*, 486 Pa. 144, 404 A.2d 671 (1979).

23. In the within matter, Complainant fails to join as a necessary party, J.F. Keily Construction Company.

24. The failure to join J.F. Keily Construction Company as necessary party deprives the Commission of an essential party needed to completely resolve the alleged controversy and provide complete relief.

Wherefore, UGI requests that the Complaint of Complainant be dismissed as a matter of law. For the aforementioned reasons, a hearing is unnecessary and Respondent is entitled to judgment as a matter of law. Granting the UGI motion for dismissal of this Complaint is appropriate in these circumstances.

Respectfully submitted,

UGI Utilities, Inc.



By: _____
Jorge M. Pereira, Esq.

Notice to Plead

To: Christopher R. Williams:

You are hereby notified to file a written response to the above Preliminary Objections within ten (10) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

A copy of your response must also be mailed to:

Jorge M. Pereira, Esquire
Prince Law Offices, P.C.
646 Lenape Road,
Bechtelsville, PA 19505-9135

Respectfully submitted,

UGI Utilities, Inc.



By: _____
Jorge M. Pereira, Esq.

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Christopher R. Williams,
Docket
Complainant,

Complaint

No. C-2019-3009868

VS.

UGI Utilities, Inc.,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 28th day of May, 2019, served a true and correct copy of the foregoing document in the manner and upon the persons listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

VIA FIRST CLASS MAIL

Christopher R. Williams
645 Upper Market Street
Milton, PA 17847



Jorge Pereira
Counsel for UGI Utilities, Inc.