

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debra Reid,

Complainant,

v.

Mill Creek MHP Management, LLC,

Respondent.

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: **Complaint Docket**
: **No. C-2019-3010073**
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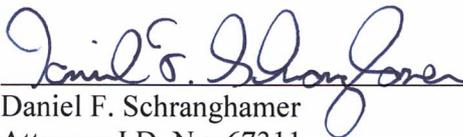
NOTICE TO PLEAD

TO: Debra Reid
2 Shawna Ave.
York, PA 17402

You are hereby notified to plead to the within Preliminary Objections of Respondent Mill Creek MHP Management, LLC, to Formal Complaint within ten (10) days of the date of service of these objections.

Respectfully submitted,

GSP Management Co.



Daniel F. Schranghamer
Attorney I.D. No. 67311
800 West Fourth Street, Suite 200
Williamsport, PA 17701
Phone: (570) 567-7261

Attorney for Respondent Mill Creek MHP
Management, LLC,

Date: June 10, 2019

project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.” 49 C.F.R. §191.3.

Preliminary Objections.

First Preliminary Objection – Legal Insufficiency of a Pleading.

5. Mill Creek Management incorporates by reference the allegations contained in the foregoing paragraphs as if set forth fully herein.

6. Under 52 Pa.Code Section 5.101(a)(4), a respondent may preliminarily object to a complaint based upon the legal insufficiency of a pleading.

7. In her Formal Complaint, Ms. Reid alleges that Mill Creek Management “is illegally operating as a utility/distribution company without license to do so.” Formal Complaint, Section 4 (Page 2).

8. Based upon this claim, Ms. Reid would like the Commission to investigate and fine Mill Creek Management for “operating illegally as a utility/distribution company.” Formal Complaint, Section 5 (Page 3).

9. For the sake of argument, Mill Creek Management assumes that Ms. Reid intends to claim that Mill Creek Management is operating as a “public utility” without a certificate of public convenience.

10. A “public utility” is defined under the Public Utility Code as “[a]ny person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for [p]roducing, generating, transmitting, distributing or furnishing natural or artificial gas . . . to or for the public for compensation.” 66 Pa.C.S. Section 102.

11. The seminal case for evaluating whether an entity is a public utility within the meaning of the Public Utility Code is *Drexelbrook Associates v. Public Utility Commission*, 418 Pa. 430, 212 A.2d 237 (1965).

12. In *Drexelbrook*, the Court held that the owner of an apartment complex, which included 90 buildings containing 1,223 residential units, 9 retail stores, various public areas, and a club with a dining room, swimming pool, skating rink, and tennis courts, was not a “public utility” after it purchased the equipment used to furnish gas, water, and electric service directly to the tenants of the complex because the end users of the gas, water, and electric service were part of a defined and discrete group – the tenants of the apartment complex. *Drexelbrook*, 212 A.2d at 241.

13. Since the gas, water, and electric service in the apartment complex was to a defined and discrete group, it was not “to or for the public” within the meaning of the definition of a “public utility.” *Drexelbrook*, 212 A.2d at 241.

14. In *Pilot Travel Centers LLC v. Pennsylvania Public Utility Commission*, 933 A.2d 123 (Pa.Cmwlth. 2007), Commonwealth Court reiterated that “the test for determining whether utility services are being offered ‘for the public’ [is] . . . whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals. . . . The private or public character of a business does not depend upon the number of persons who actually use the service; rather, the proper characterization rests upon whether or not the service is available to all members of the public who may require the service.” (quoting *Waltman v. Pennsylvania Public Utility Commission*, 596 A.2d 1221, 1223 (Pa.Cmwlth. 1991)) See also, *Petition of the*

Township of Mahoning for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers Adjoining its Boundaries Does Not Constitute the Provision of Public Utility Service Under 66 Pa.C.S. Section 102, 2017 Pa.PUC LEXIS 160 (2017).

15. The Commission’s guidelines for determining public utility status mirrors the standard in *Drexelbrook*. 52 Pa.Code §69.1401.

16. In her Formal Complaint, Ms. Reid does not allege any facts to support her claim that Mill Creek Management is a “public utility.”

17. Specifically, Ms. Reid does not allege, or even imply, that Mill Creek Management is distributing natural gas to or for the public for compensation.

18. Rather, Ms. Reid alleges that Mill Creek Management’s master meter system only provides natural gas to the tenants of the Mill Creek manufactured home community. *See, e.g.*, Formal Complaint, Section 5 (Page 3) (“The company has charged myself alone for more units used at a time than the master meter read for the entire MHP of 173 homes (Documentation enclosed).”)

19. There are no facts alleged in the Formal Complaint, therefore, that the master meter system operated by Mill Creek Management provides natural gas “to or for the public” within the meaning of the Public Utility Code. 66 Pa. C.S. §102.

20. Moreover, as a registered pipeline operator, Mill Creek Management cannot, by definition, also be a “public utility.” *See*, 58 P.S. Section 801.102 (the term “pipeline operator” “does not include a public utility . . .”).

21. Accordingly, there are no facts alleged in the Formal Complaint that Mill Creek Management is a “public utility” within the meaning of the Public Utility Code. 66 Pa. C.S. §102.

WHEREFORE, for the foregoing reasons, Respondent Mill Creek Management respectfully requests that the Commission sustain this Preliminary Objection and dismiss this claim in its entirety.

Second Preliminary Objection – Lack of Commission Jurisdiction.

22. Mill Creek Management incorporates by reference the allegations contained in the foregoing paragraphs as if set forth fully herein.

23. Under 52 Pa.Code Section 5.101(a)(1), a respondent may preliminarily object to a complaint based upon the lack of Commission jurisdiction.

24. In her Formal Complaint, Ms. Reid raises the following additional claims:

- a. Ms. Reid claims there are incorrect charges on the natural gas bills Ms. Reid has received from Mill Creek Management; and
- b. Ms. Reid claims Mill Creek Management is billing 6.5 times more than the “legally established rate.”

Formal Complaint, Section 4 (Page 2).

25. Based upon these claims, Ms. Reid seeks the following additional relief:

- a. Ms. Reid wants Mill Creek Management to bill for gas usage in accordance with the “established rates established and published by the PUC;”
- b. Ms. Reid wants to be reimbursed for all “gas overages” for which she has been billed and for which she has paid;
- c. Ms. Reid wants Mill Creek Management to make budget billing or payment plans available; and
- d. Ms. Reid wants Mill Creek Management to stop harassing her and threatening her with eviction.

Formal Complaint, Section 5 (Page 3).

26. The Commission only possesses the authority the Pennsylvania legislature has specifically granted to in in the Public Utility Code, 66 Pa.C.S. Section 101 *et seq.* The Commission’s jurisdiction must arise from the express language of its enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).

27. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602, 603-04 (Pa. 1967).

28. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390, 393 (Pa.Cmwlth. 1992).

29. While Mill Creek Management is a pipeline operator for purposes of the Gas and Hazardous Liquids Pipelines Act (the “Pipelines Act”), the Commission has jurisdiction over Mill Creek Management only for those purposes set forth in the Pipelines Act. *See*, 58 P.S. Section 801.504(a).

30. The Commission does not have jurisdiction over Mill Creek Management “for purposes of rates or ratemaking or any purpose other than those set forth in [the Pipelines Act].” *See*, 58 P.S. Section 801.504(a).

31. Moreover, nothing in the Pipelines Act “grants the commission additional authority to determine or regulate a pipeline operator as a public utility as defined in 66 Pa.C.S. Section 102 (relating to definitions) or as a natural gas supplier or natural gas supply services as defined in 66 Pa.C.S. Section 2202 (relating to definitions).” 58 P.S. Section 801.504(a).

32. The Commission, therefore, may not regulate Mill Creek Management – a registered pipeline operator under the Pipelines Act – as a public utility, a natural gas supplier, or a natural gas supply service.

33. Under Section 501(a) of the Pipelines Act, the Commission has “general administrative authority to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws.” 58 P.S. Section 801.501(a). Moreover, the Commission “may adopt regulations, consistent with the Federal pipeline safety laws, as may be necessary or proper in the exercise of its powers and perform its duties under [the Pipelines Act].” *Id.* Any such regulations, however, “shall not be inconsistent with or greater or more stringent than the minimum standards and regulations adopted under the Federal pipeline safety law.” *Id.*

34. The commission has the following duties under the Pipelines Act:

- “(1) To investigate a service, act, practice, policy or omission by a pipeline operator to determine compliance with this act.
- (2) To investigate a pipeline transportation facility to determine if it is hazardous to life or property.
- (3) To investigate the existence or report of a safety-related condition that involves a pipeline transportation facility.
- (4) To enter into contracts or agreements with the United States Department of Transportation to inspect intrastate or interstate transmission facilities.
- (5) Accept grants-in-aid, cash and reimbursements made available to the Commonwealth by the Federal Government to implement Federal pipeline safety laws or other Federal law.

- (6) To advise, consult and cooperate with the Federal Government, other states and other agencies as may be necessary to carry out the purposes of this act.
- (7) To enforce the Federal pipeline safety laws and, after notice and opportunity for a hearing, impose civil penalties and fines and take other appropriate enforcement action.
- (8) For purposes of petroleum gas, the commission's jurisdiction under this act shall be limited to those petroleum gas systems that are the following:
 - (i) Subject to the Federal pipeline safety laws.
 - (ii) Not a public utility."

58 P.S. Section 801.501(a).

35. The federal pipeline safety laws do not concern themselves with the issues raised by Ms. Reid in her Formal Complaint, including:

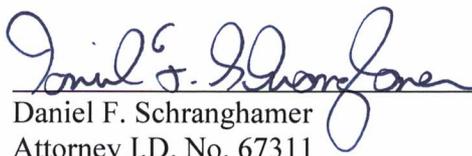
- a. Whether a master meter system is billing homeowners for gas usage according to rates established and published by the Commission.
- b. Whether a master meter system has allegedly charged an individual for more units of gas used than the master meter read for the entire system.
- c. Whether a master meter system offers budget billing or payment plans.
- d. Whether a landlord who operates a master meter system credits payments first to rent or gas bills.

36. The additional claims brought by, and the additional relief sought by, Ms. Reid in her Formal Complaint are, therefore, outside the Commission's jurisdiction and duties under the Pipelines Act.

WHEREFORE, for all the foregoing reasons, Respondent Mill Creek Management respectfully requests that the Commission sustain this Preliminary Objection and dismiss these claims in their entirety.

Respectfully submitted,

GSP Management Co.

A handwritten signature in blue ink, appearing to read "Daniel F. Schranghamer", is written over a horizontal line.

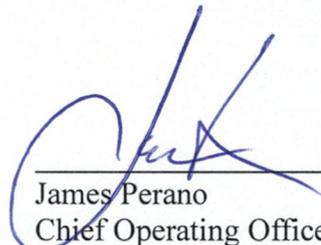
Daniel F. Schranghamer
Attorney I.D. No. 67311
800 West Fourth Street, Suite 200
Williamsport, PA 17701
Phone: (570) 567-7261

Attorney for Respondent Mill Creek MHP
Management, LLC,

Date: June 10, 2019

VERIFICATION

I, James Perano, Chief Operating Officer of Respondent Mill Creek MHP Management, LLC, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that Respondents will be able to prove same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsifications to authorities).



James Perano
Chief Operating Officer
GSP Management Co.

Dated: June 10, 2019

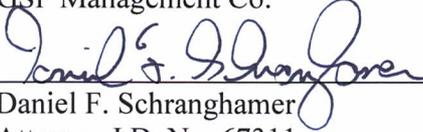
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of Section 1.54 (relating to service by a party). The document was filed electronically on the Commission's electronic filing system.

Name:	Means of Service:	Date(s) of Service:
Debra Reid 2 Shawna Ave. York, PA 17402	First Class Mail	June 10, 2019

Respectfully submitted,

GSP Management Co.



Daniel F. Schranghmer
Attorney I.D. No. 67311
800 West Fourth Street, Suite 200
Williamsport, PA 17701
Phone: (570) 567-7261

Attorney for Mill Creek MHP Management, LLC

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