

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawnece Moore, a/k/a Ikhana-hal-makina	:	
	:	
v.	:	C-2019-3013315
	:	
Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objections filed by the Pittsburgh Water and Sewer Authority and dismisses the Formal Complaint on the grounds the Commission lacks jurisdiction over the subject matter and does not have the statutory authority to grant the relief requested in the Formal Complaint.

HISTORY OF THE PROCEEDING

On September 24, 2019, Shawnece Moore, ex rel.¹ Ikhana-hal-makina (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Pittsburgh Water and Sewer Authority (PWSA or Respondent) alleging there were incorrect charges on her bill and Aborigine people were not to be charged for

¹ Complainant referred to herself in the Formal Complaint as “Shawnece Moore ex rel. Ikhana-hal-makina.” “*Ex rel.*” is a citation format of a Latin term (*ex relatione*) meaning "upon being related" and is a term often used to denote a proceeding that is related to information provided by (and being related to) another source or individual. Ms. Moore provides the Commission with her proper name but relates information here concerning only herself. Accordingly, the appropriate term here is “a/k/a,” an acronym used to mean “also known as.”

resources. Specifically, Complainant alleged PWSA was not permitted to tax her for water or sewage services because she was an Aborigine American. She requested the Commission order PWSA to remove any balance on her account and stop billing her for water and wastewater services.

On December 4, 2019,² PWSA filed an Answer in which PWSA generally denied the allegations. PWSA noted Complainant owns the service address and acknowledged it provides residential water and wastewater services to Complainant at the service address. PWSA requested the Commission dismiss the Complaint and grant any other relief deemed appropriate.

On December 4, 2019, PWSA filed Preliminary Objections, with a Notice to Plead within ten days. PWSA asserted the allegations do not concern any matter over which the Commission has jurisdiction and the Commission does not have the statutory authority to grant the relief requested in the Formal Complaint. PWSA requested the Commission dismiss the Formal Complaint, pursuant to 52 Pa.Code § 5.101(a).

On December 19, 2019, Complainant filed an untimely reply to PWSA's Preliminary Objections. The reply generally reasserted the allegations in Complainant's Formal Complaint that PWSA was attempting to harm and extort resources from an Aborigine American person and that Respondent was violating the United States Constitution, as well as various treaties and declarations on the Rights of Indigenous Peoples and human rights law. Complainant asserted, as a member of the Iroquois Confederacy of Aborigine American Peoples (Iroquois Confederacy), she is not subject to the jurisdiction of the Commonwealth of Pennsylvania, the County of Allegheny, the City of Pittsburgh or the School District of Pittsburgh. Complainant further contended that statutes, codes and policies of the same did not apply to her as an Aborigine of America.

On January 2, 2020, the Chief Administrative Law Judge assigned this matter to the undersigned for a ruling on the Preliminary Objections. The Preliminary Objections are ready for decision. For the reasons set forth below, I will grant the Preliminary Objections.

² PWSA averred a complete copy of the Formal Complaint was not received until November 14, 2019.

DISCUSSION

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer; however, under the regulation at 52 Pa.Code § 5.21(d), the Commission is authorized to dismiss a complaint if a hearing is not necessary. Under the Commission's regulation at 52 Pa.Code § 5.101(a)(1), a party may file a preliminary objection to dismiss a pleading for lack of Commission jurisdiction, because judicial economy is served by avoiding a hearing where no factual dispute exists. If there exists no factual issue pertinent to the resolution of a case, a hearing is unnecessary.³

Preliminary Objections

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.

³ See 66 Pa.C.S.A. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa.Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (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).

Here, PWSA's Preliminary Objections assert lack of Commission jurisdiction, pursuant to 52 Pa.Code § 5.101(a)(1) and that the Complaint is legally insufficient pursuant to 52 Pa.Code § 5.101(a)(4), in that the Complaint failed to allege that PWSA violated the Public Utility Code, Commission regulations or Commission orders. In addition, PWSA's Preliminary Objections assert dismissal is warranted due to the inclusion of impertinent matter in the Formal Complaint, pursuant to 52 Pa.Code § 5.101(a)(2), and insufficient specificity in the Formal Complaint, 52 Pa.Code § 5.101(a)(3), pursuant to the requirements of 52 Pa.Code § 5.22(a)(5).

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections.⁴ A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure. The Commission ruled in *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988), that it would follow the standard stated therein that 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.⁵

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 from those facts.⁶ The Commission must view the factual assertions in the Complaint in the light most favorable to Complainant, as the non-moving Party, and should dismiss the Complaint only if it appears Complainant would not be entitled to relief under any circumstances as a matter of law.⁷ Viewing the factual assertions in the light most favorable to Complainant for purposes of disposing of the Preliminary

⁴ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (*Equitable*).

⁵ *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).

⁶ *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).

⁷ *Equitable, supra*.

Objections, it is clear these Preliminary Objections must be granted and the Formal Complaint herein must be dismissed for the following reasons.

Commission Jurisdiction and Legal Sufficiency

The Commission, as a creation of the Pennsylvania General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.⁸ Accordingly, the Commission must act within, and cannot exceed, its jurisdiction.⁹ A party to a proceeding cannot confer jurisdiction upon the Commission where jurisdiction does not exist.¹⁰ The Commission must have subject matter jurisdiction as a prerequisite to the exercise of its power before it can decide a controversy.¹¹

PWSA contended the Formal Complaint raised issues that are outside the subject matter jurisdiction of the Commission. PWSA asserted the Formal Complaint concerns alleged violations of the U.S. Constitution and Federal treaties and agreements allegedly entered into between two sovereign nations. PWSA is correct in its assertion. The Commission only possesses the authority specifically delegated and granted to it by the Pennsylvania Legislature and as outlined in the Public Utility Code, and the Commission's regulations and orders. Nowhere is the Commission authorized to resolve disputes between a member of a foreign state and a public utility certificated by the Commonwealth of Pennsylvania by analyzing the respective rights and duties of the United States of America and another nation.

Complainant alleged PWSA violated the United States Constitution and/or its treaties and agreement entered into between the United States of America and the Iroquois Confederacy. The Formal Complaint contains no allegations concerning any violation of the

⁸ *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁹ *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

¹⁰ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹¹ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

Pennsylvania Public Utility Code, or any Commission regulation or order by the utility. However, as previously noted, the Commission only possesses authority to preside over alleged violations of the Pennsylvania Public Utility Code, or any Commission regulation or order. Complainant appeared to acknowledge that the Commission lacks jurisdiction or authority in this proceeding in her reply to the Preliminary Objections in which Complainant averred that she and other members of the Iroquois Confederacy, “are not subject to the jurisdiction of the Commonwealth of Pennsylvania, County of Allegheny, City of Pittsburgh, School District of Pittsburgh and its employees/agents. Statues [sic] codes and policies don’t apply to me an aborigine of America.”

Here, the Formal Complaint alleged PWSA failed to comply with the U.S. Constitution and failed to comply with Federal treaties and agreements when PWSA sent bills to Complainant requiring payment for water and wastewater services provided to Complainant at the service address. Since the Formal Complaint fails to state a claim which the Commission is authorized to rule on, PWSA’s Preliminary Objections - alleging that the Complaint is legally insufficient and outside the jurisdiction of the Commission – are correct.

Inclusion of Impertinent Matter

PWSA averred in its Preliminary Objections that the Formal Complaint contains impertinent matter, pursuant to 52 Pa.Code § 5.101(a)(2). PWSA noted Complainant requested the Commission order PWSA to absolve her of the obligation to pay the outstanding account balance and order PWSA to discontinue billing Complainant in the future due to her status as an Aborigine American. PWSA asserted the requested relief is beyond the Commission’s jurisdiction and power to grant because the Commission does not have the power to require PWSA to address Complainant’s sovereign citizen claim and address Complainant’s claims relating to the Federal tax status of individual Aborigine Americans. For that reason, PWSA asks the Commission to find the Formal Complaint contains impertinent matter and dismiss the Formal Complaint.

PWSA is correct. The Pennsylvania Legislature did not authorize the Commission to administer and make decisions concerning whether Complainant has a legitimate sovereign citizen claim or to address how the federal tax status of Aborigine Americans might affect Complainant's claims that payment is not due to PWSA for services rendered.

Insufficient Specificity of a Pleading

PWSA asserted the Formal Complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4), in that the Complaint fails to allege that Respondent violated the Public Utility Code, Commission regulations or Commission orders. 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 [utility] in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”¹²

PWSA averred the Formal Complaint was insufficiently specific, pursuant to 52 Pa.Code § 5.101(a)(3), as it fails to conform to the requirements of 52 Pa.Code § 5.22(a)(5) which requires a formal complaint to include a “clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation” which shows the utility is in violation of a law which the Commission has jurisdiction to administer.¹³

PWSA pointed out that the Formal Complaint failed to assert any fact or set of facts to support the Complaint that the bills PWSA sent to Complainant were incorrect or contained incorrect charges. Complainant does not cite to a specific bill or specify a charge which is disputed other than to claim that all the charges listed on her bills are incorrect charges because Complainant has an alleged exemption as a direct result of her status as an Aborigine American. PWSA acknowledged the Formal Complaint reflects Complainant's view that she is a sovereign citizen, but PWSA also noted Complainant does not specifically address how PWSA

¹² 52 Pa.Code § 5.22(a)(4).

¹³ See 66 Pa.C.S.A. § 701; 52 Pa.Code § 5.22.

is in violation of any law over which the Commission has jurisdiction. PWSA asks the Commission to dismiss the Formal Complaint and to not require the utility or the Commission to dedicate additional resources to this matter.

PWSA is correct. The Formal Complaint does not explain or specify which part of the bills are disputed. The Formal Complaint also does not explain or specify how PWSA has violated the Public Utility Code, and/or the Commission's regulations and orders. Accordingly, I will grant PWSA's Preliminary Objections alleging the insufficient specificity of the Formal Complaint.

Conclusion

Accordingly, for all the foregoing reasons, I will grant the Preliminary Objections of PWSA and will dismiss the Formal Complaint.

CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the subject matter of this dispute because it does not involve a matter over which the Commission has authority. 52 Pa.Code §§ 5.21 and 5.101(a)(1).
2. The Formal Complaint does not raise a claim that, if proven, would show Respondent failed in any way to furnish and maintain adequate, efficient, safe and reasonable service and facilities. 52 Pa.Code § 5.101(a)(4), and 66 Pa.C.S.A. § 1501.
3. A hearing in this matter is not necessary or in the public interest. 52 Pa.Code § 5.21(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the caption shall be amended from “Shawnece Moore ex rel Ikhana-hal-makina v. Pittsburgh Water and Sewer Authority” to read “Shawnece Moore, a/k/a Ikhana-hal-makina v. Pittsburgh Water and Sewer Authority.”

2. That the Preliminary Objections filed by Pittsburgh Water and Sewer Authority in the matter of Shawnece Moore, a/k/a Ikhana-hal-makina versus Pittsburgh Water and Sewer Authority at Docket No. C-2019-3013315 are granted.

3. That the Formal Complaint of Shawnece Moore, a/k/a Ikhana-hal-makina, against Pittsburgh Water and Sewer Authority at Docket No. C-2019-3013315 is hereby dismissed for failure to state a claim upon which relief can be granted.

4. That the docket for this proceeding, Docket No. C-2019-3013315, be marked closed.

Date: January 27, 2020

/s/
Katrina L. Dunderdale
Administrative Law Judge