



National Fuel

Nathaniel J. Ehrman
Senior Attorney

March 20, 2020

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

RE: Thomas Picheco v.
National Fuel Gas
Distribution Corporation
Docket No. C-2020-3018963

Dear Secretary Chiavetta:

Enclosed please find National Fuel Gas Distribution Corporation's Preliminary Objections in the above-referenced Complaint.

Very truly yours,

Nathaniel J. Ehrman
(814) 871-8177

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS PICHECO,	:	
	:	
Complainant,	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	DOCKET NO. C-2020-3018963
DISTRIBUTION CORPORATION,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION
TO THE COMPLAINT OF THOMAS PICHECO**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes National Fuel Gas Distribution Corporation (“National Fuel”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the request for damages and the tort-based claims in the above-captioned Formal Complaint (“Complaint”) filed by Thomas Picheco (“Complainant”). As explained herein, the Commission does not have authority to award damages. Moreover, the Commission does not have jurisdiction over tort-based claims. Therefore, requests for damages are properly stricken from complaints as impertinent matter, and that any tort-based claims are properly dismissed as well.

For these reasons, and as explained more detail below, National Fuel respectfully requests that the Commission grant this Preliminary Objection and summarily dismiss the Complainant’s request for damages and his tort-based claims. In support thereof, National Fuel states as follows:

I. BACKGROUND

1. National Fuel furnishes natural gas services to approximately 200,000 customers throughout its certificated service territory, which includes various communities in the counties of Armstrong, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, McKean, Mercer, Venango, and Warren, Pennsylvania, which territory is more fully described in its Tariff Gas-Pa. P.U.C. No. 9, Pages 8 and 9. National Fuel is a public utility corporation duly organized and existing under the laws of the State of New York. In compliance with the requirements of the Pennsylvania Business Corporation Law (Act of May 5, 1933, P.L. 364, as amended), National Fuel has secured from the Commonwealth of Pennsylvania authority to do business within the Commonwealth of Pennsylvania as a foreign corporation.

2. By Secretarial Letter dated March 2, 2020, National Fuel was served with the above-captioned Complaint. The issues raised in the Complaint concern allegations that terminating service to the property resulted in damage to the property.¹ Through the Complaint, the Complainant alleges that National Fuel “trespass[ed]” and requests “punitive damages” and to be “reimbursed for damages” caused by frozen pipes. (Complaint ¶ 5).

3. National Fuel herein files this Preliminary Objection to the Complaint. For the reasons explained below, National Fuel respectfully requests that the Commission summarily dismiss the Complaint’s request for damages because such relief cannot be granted by the

¹ National Fuel affirmatively notes that the Complainant was not the account holder at the property, nor was he identified as a landlord of the property. National Fuel properly terminated service at the property pursuant to a request by the account holder. To the extent Complainant has any claim for damages, such claim is more properly directed against the account holder in the appropriate forum.

Commission. Furthermore, National Fuel respectfully requests that the Commission summarily dismiss the Complaint's tort-based claims due to lack of jurisdiction.

II. STANDARD OF REVIEW

4. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwltth.*, 910 A.2d 775, 781 (Pa. Cmwltth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwltth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwltth. 2007). For preliminary objections to be sustained,

it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

III. PRELIMINARY OBJECTIONS

A. THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES AND THE COMPLAINANT’S REQUEST FOR TORT-BASED CLAIMS SHOULD BE DISMISSED DUE TO LACK OF JURISDICTION.

6. National Fuel incorporates by reference Paragraphs 1 through 5 as if fully set forth herein.

7. In their Formal Complaint, the Complainant request as relief, among other things, that the Company be directed to pay “punitive damages” related to an alleged “trespass” and that he be “reimbursed for damages” caused by frozen pipes. (Complaint ¶ 5)

8. It is well-established that the Commission does not have the authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

9. Furthermore, the Commission does not have jurisdiction over claims of a utility’s negligence or other tortious conduct. “Actions for damages are properly claimed in a court of common pleas, which has proper jurisdiction over negligence and other tort claims.” *Horowitz v. PECO Energy Company*, Docket No. C-2013-2382740 (Final Order Entered February 6, 2014); *see also Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A.2d 744 (Pa. Cmwlt. 1995).

10. Here, the Complainant’s request for damages and tort-based claims are impertinent matters “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). Indeed, requests for damages are

regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No. C-2011-2264876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 2012 Pa. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

11. Therefore, the Complainant's request for damages and tort-based claims are impertinent matters and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2). Furthermore, the Commission lacks jurisdiction over tort-based claims and they should be stricken from the Complaint pursuant to 52 Pa. Code § 5.101(a)(1).

WHEREFORE, National Fuel respectfully requests that the Complainants' request for damages and tort-based claims be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(1) and 52 Pa. Code § 5.101(a)(2) respectively.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, National Fuel Gas Distribution Corporation respectfully requests that the request for damages and the tort-based claims in the above-captioned Formal Complaint be dismissed pursuant to 52 Pa. Code § 5.101(a)(1) and 52 Pa. Code § 5.101(a)(2) respectively.

Respectfully submitted,

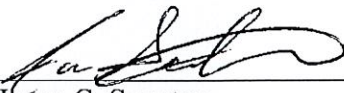


Nathaniel J. Ehrman
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VERIFICATION

I, Jason C. Scouten, being an Assistant Superintendent at National Fuel Gas Distribution Corporation, 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 National Fuel Gas Distribution Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 3/19/20



Jason C. Scouten

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS PICHECO,	:	
	:	PROOF OF SERVICE
Complainant,	:	
	:	
v.	:	
	:	
NATIONAL FUEL GAS	:	
DISTRIBUTION CORPORATION,	:	
	:	DOCKET NO. C-2020-3018963
Respondent,	:	

I hereby certify that I have this day served a true copy of the foregoing document upon the participant, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Thomas Picheco
5736 Cherry St
Erie, PA 16509

NATIONAL FUEL GAS
DISTRIBUTION CORPORATION



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Erie, PA 16512

Dated: 3/20/2020