**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Musgrave IV :

:

v. : C-2020-3020714

:

Pittsburgh Water and Sewer Authority :

**ORDER GRANTING PITTSBURGH WATER AND SEWER AUTHORITY’S PRELIMINARY OBJECTION IN PART AND DENYING IN PART**

HISTORY OF THE PROCEEDING

On July 8, 2020, John Musgrave IV (Complainant or Mr. Musgrave) filed a formal Complaint against Pittsburgh Water and Sewer Authority (PWSA or Respondent) alleging that the utility had failed to provide reasonable and adequate service.

On August 10, 2020, PWSA filed its Answer with a New Matter. A Notice to Plead was attached with the New Matter indicating that an Answer to the New Matter had to be filed within 20 days of service.

On the same date, PWSA also filed Preliminary Objections to the Complaint.

On August 20, 2020, the Complainant filed a response to the Preliminary Objections.

On August 29, 2020, the Complainant filed an Answer to the New Matter.

On September 18, 2020, a Motion Judge Assignment Notice was issued which indicated that the matter was assigned to me.

I will now address the Preliminary Objections filed by PSWA in this matter.

DISCUSSION

The Complainant alleges in his formal Complaint that PWSA has failed to provide water that is adequately chlorinated. The Complainant also contends that the PWSA has failed to fix the water main that services his home. The Complainant contends that the service line to his home has experienced a number of breaks which results in loss of water service.

PWSA filed a Preliminary Objection and New Matter to address the Complainant’s accusations. PWSA alleges that the Commission does not have jurisdiction regarding water quality issues, specifically the chlorination levels. PWSA also asserts that the Commission does not have jurisdiction to settle dispute as to whether a service line is on public or private land. Finally, PWSA contends that the Complainant does not have standing to bring this matter as his father was last person listed as the customer of record for water service for the address at issue.

The Complainant in his response to the Preliminary Objections and New Matter, indicates that he has been paying the bills for the account for awhile and is the customer of record for the account. Further, he disputes that the service line is on private property and that PWSA has the responsibility to provide him with adequate and safe service. Lastly, the Complainant indicates that the chlorination of the water is important to the safety of the water service.

The Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company,* 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission,* 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward,* 802 A.2d 705 (Pa.Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.,* 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

The regulation reads as follows:

**§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(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).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S.A. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593, (Pa.Cmwlth. 2003), *petition for allowance of appeal denied*, 836 A.2d 123 (Pa. 2003); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’m*, 563 A.2d 548 (Pa.Cwmlth. 1989); *Edan Transportation Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa.Cwmlth. 1993).

In the present matter, a hearing in this case is still necessary as there is a disputed question of fact which must be resolved. The Complainant disputes the Company’s contention that he is not the customer of record in this case. The Complainant in his Complaint avers that there is a reliability, safety or quality problem with his utility service which the Respondent specifically denied in its Answer. While the specific chlorine readings are not in the Commission’s jurisdiction, in general water quality can be reviewed by the Commission. Further, whether the service line is within the jurisdiction of the PWSA and therefore would be their responsibility to repair is an issue that the Commission should consider, especially since the Complainant disputes the PWSA’s factual contention that it is a private service line. Therefore, questions remain whether, pursuant to the Public Utility Code and applicable regulations, PWSA provided the Complainant with adequate, efficient, safe, and reasonable service and whether civil penalties are warranted in this case. The Complainant is advised that he will bear the burden of proof at hearing and must present evidence sufficient to prove that the Respondent violated a statute, regulation, its tariff or an order of the Commission. 66 Pa.C.S. § 332(a).

CONCLUSIONS OF LAW

1. The filing of a preliminary objection is permitted under Commission regulations. 52 Pa.Code § 5.101(a)(1)-(6).

2. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

3. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

4. The Respondent has not established that the Preliminary Objections should be granted in this matter.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection and Motion to Strike Impertinent Matter filed by Pittsburgh Water and Sewer Authority in the case captioned *John Musgrave IV v. Pittsburgh Water and Sewer Authority,* Docket No. C-2020-3020714, is granted in part;
2. That the Complainant’s allegations regarding specific chlorination levels as related to the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act are stricken from the Complaint;
3. That the hearing should be scheduled to address the issues of whether Pittsburgh Water and Sewer Authority provided the Complainant with adequate, efficient, safe, and reasonable service, whether the general water quality is safe service, whether the Complainant has standing to bring the Complaint, and whether civil penalties should be assessed.

Dated: October 27, 2020 \_\_\_\_\_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Marta Guhl

Administrative Law Judge

**C-2020-3020714 -** **JOHN KERR MUSGRAVE, IV v. THE PITTSBURGH WATER AND SEWER AUTHORITY**

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