

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason Paul	:	
	:	
v.	:	C-2020-3021361
	:	
Alliance Petroleum Corporation	:	
a/k/a Diversified Production LLC	:	

**NOTICE TO PLEAD**

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Diversified Production LLC, and the Administrative Law Judge presiding over the issue.

The Pennsylvania Public Utility Commission has urged parties to file documents using the Commission's eFile filing system, which can be found online at: <https://efiling.puc.pa.gov/>

The Pennsylvania Public Utility Commission's mailing address for filings is:

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

In addition, a copy of any response hereto shall be electronically served on Administrative Law Judge Emily I. DeVoe at: [edevoe@pa.gov](mailto:edevoe@pa.gov)

Respectfully submitted,

A handwritten signature in cursive script that reads "Eric L. Calvert". The signature is written in black ink and is positioned above a horizontal line.

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***Counsel for Diversified Production LLC***

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**PRELIMINARY OBJECTION OF ALLIANCE PETROLEUM  
CORPORATION A/K/A DIVERSIFIED PRODUCTION LLC  
TO THE COMPLAINT OF JASON PAUL**

Pursuant to 52 Pa. Code § 5.101, Alliance Petroleum Corporation a/k/a Diversified Production LLC (“Diversified”) submits these Preliminary Objections to the Complaint of Jason Paul (the “Complaint”) in the above captioned proceeding and requests that the Complaint be stricken in its entirety and the proceeding dismissed with prejudice.

**I. INTRODUCTION**

1. The Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(1) because Diversified is not a Public Utility and the Pennsylvania Public Utility Commission (“Commission”) lacks jurisdiction over Diversified and the natural gas operations which are the subject of the Complaint. The Complainant cites a “problem with [his] utility service,” which the Complaint describes as alleged lack of certain information regarding a “Gondor” natural gas well. Diversified interprets this “Gondor” well to refer to the Gonder R H 1 well, permit number 37-111-20186, located in Jenner Township, Somerset County, Pennsylvania (the “Well”). Diversified Production LLC owns and operates the Well. Diversified Production LLC was formerly known as Alliance Petroleum Corporation

2. As to the substance of the Complaint, Mr. Paul demands “[a]] full detail as to the operation, status to the “Gondor” vertical gas well, production records, person in charge, safety conditions, location of horizontal gas lines under my property. In addition a full explanation why Indiana, PA location refuses to have a safety or public relations department competent of safety concerns of public.” Mr. Paul owns a very small mineral interest in the natural gas production from the Well and is entitled to certain information. Accordingly, Diversified provided Mr. Paul with Well production records from the Pennsylvania Department of Environmental Protection. Further, a list of Diversified contacts who may be able to assist Mr. Paul directly has been provided to Mr. Paul. Diversified employees with knowledge of the Well have also tried to contact Mr. Paul.

3. Nevertheless, Mr. Paul has mistakenly brought his request for information regarding the Well and Diversified’s operations before the Commission in the form of his Complaint. The Commission does not have jurisdiction to hear the matters set out in the Complaint because Diversified is not a Public Utility. Diversified does not distribute natural gas to the public for compensation; Diversified engages in oil and gas production operations from wells that are duly permitted, bonded, and operated by Diversified under the terms of applicable oil and gas leases and in full compliance with all state and federal regulations, including any applicable public relations and disclosure requirements. The natural gas produced by Diversified is generally sold to private buyers under the terms of private contracts.

## **II. ARGUMENT**

### **A. Legal Standard**

4. A respondent before the Commission has the right to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the

Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R.C.P 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

5. While considering whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), appeal denied, 788 A.2d381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be granted if, based on the facts averred by the Complaint, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), appeal denied, 50 A.3d 126 (Pa. 2012).

**B. Preliminary Objection: The Commission Lacks Jurisdiction Over Diversified and the Natural Gas Production Operations Cited In The Complaint.**

6. Pursuant to 52 Pa. Code § 5.101(a)(1), the Complaint should be stricken and this proceeding dismissed with prejudice because the law is clear and free from doubt that the Commission does not have subject matter jurisdiction of Diversified's oil and natural gas production and operations, which are the subject of the Complaint.

7. The Commission only has the powers and authority granted to it by the Pennsylvania General Assembly as contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28,

2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and not exceed, its jurisdiction. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n.*, 43 A.2d 348 (Pa Super. 1945). Subject matter jurisdiction is essential to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

8. In Pennsylvania, a “Public Utility” is defined in pertinent part as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.” 66 Pa. C.S. § 102.

However, the applicable statute also provides the following specific exclusion from the definition of a Public Utility: “(iii) [a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.” 66 Pa. C.S. § 102 (emphasis added).

9. Diversified is an independent oil and gas producer that owns and operates oil and gas wells, including the Well, in Pennsylvania and other states. Diversified sells the natural gas produced from the Well to private, corporate purchasers under the terms of private natural gas purchase contracts. Diversified does not distribute the natural gas produced from the Well, or from any of its oil and gas facilities in Pennsylvania, “directly to the public for compensation” and is therefore specifically excluded from the definition of a Public Utility over which the Commission may assert subject matter jurisdiction. *Id.*

10. In addition, the Commission lacks jurisdiction over the oil and gas lease which governs the private contractual rights of Mr. Paul and Diversified with regard to Diversified’s production of natural gas from the Well, including Mr. Paul’s right to information about the Well. The subject oil and gas lease, originally by and between CNG Development Company

and Aleck T. Baraniak, is dated September 27, 1988 and recorded in the public records of Somerset County, Pennsylvania as Lease Number DV00951, volume 1041, page 077 (the "Lease").

11. The Commission generally lacks jurisdiction to interpret, enforce, or adjudicate disputes regarding a contract between private entities. *See Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012) ("[T]here can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses."); *Adams v. Pa. PUC*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003) ("[T]he PUC lacks jurisdiction over private contractual disputes.").

12. Here, Mr. Paul's Complaint contains only allegations relating wholly to Diversified's operation of the Well and the alleged lack of information provided by Diversified to Mr. Paul. Diversified's operation of the Well and related facilities, and Mr. Paul's rights regarding receiving information from Diversified, are governed by the terms of the Lease - a private contract "involving a private individual and a business." *Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012).

13. The Complaint should be stricken and this proceeding dismissed with prejudice because (i) the law is clear that Diversified is not a Public Utility over which the Commission may assert jurisdiction and (ii) the Commission lacks jurisdiction over private contracts such as the Lease governing Mr. Paul's mineral rights and Diversified's operation of the Well and facilities.

14. Diversified's Preliminary Objection should be granted as "the relief is clearly warranted and free from doubt." *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

### III. CONCLUSION

WHEREFORE, for the reasons stated above, Diversified respectfully requests that the Commission (1) grant this Preliminary Objection, (2) strike Mr. Paul's Complaint in its entirety and (3) dismiss these proceedings with prejudice.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of November, 2020, I electronically filed the foregoing "Preliminary Objections to the Complaint of Jason Paul" with the clerk of the Commission using the Pennsylvania Public Utility Commission's eService system, which will send notification of such filing to the following:

JASON PAUL  
132 CESSNA HILL RD  
BOSWELL PA 15531  
Accepts eService

Respectfully submitted,



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