

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objection filed by Alliance Petroleum Corporation a/k/a/ Diversified Production LLC and dismisses the Formal Complaint filed by Jason Paul because the Complaint insufficiently avers that the Respondent is a “public utility” under 66 Pa. C.S § 102.

HISTORY OF THE PROCEEDING

On March 17, 2020, Jason Paul (Complainant or Mr. Paul) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Alliance Petroleum Corporation a/k/a Diversified Production LLC (Company, Respondent or Diversified), alleging the Company was “operating a gas well with unknown operating conditions” and “will not respond as to operation status.” As relief, Complainant requests “a full detail as to operation, status of the Gondor [illegible] gas well, production records, person in charge, safety conditions, location of horizontal gas lines under my property.” He also requests

“a full explanation why Indiana PA location refuses to have a safety or public relations dept comptent [sic] of safety concerns of public.”

On September 1, 2020, the Company filed correspondence advising, *inter alia*, that Diversified is not a utility, Complainant does not own an interest in the subject well or the oil and gas property where the subject well is located, and Diversified complies with all applicable leases and federal and state regulations.

On September 24, 2020, a Hearing Notice was entered, scheduling an initial hearing for Thursday, November 12, 2020, at 10:00 a.m. The Notice advised the Parties they were responsible for calling into the hearing at the scheduled date and time. The Notice reads, **“At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Presiding Officer.”** (emphasis in original). The Notice also provides, *“Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”* (emphasis in original). The Notice included the toll-free bridge number, the PIN number, and instructions on how to call into the hearing.

On September 28, 2020, an Interim Order was entered converting the November 12, 2020 proceeding to a prehearing conference.

The Notice and Interim Order were sent to Complainant via email.¹

The undersigned called into the prehearing conference on November 12, 2020, at approximately 10:00 a.m. Respondent’s counsels, Benjamin M. Sullivan, Esquire, and Eric L. Calvert, Esquire², were present for the conference. Complainant was not present. In order to give Complainant an opportunity to participate in the conference, the undersigned directed her legal assistant to call Complainant and remind him to call into the conference. The legal

¹ See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order Entered March 20, 2020).

² Attorney Calvert was admitted *pro hac vice* by Interim Order dated November 6, 2020.

assistant left a voice mail message for Complainant that included the conference call-in bridge and PIN numbers.³

At approximately 10:10 a.m., the prehearing conference commenced in Complainant's absence. Attorney Calvert addressed various issues, including Respondent's intent to file either Preliminary Objections or a Dispositive Motion in this matter. The conference was then concluded.

Later on November 12, 2020, Complainant called the undersigned's office and left a message indicating that he was under the impression that someone was going to call him for the conference, and no one called him.

Based on counsel's stated intent to file Preliminary Objections or a Dispositive Motion in this matter, the undersigned did not schedule a second prehearing conference or evidentiary hearing. Rather, on November 16, 2020, the undersigned issued an Interim Order setting a deadline of November 30, 2020 for the Company to file a dispositive motion or preliminary objections.

On November 24, 2020, Complainant filed correspondence regarding his failure to appear at the conference. Complainant advised he was unable to appear "due to self quarantine" [sic.] and that he called into the 412 number and was told he had to call on time and explain his health issue. His correspondence is unclear as to when he called, what number he called, and to whom he spoke.

On November 24, 2020, the Company filed Preliminary Objections. The Company argued the Complaint should be dismissed pursuant to 52 Pa.Code § 5.101(a)(1), because Diversified is not a public utility and the Commission lacks jurisdiction over Diversified and the natural gas operations which are the subject of the Complaint. The Company explains that it does not distribute natural gas to the public for compensation; rather, it engages in oil and gas production operations from wells operated by Diversified under the terms of applicable oil

³ See N.T. 4

and gas leases. Diversified explains that the natural gas it produces is generally sold to private buyers under the terms of private contracts. As relief, Diversified requests that the Commission grant its Preliminary Objection, strike the Complainant's Complaint in its entirety, and dismiss these proceedings with prejudice.

The Preliminary Objections included a Notice To Plead, directing Complainant to file a response within 10 days of service. Complainant did not file a response to the Preliminary Objections.

By Interim Order, the record closed on December 16, 2020.

FINDINGS OF FACT

1. Complainant is Jason Paul.
2. Respondent is Alliance Petroleum Corporation a/k/a/ Diversified Production LLC.
3. On March 17, 2020, Complainant filed a Complaint with the Commission against Respondent, alleging the Company was "operating a gas well with unknown operating conditions" and "will not respond as to operation status."
4. The Complaint avers that the Company is "operating a gas well with unknown operating conditions" and "will not respond as to operation status."
5. The Complaint does not aver that the Company is a producer of natural gas engaged in distributing such gas directly to the public for compensation.

DISCUSSION

In its Preliminary Objection, Respondent argues that the Complaint should be dismissed in its entirety because the Company is not a public utility and the Commission lacks authority to hear Complainant's Complaint.⁴

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.⁵ The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.⁶

Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state 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.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the

⁴ Pursuant to 52 Pa Code § 5.101, preliminary objections must be filed within 20 days of the date of service of a complaint. The Company's preliminary objections in this case were filed well after the 20-day deadline. However, the presiding officer may, at any stage of the proceeding, waive a requirement when necessary or appropriate, as long as the waiver does not adversely affect a substantive right of a party. 52 Pa.Code § 1.2(a), (c). In this case, no substantive right of a party would be affected by ruling on the Company's Preliminary Objection as if it had been filed timely because the Complainant had notice of the Preliminary Objection and the opportunity to respond.

⁵ 52 Pa. Code § 5.101(a). *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

⁶ *Id.*

other party, as well as every inference fairly deducible from those facts. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences.⁷ All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.⁸ However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code (“Code”).⁹ The Commission must act within, and cannot exceed, its jurisdiction.¹⁰ Jurisdiction may not be conferred by the parties where none exists.¹¹ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹²

The Commission has discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.¹³

Section 701 of the Public Utility Code, 66 Pa.C.S §701 (Section 701), provides:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by **any public utility** in violation, or claimed violation, of any law which the commission has

⁷ 52 Pa.Code §101(a)(1)-(7); *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

⁸ *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

⁹ *Shedlosky v. Pa. Elec. 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).

¹⁰ *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

¹¹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹² *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

¹³ 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

jurisdiction to administer, or of any regulation or order of the commission. services.^[14]

Section 102 of the Code, 66 Pa.C.S § 102 (Section 102), defines the term “public utility” 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.**
 - (ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
 - (iii) Transporting passengers or property as a common carrier.
 - (iv) Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.
 - (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, **for the public for compensation.**
 - (vi) Conveying or transmitting messages or communications, except as set forth in paragraph (2)(iv), by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.
 - (vii) Wastewater collection, treatment, or disposal for the public for compensation.
 - (viii) Providing limousine service in a county of the second class pursuant to Subchapter B of Chapter 11 (relating to limousine service in counties of the second class).^[15]

Section 102 further provides that the term “public utility” does not include “any producer of natural gas not engaged in distributing such gas directly to the public for compensation.”¹⁶

Therefore, to survive the Preliminary Objection, the Complaint must sufficiently aver that the Company is a public utility over which the Commission has jurisdiction.¹⁷ The

¹⁴ 66 Pa.C.S. § 701 (emphasis added).

¹⁵ 66 Pa.C.S. § 102 (emphasis added).

¹⁶ 66 Pa.C.S § 102.

¹⁷ 66 Pa.C.S. § 332(a), 52 Pa. Code 5.21(a).

Complaint must include averments that, if assumed to be true, would establish that the Company directed meets the definition of a “public utility” in Section 102 of the Code.

In his Complaint, Complainant avers Diversified is “operating a well with unknown operating conditions” and will not respond to his questions regarding its operation status. As relief, Complainant requests “a full detail as to operation, status of the Gondor [illegible] gas well, production records, person in charge, safety conditions, location of horizontal gas lines under my property.” He also requests “a full explanation why Indiana PA location refuses to have a safety or public relations dept comptent [sic] of safety concerns of public.”

As discussed above, the Commission has only the authority granted to it by statute. Section 701 of the Code provides that individual members of the public, such as Mr. Paul, may file a complaint with the Commission against any “public utility.” A complaint filed under Section 701 of the Code must sufficiently aver that the company is in fact a “public utility.”

In this case, Complainant avers only that the Company is a producer of natural gas and does not make any averments that the Company distributes gas directly to the public for compensation. Absent such averments, the Complaint fails to sufficiently aver that the Commission has authority to hear the Complaint under the Commission’s authority in Section 701. Notably, in its Preliminary Objection, the Company argues it is not a jurisdictional public utility as it does not distribute gas directly to the public for compensation. Complainant did not file any response refuting the Company’s claim.¹⁸

The Commission, in addition to having authority over “public utilities” as defined in Section 102, also has limited authority over pipeline operators pursuant to the Gas and Hazardous Liquids Pipelines Act (Pipeline Act or Act 127).¹⁹ Section 501(a) of Act 127 (Section

¹⁸ As this decision is a ruling on Preliminary Objections, rather than a ruling on some dispositive motion, such as a Motion for Judgment on the Pleadings, it would be improper for the undersigned to make a finding that the Respondent is *in fact* not a “public utility.” Therefore, this decision limits its analysis to whether Complainant *sufficiently avers* the Company is a “public utility.”

¹⁹ Act of Dec. 22, 2011, P.L. 856, No. 127.

501) grants the Commission the “general administrative authority to supervise and regulate pipeline operators within this Commonwealth consistent with Federal pipeline safety laws.”

Section 501 establishes that the Commission has the following duties:

- (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 Federal 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.²⁰

Section 102 of Act 127 defines a “pipeline operator” as “a person who owns or operates equipment or facilities in this Commonwealth for the transportation of Hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.”

Assuming that the Company meets the definition of a “pipeline operator” in Section 102, Section 501 does not explicitly grant the Commission to hear Complaints filed by members of the public, such as Mr. Paul, against pipeline operators. Section 501 grants *the Commission* the authority to *supervise* and *investigate*. Undoubtedly, Section 501 grants the Commission the authority to initiate its *own investigation* into pipeline operators, however, it does not necessarily follow that it also has the authority to hear and adjudicate complaints initiated by

²⁰ Act 127 § 501(a)

individual members of the public, such as Mr. Paul. Because Section 501 does not expressly grant the Commission to hear complaints against pipeline operators initiated by members of the public, and the Commission only has the authority granted to it by statute, the instant Complaint cannot be heard under Section 501.²¹

The Complaint fails to sufficiently aver the Company is a “public utility” such that the Commission would have authority to hear the Complaint under Section 701, and Section 501 does not grant the Commission to hear complaints against pipeline operators initiated by individual members of the public. Therefore, the Preliminary Objection must be granted, and the Complaint must be dismissed.

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record, and cautions against dismissing cases on a preliminary basis. In the often-cited case of *Carlock v. United Telephone Company of Pennsylvania (Carlock)*²², the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed because of a preliminary pleading.²³ The Commission explained that in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form.²⁴

This case is distinguishable from *Carlock* in that this case is not being dismissed due to an insufficiency of pleading regarding an alleged violation of a statute, regulation, order, or tariff provision by a public utility over whom the Commission undoubtedly has jurisdiction. Rather, this Complaint is being dismissed because the Complaint fails to sufficiently aver that the Company meets the definition of a “public utility” such that the Commission has the

²¹ *Even if* the Company in fact meets the definition of a “pipeline operator” *and* the Commission has the authority to hear complaints against pipeline operators initiated by individual members of the public, Complainant does not aver that the Company has violated any state or Federal statute, regulation, or order. Complainant only avers that the Company is operating a well with “unknown conditions.”

²² Docket No. F-00163617 (Order entered July 14, 1993).

²³ *Id.* at 7.

²⁴ *Id.*

authority under Section 701 to hear the Complaint. Allowing this Complaint to proceed will incur additional litigation costs for the Company, relating to a complaint the Commission lacks the authority to hear.

Section 703 of the Code, 66 Pa.C.S. § 703(b), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.²⁵ The public interest does not require a hearing in this case. Complainant has failed to sufficiently aver that the Company is a jurisdictional public utility. Although provided an opportunity to appear at the conference and provide a written response to the Preliminary Objection, Complainant did neither. Allowing the Complaint to proceed at this point will unnecessarily increase costs for Diversified and consume Commission resources. Therefore, the Complaint is dismissed, in its entirety, without a hearing.

CONCLUSIONS OF LAW

1. The Commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. 66 Pa.C.S § 501(b).
2. The term “public utility” does not include “any producer of natural gas not engaged in distributing such gas directly to the public for compensation.” 66 Pa.C.S. § 102.
3. As the party seeking relief, Complainant has the burden of proving that Diversified is a jurisdictional public utility. 66 Pa.C.S. § 332(a), 52 Pa.Code § 5.21(a).
4. In order to be legally sufficient, a complaint must allege that (1) the respondent is a jurisdictional public utility and (2) that it has violated some statute, regulation, order, or tariff provision. 66 Pa.C.S. § 332(a), 52 Pa.Code § 5.21(a).

²⁵ See also, 52 Pa.Code § 5.21(d).

5. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

6. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

7. A hearing in this matter is not necessary to the public interest.

8. The Commission does not have the authority to hear the complaint filed in this matter.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Alliance Petroleum Corporation a/k/a/ Diversified Production LLC in response to the Complaint of Jason Paul filed on March 17, 2020, at Docket No. C-2020-3021361, is granted.

2. That the Complaint filed by Jason Paul against Alliance Petroleum Corporation a/k/a/ Diversified Production LLC at Docket No. C-2020-3021361 is hereby dismissed.

3. That the Secretary's Bureau shall mark C-2020-3021361 as closed.

Date: January 7, 2021

_____/s/
Emily I. DeVoe
Administrative Law Judge