

# Commonwealth of Pennsylvania

## Before the Pennsylvania Public Utility Commission

In the Matter of:

Stephen Morgan,  
Complainant,

Complaint Docket  
No. C-2020-3021730

VS.

Columbia Gas of Pennsylvania, Inc.,  
Respondent.

### Joint Motion to Transfer

**AND NOW** comes Stephen Morgan and Brian Dolfi (Complainants) and Columbia Gas of Pennsylvania, Inc. (Columbia Gas), pursuant to 52 *Pa. Code*, Section 5.101 (a)(1) and 42 Pa. C.S. § 5103, and file the following Joint Motion to Transfer:

1. On or about August 6, 2020, Complainant Morgan, an adjacent property owner, filed a formal complaint with the Commission regarding a 2018 Landslide that occurred on Scenery Drive, Belle Vernon, PA. The Complaint also joined an additional individual by the name of Brian Dolfi as a complaining party, also an adjacent property owner located at 623 Hamilton Avenue, Belle Vernon, PA.
2. On September 22, 2020, Columbia Gas filed an Answer, New Matter and Preliminary Objections to the Complaint.
3. On October 26, 2020, the assigned Administrative Law Judge issued an Interim Order directing Complainant Morgan to file an Amended Complaint, holding in abeyance the standing of Complainant Morgan and dismissing Complainants' request for monetary damages.
4. On November 3, 2020, the assigned Administrative Law Judge issued an Interim Order extending the time for Complainant Morgan to file an amended complaint until no later than November 24, 2020 and directing Complainant Morgan to clarify the relationship of Complainant Morgan to Complainant Dolfi.
5. By November 24, 2020, counsel filed their Notices of Appearance for both Complainants Morgan and Dolfi, and on November 24, 2020, Complainants Morgan and Dolfi filed an Amended Complaint in the above matter. The Amended Complaint included Stephen Morgan and Brian Dolfi as complainants and owners of three adjacent properties that border Scenery Drive, Belle Vernon, PA.

6. On December 21, 2020, Columbia Gas filed an Answer to Complainants' Amended Complaint.

7. On December 22, 2020, Columbia Gas filed a Motion for Judgment on the Pleadings arguing, *inter alia.*, that the Complainants' claims should be dismissed because the claims are time-barred by the Commission's rules and the Commission is not the appropriate forum.

8. On December 22, 2020, the Presiding Administrative Law Judge issued a Hearing Type Change Notice providing that the telephonic hearing scheduled for January 20, 2020 be changed to a Prehearing Conference.

9. On December 28, 2020, the Presiding Administrative Law Judge issued an Interim Order dismissing an outstanding Preliminary Objection as moot and directing the parties to file Prehearing Conference Memorandums no later than January 19, 2021

10. On January 11, 2021, Complainants filed a Response in Opposition to Motion for Judgment on the Pleadings and Brief.

11. On January 19, 2021 Complainants and Columbia Gas filed a Joint Prehearing Memorandum. The Joint Memorandum proposed a time schedule for investigation, discovery depositions and exchange of information between the parties.

12. A Prehearing Conference was held on January 20, 2021. At the Prehearing Conference, *inter alia.*, the possibility of transferring this matter to the Court of Common Pleas of Westmoreland County pursuant to 42 Pa. C.S. § 5103 was discussed. Westmoreland County is the County wherein the three adjacent properties that border Scenery Drive, Belle Vernon, PA are located.

13. On January 25, 2021, the Presiding Administrative Law Judge issued an Interim Order Denying Columbia Gas's Motion for Judgment on the Pleadings.

14. Complainants and Columbia have further considered the transfer of this matter and now file this Joint Motion requesting that this matter with the Commission be stayed while Complainants' claims for monetary damages are transferred to and heard before the Court of Common Pleas of Westmoreland County pursuant to 42 Pa. C.S.A. § 5103 where it shall be treated as if originally filed by Complainants Morgan and Dolfi in the Court of Common Pleas of Westmoreland County, the transferee court, on the date when first filed in the Pennsylvania Public Utility Commission – August 6, 2020. 42 Pa. C.S.A. § 5103(a) (“A matter which is within the exclusive jurisdiction of a court...of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court...of this Commonwealth where it shall be treated as if originally filed in the transferee court...of this Commonwealth on the date when first filed in the other tribunal).

15. Applicable Commission and relevant Court cases indicate that the enforcement powers of the Commission do not include the power to award monetary damages and thus, the Commission lacks jurisdiction to award monetary damages in any matter, including this matter.

*Elkin v. Bell*, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (1978); see *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa. Super. 1981). The Court of Common Pleas retains original jurisdiction over matters for monetary damages. *Behrend v. Bell Telephone Co.* 363 A.2d 1152 (Pa. Super. 1976). This matter should be litigated in a civil court as Plaintiff may be entitled to monetary damages under the facts alleged.

16. Moreover, The Pennsylvania Public Utilities Commission (“PUC”) falls within the definition of tribunal under 42 Pa. Cons. Stat. § 5103(d). This section defines “tribunal” as “a court...or other judicial officer of the Commonwealth vested with power to enter an order in a matter. The statute includes in this classification the “the Board of Claims, the Board of Property, the Office of Administrator for Arbitration Panels for Health Care and any other similar agency. *Id.*

17. Courts extend the “any other similar agency” language under this section to include commonwealth agencies possessing statewide jurisdiction over subjects which are also, in other instances, within the original jurisdiction of the courts. *Barner v. Board of Supervisors of South Middleton Township*, 537 A.2d 922, 926 (Pa. Commw. Ct. 1988). The PUC is a commonwealth agency. *Mercury Trucking, Inc. v. Pennsylvania Public Utility Commission*, 55 A.3d 1056, 1068 n.4 (Pa. 2012) (holding that an independent administrative commission is a Commonwealth agency under the Judicial Code).

18. The PUC also shares statewide jurisdiction with the courts over subjects which are in other instances within the courts’ original jurisdiction. *Barner*, 537 A.2d at 926 (Cmmwlth. Ct. 1988). The PUC has the statewide power upon complaint to “reform all contracts between a public utility and any person, corporation, or municipal corporation . . .” 66 Pa. Cons. Stat. § 508.<sup>1</sup> 42 Pa. Cons. Stat. § 931(a) vests the courts of common pleas with unlimited original jurisdiction including contract disputes. See *E.g., Ogontz Controls Company v. Pirkle*, 499 A.2d 593, 595 (Pa. Super. Ct. 1985). The PUC and the courts of common pleas share jurisdiction over contract disputes concerning public utilities. The courts also share jurisdiction over disputes within the PUC’s jurisdiction where inadequate administrative remedies are available. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 793-94 (Pa. 1978).

19. Moreover, the doctrine of primary jurisdiction allows courts to refer matters within the special competence of an administrative agency to that agency for resolution. *County of Erie v. Verizon North, Inc.* 879 A.2d 357, 363 (Pa Commw. Ct. 2005). The doctrine suspends the courts’ proceedings rather than completely divesting it of jurisdiction. *U.S. Int’l Bhd. of Elec. Workers Local Union No. 98 v. The Farfield Co.*, 389 F. Supp. 3d. 275, 283 (E.D. Pa. 2019). Although, the agency’s determination on the matter within its expertise binds the court, *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371, 376 (Pa. 1980), the court retains jurisdiction over the question of damages if administrative relief will not make the litigant whole. *Pettko v. Pennsylvania American Water Co.*, 39 A.3d 473, 484 (Pa. Commw. Ct. 2012). In those situations, the PUC shares jurisdiction with the courts over subjects which are in other instances within the courts’ original jurisdiction.

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<sup>1</sup> 42 Pa. Cons Stat. § 763(a)(1) also lists the Public Utility Commission among agencies with statewide jurisdiction.

20. The weight of authority also supports the contention that the PUC is a tribunal under 42 Pa. Cons. Stat. § 5103(d). See *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 699-700 (Pa. Commw. Ct. 2018) (concurrence suggesting that transfer of complaint to PUC was proper under 42 Pa. Cons. Stat. § 5103(a)); *Ass'n of Cmty. Org. for Reform Now v. City of Philadelphia Water Dept.*, 512 A.2d 1312, 1315 (Pa. Commw. Ct. 1986) (holding that transfer of a dispute from the court to the PUC was unavailable before 42 Pa. Cons. Stat. § 5103(a) was amended to include administrative agencies); *Optimum Image, Inc. v. Philadelphia Elec. Co.*, 600 A.2d 553, 555 (Pa. Super. Ct. 1991) (holding that the court validly transferred a claim to the PUC pursuant to trial court order). Notedly, the transfer of matters under 42 Pa. Cons. Stat. § 5103(a) is reciprocal – when appropriate, a matter may be transferred from either the Court to the PUC or from the PUC to the Court. Finally, and as stated, the PUC is included within the definition of tribunal under the *Barner* test as a commonwealth agency with statewide jurisdiction over subjects which are in other instances within the courts' original jurisdiction. *Barner*, 537 A.2d at 925 (Pa. Commw. Ct. 1988).

21. With the transfer of this matter as to Complainants claims for monetary damages to the Court of Common Pleas of Westmoreland County, the Complainants and Columbia Gas agree to toll the statute of limitations as of August 6, 2020, the date the Complainants initiated this action at the PUC.

22. With the transfer of this matter as to Complainants claims for monetary damages to the Court of Common Pleas of Westmoreland County, Columbia Gas agrees to consent to Complainants' Motion to Amend Complaint that may be filed with the Court of Common Pleas of Westmoreland County.

23. The Complainants and Columbia Gas also request that the caption be amended to include both Complainants, Stephen Morgan and Brian Dolfi, as Complainants in this matter and in the matter transferred to the Court of Common Pleas of Westmoreland County.


24. Therefore, this matter as to Complainants claims for monetary damages should be transferred to the Court of Common Pleas of Westmoreland County as if filed by Complainants on August 6, 2020 pursuant to 42 Pa. C.S.A. § 5103 because the Commission does not have jurisdiction to make an award for Complainants' monetary damages. Unlike the Commission, a court of common pleas in the event of a finding of liability has the authority to order the remedy of monetary damages for Complainants.

**WHEREFORE**, since a) the Commission does not have jurisdiction to make an award for Complainants' monetary damages and, b) unlike the Commission, a court of common pleas, in the event of a finding of liability, has the authority to order monetary damages to Complainants, Complainants' claims for monetary damages are properly within the purview of civil court. Therefore, Complainants and Columbia Gas request that an order be issued: 1) amending the caption to include both Complainants, Stephen Morgan and Brian Dolfi, as Complainants in this matter and in the matter transferred to the Court of Common Pleas of Westmoreland County; 2) transferring this matter as to Complainants' claims for monetary damages to the Court of Common Pleas of Westmoreland County to be treated as if originally


filed in the Court of Common Pleas of Westmoreland County on August 6, 2020, the date when first filed in the Commission; and 3) staying indefinitely the matter before the Commission.

Respectfully submitted,

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Columbia Gas of Pennsylvania, Inc.

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Dated: 5/24/2021