

**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.

**Proposed Order Granting Joint Motion to Transfer**

Procedural History

On August 6, 2020, Complainant Morgan, an adjacent property owner, filed a Formal Complaint with the Commission against Columbia Gas of Pennsylvania, Inc. (Respondent or Columbia or Company) 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. The Complaint alleged that “a slide occurred after Columbia Gas installed a line, [and] Columbia Gas did not restore the property to the condition it was in prior to the installation work.” For relief, Complainant Morgan requested Columbia “restor[e] the property to the prework condition [and] repair damage done by the slide.”

On September 22, 2020, Columbia filed an Answer, New Matter and Preliminary Objections to the Complaint. Columbia averred in its Answer, *inter alia*, that Columbia installed a main gas line in the public street in the vicinity of Scenery Drive, Belle Vernon, PA in 2011/2012 and that a land slide occurred thereafter in September 2018 in the vicinity of 1810 Scenery Drive, Belle Vernon, PA that damaged the main gas line in the public street. Columbia alleged that it made all appropriate repairs, installed a new gas line and denied knowledge of any damage to property located at 745 Fellsburg Road and denied the other material averments in the Complaint.

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 as the exclusive jurisdiction for claims of monetary damages lies with the Court of Common Pleas. Upon reconsideration, this Order reinstates Complainants’ request for monetary damages for the purpose of transfer and, correspondingly, grants the Parties’ Joint Motion to Transfer

Complainants' claims for monetary damages to the Court of Common Pleas of Westmoreland County, Pennsylvania, as further set forth below. 42 Pa. C.S. § 5103(a) (a matter which is in 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) (emphasis added).

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. 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.

On December 21, 2020, Columbia filed an Answer to Complainants' Amended Complaint. On December 22, 2020, Columbia 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. 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.

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. On January 11, 2021, Complainants filed a Response in Opposition to Motion for Judgment on the Pleadings and Brief. On January 19, 2021, Complainants and Columbia filed a Joint Prehearing Memorandum. The Joint Memorandum proposed a time schedule for investigation, discovery depositions and exchange of information between the parties.

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

#### The Parties' Joint Motion to Transfer Complainants' Claims for Monetary Damages

Complainants and Columbia further considered the transfer of Complainants' claims for monetary damages to the Court of Common Pleas of Westmoreland County, Pennsylvania, and on May 24, 2021, filed their Joint Motion requesting that the current 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 Complainants' claims for monetary damages shall be treated as if originally filed by Complainants Morgan and Dolfi in the Court of Common Pleas of Westmoreland County, Pennsylvania, 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).

Applicable Commission and relevant Pennsylvania Common Law 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). Accordingly, Complainants' claims for monetary damages, which are reinstated herein, will be transferred to the Court of Common Pleas of Westmoreland County, Pennsylvania, as Complainants may be entitled to monetary damages under the facts alleged.

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 Board of Claims, the Board of Property, the Office of Administrator for Arbitration Panels for Health Care and any other similar agency. *Id.* 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).

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

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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.

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).

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.

Additionally, 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) (concurrency 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). Notably, 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).

With the transfer of this matter as to Complainants claims for monetary damages to the Court of Common Pleas of Westmoreland County, Columbia has agreed: 1) to toll the statute of limitations as of August 6, 2020, the date the Complainants initiated this action at the PUC; and 2) to consent to Complainants' Motion to Amend Complaint that may be filed with the Court of Common Pleas of Westmoreland County, Pennsylvania. In their Joint Motion, the Complainants and Columbia also requested 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.

Considering the Joint Motion to Transfer filed by the Parties and the supporting law, the Complainants' Monetary Claims are reinstated and 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 as the Commission does not have jurisdiction to make an award for Complainants' alleged

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.

Order

THEREFORE, on this \_\_\_\_ day of \_\_\_\_\_, 2021, since a) the Commission does not have jurisdiction to make an award for Complainants', Stephen Morgan and Brian Dolfi, alleged 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.

**IT IS ORDERED:**

- 1) that the Parties' Joint Motion to Transfer Complainants' Claims for Monetary Damages is hereby GRANTED:
- 2) That the caption of this matter is 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, Pennsylvania;
- 3) That the previous Order dismissing Complainants' claims for monetary damages only is hereby reconsidered and these claims for monetary damages are reinstated for the purpose of transferring Complainants' claims for monetary damages to the Court of Common Pleas of Westmoreland County, Pennsylvania;
- 4) That Complainants' claims for monetary damages are hereby transferred to the Court of Common Pleas of Westmoreland County, Pennsylvania.
- 5) That Complainants' claims for monetary damages so transferred by this Order to the Court of Common Pleas of Westmoreland County, Pennsylvania will be treated as if originally filed in the Court of Common Pleas of Westmoreland County on August 6, 2020, the date when those claims were first filed in the Commission by Formal Complaint in accordance with 42 Pa. C.S.A. § 5103;
- 6) That the claims between the Parties remaining with the Commission are stayed indefinitely;
- 7) That by agreement of the Parties and this Order, any applicable statute of limitations regarding Complainants' claims for monetary damages is tolled as of August 6, 2020;

- 8) That Columbia Gas consents to Complainants' filing of a Motion to Amend Complaint before the Court of Common Pleas of Westmoreland County, Pennsylvania;
- 9) That the Commission Secretary certify this Order and the current record/case file before the Commission; and
- 10) That a Certified Copy of a) this Order, and b) the Commission record/case file be provided to counsel for the Complainants to facilitate the transfer of the Complainants' monetary damages claims to the Court of Common Pleas of Westmoreland County, Pennsylvania.

Dated: \_\_\_\_\_

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Emily I. DeVoe  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Proposed Order Granting Joint Motion to Transfer by electronic service pursuant to Emergency Order at Docket No. M-2020-3019262, upon the participants listed below, in accordance with the requirement of Section 1.54 (relating to service by a participant).

Larry R. Crayne, Esquire  
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*(Counsel for Columbia Gas)*

Emily I. DeVoe, Administrative Law Judge  
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Date: August 2, 2021

/s/ Dennis R. Very  
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