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File #: 191808

September 15, 2021

VIA ELECTRONIC FILING

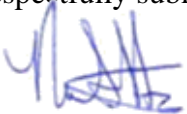
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Robert G. Collins v. The York Water Company
Docket No. C-2021-3028154**

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of The York Water Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc

cc: Certificate of Service

CERTIFICATE OF SERVICE

(Docket No. C-2021-3028154)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL

Robert G. Collins
136 Barclay Lane
Glen Rock, PA 17327
sakitumibob@gmail.com

Date: September 15, 2021



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|---------------------------|
| Robert G. Collins, | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Docket No. C-2021-3028154 |
| | : | |
| The York Water Company, | : | |
| | : | |
| Respondent. | : | |

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR PPL ELECTRIC UTILITIES CORPORATION.



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Of Counsel:

Post & Schell, P.C.

Date: September 15, 2021

Attorneys for The York Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Robert G. Collins, | : | |
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| Complainant, | : | |
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| v. | : | Docket No. C-2021-3028154 |
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| The York Water Company, | : | |
| | : | |
| Respondent. | : | |

**PRELIMINARY OBJECTIONS OF
THE YORK WATER COMPANY TO
THE COMPLAINT OF ROBERT G. COLLINS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes The York Water Company (“York Water” or the “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Complaint”) filed by Robert G. Collins (“Complainant”) in its entirety.

The Complaint alleges that York Water “is trying to buy” the water and wastewater facilities currently owned by Albrights MHP and will begin charging the Complainant after that acquisition. (Complaint ¶ 4.) Through the Complaint, the Complainant alleges that his contract with Albrights MHP “states that water and sewer expenses are provided at no expense to [him] by Albrights MHP,” so he does not want York Water to charge him for those services in the future, and “if they do, for the cost” to “not be \$80.00 a month.” (Complaint ¶ 4.)

As explained herein, the Commission should summarily dismiss the Complaint. The primary flaw with the Complaint is that York Water has not yet filed an Application seeking Commission approval to acquire Albrights MHP's water and wastewater facilities and begin providing service to properties located in Albrights MHP. Therefore, the Complaint is not ripe, and the Complainant lacks standing, *i.e.*, a direct, immediate and substantial injury. Additionally, in the Complaint, the Complainant fails to allege that York Water has violated any provision of the Public Utility Code, a Commission regulation or order, or the Company's Commission-approved tariffs. The Complainant only alleges that he opposes the Company's acquisition of the Albrights MHP water and wastewater facilities because his contract with Albrights MHP "states that water and sewer expenses are provided at no expense to [him] by Albrights MHP." (Complaint ¶ 4.) However, it is well-established that the Commission does not have jurisdiction over private contractual disputes, especially those between a private citizen and a non-utility. Therefore, the Complaint should be summarily dismissed.

In support thereof, York Water states as follows:

I. BACKGROUND

1. York Water is a "public utility" as defined in Section 102 of the Pennsylvania Public Utility Commission Code, 66 Pa. C.S. § 102. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission.

2. By Secretarial Letter dated August 26, 2021, York Water was served with the above captioned Complaint. In the Complaint, the Complainant states that he "does not want The York Water Company to buy the water and sewer service for" Albrights MHP and "if they do, for the cost to [the Complainant] not be \$80.00 a month." (Complaint ¶ 5.)

3. The water and wastewater system currently serving the Complainant is owned and operated by Albrights MHP, which serves a mobile home community in York County, Pennsylvania.

4. Albrights MHP is not a regulated public utility.

5. York Water does not currently provide utility service of any kind to the Complainant.

6. Although York Water has entered into an agreement to purchase the water and wastewater facilities of MHP, closing of the transaction is subject to and conditioned on Commission review and approval.

7. To date, York Water has not filed an Application requesting Commission approval to acquire Albrights MHP's water and wastewater facilities and begin providing water and wastewater services to properties located in Albrights MHP.

8. York Water herein files these Preliminary Objections to the Complaint. For the reasons explained below, the Company respectfully requests that the Complaint be dismissed pursuant to Sections 5.101(a)(4) and (a)(7) of the Commission's regulations because: (1) the Complaint is not ripe for Commission review; (2) the Complainant does not have standing to pursue the claims set forth the Complaint; and (3) the Commission does not have jurisdiction to adjudicate a private contractual matter between the Complainant (a private citizen) and Albrights MHP (a non-utility). *See* 52 Pa. Code § 5.101(a)(4), (a)(7).

II. STANDARD OF REVIEW

9. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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 a 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)(1), (4), (7) (emphasis added).

10. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. V. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

11. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

III. PRELIMINARY OBJECTIONS

A. **PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMPLAINANT’S CLAIMS ARE NOT RIPE FOR REVIEW AND, THEREFORE, THE COMPLAINANT LACKS STANDING (52 PA. CODE § 5.101(A)(4), (7))**

12. York water incorporates by reference Paragraphs 1 through 11 as if fully set forth herein.

13. The Complaint should be dismissed because the Complainant’s claims, arguing that York Water should not be permitted to purchase the water and wastewater facilities of Albrights MHP or, alternatively, not bill the Complainant \$80 per month for water and wastewater services, are not ripe and, therefore, the Complainant lacks standing.

14. In the Complaint, the Complainant asserts that he has a contract with Albrights MHP stating that water and wastewater services will be paid by the landlord. (Complaint ¶ 4, attachment.).

15. “Ripeness is a prerequisite to judicial review.” *Hovis v. Nat’l Fuel Gas Distrib. Corp.*, 2008 Pa. PUC LEXIS 899, at *6-11 (Nov. 10, 2008) (Initial Decision) (“*Hovis*”), *adopted without further action*, Docket No. C-2008-2035033 (Order entered Feb. 23, 2009).

16. The doctrine of ripeness mandates the presence of an “actual controversy” and requires consideration of whether the issues are adequately developed and the hardships that the parties will suffer if review is delayed. *Bayada Nurses, Inc. v. Dep’t. of Labor and Indus.*, 8 A.3d 866, 874 (Pa. 2010).

17. Relatedly, under Pennsylvania law, “a party must establish as a threshold matter that he has standing to maintain the action” when “seeking judicial resolution of a controversy.” *Stilp v. Commonwealth*, 940 A.2d 1227, 1233 (Pa. 2007).

18. “[T]he core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.” *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975)).

19. To have standing, a party must establish that its interest is substantial, direct, and immediate. *See Del-Aware Unlimited. v. Commonwealth*, 551 A.2d 1117, 1121 (Pa. Cmwlth. 1988) (citation omitted); *1000 Grandview Ass’n v. Mt. Washington Assocs.*, 434 A.2d 796, 797 (Pa. Super. 1981) (citation omitted).

20. To establish a party’s interest is “substantial,” the interest must exceed the interest “of all citizens in procuring obedience to the law.” *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). Further, the party’s interest is “direct” when “there is a causal connection between the asserted violation and the harm complained of,” and the interest is “immediate” when “that causal connection is not remote or speculative.” *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

21. Here, the Complainant’s claims are not ripe, and he lacks standing to pursue the Complaint, because York Water has not yet requested Commission approval to acquire Albrights MHP’s water and wastewater facilities and begin providing water and wastewater services to the properties in Albrights MHP.

22. Unless and until York Water files an Application pursuant to Section 1102(a) of the Public Utility Code requesting those Commission approvals, no case or controversy exists concerning the Complainant’s opposition to those approvals.

23. Moreover, unless and until York Water files such an Application, the Complainant’s interest in the matter is not substantial, direct, and immediate. *See Hovis*, 2008 Pa.

PUC LEXIS 899, at *7 (finding that “[s]ince this case is not yet ripe for review, Complainant[']s interest is not direct, substantial, and immediate”).

24. In fact, the Commission has held that a formal complaint is not ripe, and a complainant lacks standing, when a complainant attempts to challenge a Section 1102(a) application that the public utility has not filed yet. *See Hovis*, 2008 Pa. PUC LEXIS 899, at *6-11.

25. For these reasons, the Complaint should be dismissed because the Complainant’s claims are not ripe for review and, therefore, the Complainant lacks standing to pursue the Complaint. *See* 52 Pa. Code § 5.101(a)(4), (7).

B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINT RAISES A PRIVATE CONTRACTUAL DISPUTE OVER WHICH THE COMMISSION LACKS SUBJECT MATTER JURISDICTION (52 PA. CODE § 5.101(A)(1), (4))

26. York Water incorporates by reference Paragraphs 1 through 25 as if fully set forth herein.

27. In the Complaint, the Complainant refers to and attaches a rental agreement purportedly between him and R.T. Barclay, Inc. (Complaint ¶ 4, attachment.)

28. Although the Complainant contends that this is his rental agreement with R.T. Barclay, Inc., the name of the tenant and the address of the tenant’s property are redacted in the version attached to the Complaint. (*See* Complaint ¶ 4, attachment.)

29. Additionally, the Complainant failed to attach the entire agreement, as evidenced by the incomplete last sentence in Paragraph 8 of the contract. (*See* Complaint ¶ 4, attachment.)

30. Notwithstanding these issues, the Complainant contends that the rental agreement “states that water and sewer expenses are provided at no expense to [him] by Albrights MHP.” (Complaint ¶ 4.)

31. It is well-established that the Commission lacks subject matter jurisdiction over private contractual disputes. *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.”).

32. Rather, jurisdiction over such private contractual disputes lies with the Pennsylvania courts of common pleas. *See Pettko*, 39 A.3d at 478 n.9.

33. In this case, the Complainant alleges that his agreement with R.T. Barclay, Inc. would be breached if he were required to pay for water and wastewater services. (*See* Complaint ¶ 4.)

34. The Complainant fails to allege any action or planned action by York Water that violates the Public Utility Code, the Commission’s regulations, or the Company’s Commission-approved tariffs.

35. Thus, the Complaint should be dismissed because the Commission lacks subject matter jurisdiction over this private contractual dispute.

IV. CONCLUSION

WHEREFORE, The York Water Company respectfully requests that the Complaint filed by Robert G. Collins be dismissed in its entirety for the reasons set forth above.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: September 15, 2021

Attorneys for The York Water Company

VERIFICATION

I, Mark A. Wheeler, Chief Operating Officer of The York Water Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: September 15, 2021



Mark A. Wheeler