

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-----------------------|---|----------------|
| Robert George Collins | : | |
| | : | |
| v. | : | C-2021-3028154 |
| | : | C-2021-3028155 |
| York Water Company | : | |

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision grants preliminary objections filed by the Respondent and dismisses the Complainant’s consolidated complaints on the basis that the issues raised in the complaints are premature and not yet ripe for review.

HISTORY OF THE PROCEEDING

On August 11, 2021, the Complainant, Robert George Collins, filed two formal complaints against York Water Company (York Water) with the Pennsylvania Public Utility Commission (Commission) in which he opposed York Water’s proposed acquisition of the water and wastewater facilities of Albright’s Mobile Home Park (AMHP). The two complaints are identical. The complaint at Docket No. C-2021-3028154 is addressed to the purchase of the park’s water facilities and the complaint at Docket No. C-2021-3028155 is addressed to the purchase of the park’s wastewater facilities. Mr. Collins alleges in his complaints that he resides in AMHP and that, pursuant to his lease agreement, water and sewer services are provided to him by the park at no additional charge. He states that he opposes the acquisition of the AMHP

systems by York Water. In the alternative, he argues that, if York Water does acquire the systems, he should not be charged \$80.00 per month for water and sewer service that York Water estimates it will charge typical residents of the park.

On September 15, 2021, York Water filed its answer with new matter, as well as preliminary objections (POs) to the complaint at Docket No. C-2021-3028154 (water), both attached with notices to plead within twenty and ten days respectively. York water did not file an answer, new matter or preliminary objections to the complaint at Docket No. C-2021-3028155 (wastewater). In its answer and new matter, York Water avers that it entered into an agreement with the owners of AMHP to purchase the water and wastewater facilities of AMHP and that, if the purchase is completed, it would provide water and wastewater services directly to the residents of the park as individual customers, and that it would bill them individually for such service. York Water further avers that it has not yet filed an application with the Commission for a Certificate of Public Convenience authorizing the purchase of the water and wastewater facilities and its provision of service to AMHP. York Water avers that Commission approval of the transaction is a necessary pre-condition for completion of the sale. York Water argues that, because an application to the Commission has not yet been filed, the matter is not ripe for review and, accordingly, Complainant lacks standing to bring his complaint.

In its POs, York Water again argues that, because York Water has not yet filed an application to the Commission for a Certificate of Public Convenience authorizing the purchase of the water and wastewater facilities and its provision of service to the residents of AMHP, the matter is not yet ripe for review and, consequently, Mr. Collins lacks standing to bring a complaint at this time. York Water further argues that, to the extent Mr. Collins is arguing that York Water's estimated monthly charges for water and wastewater service would violate his lease agreement with AMHP, the Commission lacks jurisdiction over private contractual disputes. York Water requests that the Commission dismiss the complaint preliminarily.

By Order dated October 26, 2021, I consolidated the two proceedings, since they involve identical questions of both law and fact. Consequently, this initial decision on the POs filed at Docket No. C-2021-3028154 will be applicable to both complaints.

The Complainant did not file a response to York Water's new matter or its POs. By Motion Judge Assignment Notice dated October 20, 2021, the POs were assigned to me. The POs are ripe for disposition.

FINDINGS OF FACT

1. Complainant is Robert George Collins.
2. Respondent is York Water Company.
3. The Complainant resides in the AMHP.
4. York Water is considering purchasing the water and wastewater system assets serving the AMHP.
5. York Water has not filed an application with the Commission for a Certificate of Public Convenience authorizing the purchase of the water and wastewater facilities and the provision of service to AMHP.
6. On August 11, 2021, Robert George Collins filed a formal complaint against York Water in which he opposes York Water's purchase of the water and wastewater system assets that serve the AMHP.
7. On September 15, 2021, York Water filed an answer, new matter and preliminary objections in response to Mr. Collins' formal complaint.

DISCUSSION

Complainant resides in the AMHP and, pursuant to a lease agreement, water and wastewater services are provided to him by the AMHP. York Water has entered into an agreement with the owners of the AMHP for the purchase of the park's water and wastewater

facilities. York Water has not yet filed an application with the Commission for authorization of the purchase of the system and the provision of water and wastewater services to the residents of AMHP. Mr. Collins is opposed to the proposed purchase of the systems by York Water. Commission approval is a necessary pre-condition for completion of the purchase. York Water argues that, since an application for a Certificate of Public Convenience has not been filed with the Commission, the matter is not ripe for review and, consequently, Mr. Collins lacks standing to bring the complaint. On that basis, York Water seeks dismissal of the complaint.

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Emps.’ Retirement Sys., et al.*, 836 A.2d 1053, (Pa. Cmwlth. 2003).

The rules regarding preliminary objections are as follows:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically 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.

* * *

52 Pa. Code § 5.101(a).

In reviewing preliminary objections, only the facts in the pleadings filed by the nonmoving party can be presumed to be true in order to determine whether recovery is possible. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A2d 413 (Pa. Cmwlth. 2006) aff'd, 924 A.2d 1203 (Pa. 2007).

The reviewing authority will accept as true the well-pled averments set forth in the complaint and responsive pleadings filed by Complainants, and all inferences reasonably deducible therefrom. Conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion will not be accepted as true for purposes of evaluating preliminary objections. "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections. *Corman, et al. v. The Nat'l Collegiate Athletic Ass'n*, 74 A.3d 1149, 1156 (Pa. Cmwlth. 2013)(internal citations omitted).

In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Respondent in violation of any law which the Commission has jurisdiction to administer. 66 Pa. C.S. § 701; 52 Pa. Code § 5.21(a).

As noted above, Mr. Collins avers in his complaint that York Water is trying to purchase the water and sewer facilities for the mobile home park. He further avers that he has a contract with the mobile home park whereby water and sewer services are provided to him at no

additional charge. He attached to his complaint a letter from York Water to the mobile home park's water and sewer customers which indicates that, upon completion of the sale, York Water will bill the park's customers individually for water and sewer service. In its letter, York Water estimates that a typical water customer will be billed approximately \$40.58 per month and a typical sewer customer will be billed approximately \$40.00 per month, for a total monthly bill for both services of approximately \$80.58. Mr. Collins opposes the sale to York Water. In the alternative, he requests that, if the sale occurs, he should not have to pay \$80.00 per month for water and sewer service.

York Water avers in its new matter that (1) it is in the process of purchasing the water and wastewater facilities of AMHP, (2) the Complainant would begin receiving water and wastewater service from York Water upon completion of the sale, and (3) York Water charges its customers for water and wastewater services pursuant to its Commission-approved tariffs. York Water further avers in its new matter that before it can acquire the AMHP facilities and begin providing service, it must first obtain a Certificate of Public Convenience from the Commission, pursuant to 66 Pa. C.S. § 1102(a). I reviewed the Commission's records and confirmed that York Water has not yet filed an application with the Commission. The company argues that, unless and until it files such an application, the issues in the complaint are not ripe and, consequently, the Complainant lacks the requisite standing to bring the complaint.

An alleged controversy or issue must be "ripe" for review in order to be considered and addressed by a court or tribunal. *Hovis v. Nat'l, Fuel Gas Distribution Corp.*, 2008 Pa. PUC LEXIS 899 (Nov. 10, 2008). The concept of "ripeness" requires the presence of an actual controversy at the time the matter is raised. *Bayada Nurses, Inc. v. Dept. of Labor and Indus.*, 8 A.3d 866 (Pa. 2010).

I agree with York Water that this matter is not ripe for review and, as a result, Mr. Collins complaint is premature and must be dismissed. Even if the material facts averred by Mr. Collins in his complaint are true, there is currently no dispute or controversy before the Commission for it to decide, or for which it could order the relief sought by him. York Water's purchase of the water and sewer facilities cannot occur until York Water first applies for and

obtains a Certificate of Public Convenience from the Commission authorizing the purchase and the provision of service to the AMHP customers. 66 Pa. C.S. §§ 1101, 1102(a). Further, York Water would not be permitted to charge AMHP customers for water and wastewater service until it files and receives approval of a tariff containing the proposed rates. 66 Pa. C.S. § 1103(a). York Water has done neither, and there is no guarantee that it will. An application is not yet before the Commission, so there is no action the Commission may now take relative to the contemplated transaction. Mr. Collins' complaint is premature and, as a result, is not presently ripe for review.

Additionally, I note that, under the Commission's regulations, York Water would be required to publish notice of an application in the Pennsylvania Bulletin and in a newspaper of general circulation in the geographical territory affected by the application. 52 Pa. Code §§ 5.14 (a-d). As part of these procedures, a protest deadline would be established, giving interested persons an opportunity to protest the application. 52 Pa. Code § 5.51. Accordingly, the Commission's regulations provide a full and meaningful opportunity for interested persons to participate in such application proceedings. Therefore, if/when York Water files an application for a Certificate of Public Convenience with the Commission seeking approval of its purchase of the AMHP's water and sewer facilities and its provision of service to AMHP's customers, Mr. Collins will have an opportunity to object to the transaction.

For the reasons set forth above, York Water's POs are granted, and the consolidated complaints are dismissed.

CONCLUSIONS OF LAW

1. Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-000935435 (July 18, 1994).

2. When considering preliminary objections, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that

no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 1996).

3. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002). *Dept. of Auditor General, et al. v. State Emps.' Retirement Sys., et al.*, 836 A.2d 1053 (Pa. Cmwlt. 2003); 52 Pa. Code § 5.101.

4. In reviewing preliminary objections, only the facts in the pleadings filed by the nonmoving party can be presumed to be true in order to determine whether recovery is possible. *Pa. State Lodge, Fraternal Order of Police v. Dep't of Conservation & Nat. Res.*, 909 A2d 413 (Pa. Cmwlt. 2006) *aff'd*, 924 A.2d 1203 (Pa. 2007).

5. The reviewing authority will accept as true the well-pled averments set forth in the complaint and responsive pleadings filed by Complainants, and all inferences reasonably deducible therefrom. Conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion will not be accepted as true for purposes of evaluating preliminary objections. "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections." *Corman, et al. v. The Nat'l Collegiate Athletic Ass'n*, 74 A.3d 1149, 1156 (Pa. Cmwlt. 2013)(internal citations omitted).

6. In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Respondent in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a).

7. York Water's purchase of the water and sewer facilities cannot occur until York Water first applies for and obtains a Certificate of Public Convenience from the

Commission authorizing the purchase and the provision of service to the AMHP customers. 66 Pa.C.S. §§1101, 1102(a).

8. York Water would not be permitted to charge AMHP customers for water and wastewater service until it files and receives approval of a tariff containing the proposed rates. 66 Pa.C.S. § 1103(a).

9. An alleged controversy or issue must be “ripe” for review in order to be considered and addressed by a court or tribunal. *Hovis v. Nat’l, Fuel Gas Distribution Corp.*, 2008 Pa. PUC LEXIS 899 (Nov. 10, 2008).

10. The concept of “ripeness” requires the presence of an actual controversy at the time the matter is raised. *Bayada Nurses, Inc. v. Dept. of Labor and Indus.*, 8 A.3d 866 (Pa. 2010).

11. The consolidated complaints are not ripe for review. *Bayada Nurses, Inc. v. Dept. of Labor and Indus.*, 8 A.3d 866 (Pa. 2010).

12. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by York Water Company in the consolidate cases captioned Robert George Collins v. York Water Company at Docket Nos. C-2021-3028154 and C-2021-3028155, are granted.

