**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gary Bodkin :

:

v. : C-2021-3029830

:

Seneca Resources Company, LLC :

**ORDER DENYING PRELIMINARY OBJECTIONS**

HISTORY OF THE PROCEEDING

On November 10, 2021, the Complainant, Gary Bodkin, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Seneca Resources Company, LLC (Seneca). In his complaint, Mr. Bodkin alleges that, beginning in August 2020, he began experiencing a vibration and associated humming noise at his property. Mr. Bodkin alleges that the vibration and hum have caused him to experience adverse health effects and has forced resident mammals from the area. He states the vibration and noise is occurring on his property and in an area of approximately eight square miles around his property. He alleges he detected the identical vibration and hum six miles away from his property at coordinates 41.70040-78.49926. He alleges that Seneca has equipment located or connected to the source of the problem at these coordinates. By way of relief, Mr. Bodkin requests that Seneca reduce the flow/rate/pressure in its system to eliminate the vibration.

On January 20, 2022, Seneca filed preliminary objections in response to Mr. Bodkin’s complaint. On January 28, 2022, Seneca filed an answer to the complaint. In its answer, Seneca averred that it does not own or operate any equipment at the coordinates identified by Mr. Bodkin and denied that it was the source of the vibrations. Seneca requested that the complaint be dismissed. In its preliminary objections, Seneca argues that it is an exploration and production company, and not a pipeline company. It argues it is not a public utility company that provides public utility service and, accordingly, is not subject to Commission jurisdiction. Seneca admits that it does own some natural gas pipeline facilities in Pennsylvania that fall under the Commission’s jurisdiction. It avers, however, that its pipeline facilities are not located at the coordinates identified by Mr. Bodkin in his complaint. Seneca argues that the Commission does not have authority over oil and gas exploration and production operations. Seneca requests that its preliminary objections be granted and the complaint be dismissed.

On January 27, 2022, Mr. Bodkin filed a response to Seneca’s preliminary objections. In his response, Mr. Bodkin avers that the point of origin of the vibration and hum is at coordinates 41.70040, 78.49926, which is located on property owned by Seneca. Mr. Bodkin argues that until ownership of the equipment located at that site is identified, the issue of Commission jurisdiction over Seneca cannot be determined and, consequently, preliminary dismissal of the complaint is inappropriate.

The preliminary objections are now ripe for a decision. For the reasons set forth below, I will deny the preliminary objections.

DISCUSSION

Preliminary objections are appropriate under Commission regulations. 52 Pa. Code §5.101. Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company,* 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).

Preliminary objections are limited to the following:

**§ 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, 492 Pa. 304, 924 A.2d 1203 (2007).

The reviewing authority will accept as true the well-pled averments set forth in the complaint and responsive documents filed by Complainants, and all inferences reasonably deducible therefrom. "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 National Collegiate Athletic Association*, 74 A.2d 1149 (Pa.Cmwlth. 2013), 2013 Pa. Commw. LEXIS 353.

Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources,* 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company,* 66 Pa.PUC 24 (1988).

As noted, in ruling on Seneca’s preliminary objections, I must view the allegations raised by Mr. Bodkin in the light most favorable to him and may accept as true only the well-pled averments in the complaint. In paragraph 2 of his complaint, he wrote, “Seneca Resources, 51 Zents Blvd., Brookville, PA 15825 equipment located or connected to the source of the problem located at 41.70040,-78.49926.” In paragraph 3 of his complaint, he describes the vibration and noise he has experienced and the results of his investigation to identify the scope and ultimate source of the problem. In viewing these statements in the light most favorable to him, Mr. Bodkin is alleging that the problem is caused by Seneca equipment located at or connected to the source of the problem at the identified coordinates. Although Seneca denies having any equipment located at this location, it acknowledges that it does, in fact, own some natural gas pipeline facilities in Pennsylvania that fall under the Commission’s jurisdiction. It avers, however, that these pipeline facilities are not located at the coordinates identified by Mr. Bodkin. Since I may only consider the allegations raised by Mr. Bodkin, however, I must accept as true that Seneca does have equipment at the location identified by him and that these facilities may be the cause of the vibration and noise about which he is complaining. As noted, Seneca denies this allegation and will have an opportunity to challenge it at a hearing. I note that, as the proponent of a rule or order from the Commission in this proceeding, the burden of proof at the hearing will be on Mr. Bodkin to prove his allegations by a preponderance of the evidence.

For the reasons set forth above, Respondent’s preliminary objections are denied. Having denied Seneca’s preliminary objections, I believe it is appropriate to refer this proceeding to the Commission’s Mediation Unit to give the parties an opportunity to discuss and attempt to resolve the Mr. Bodkin’s allegations on an informal basis.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Seneca Resources Company, LLC, at Docket No. C-2021-3029830 are denied.

2. That the Formal Complaint filed by Gary Bodkin against Seneca Resources Company, LLC at Docket No. C-2021-3029830 is hereby referred to the Commission’s Mediation unit.

Date: March 24, 2022

Steven K. Haas

Administrative Law Judge

**C-2021-3029830 - GARY BODKIN v. SENECA RESOURCES COMPANY LLC**GARY BODKIN735 LINDHOLM ROADMT JEWETT PA 16735**570.415.5634**BODKINSG86@GMAIL.COM CHRISTOPHER TREJCHEL DEPUTY GENERAL COUNSELSENECA RESOURCES COMPANY LLC2000 WESTINGHOUSE DRIVE SUITE 400CRANBERRY TOWNSHIP PA 16066**412.548.2537**trejchelc@srcx.comAccepts eService