**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Graham :

 :

 v. : C-2022-3032494

 :

Philadelphia Gas Works :

**ORDER**

**DENYING PRELIMINARY OBJECTION
AND MOTION FOR JUDGMENT ON THE PLEADINGS**

**Procedural History**

On May 5, 2022, Dawn Graham filed a formal complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW), docket number C-2022-3032494. In her complaint, Ms. Graham indicated that PGW is threatening to terminate her utility service or has already terminated her utility service, that she would like a payment agreement and that there are incorrect charges on her bill. Ms. Graham also stated that she was told to apply for new service to avoid termination of this account but her trust documents and identification have been rejected. Ms. Graham provided further explanation noting, among other things, that she “wants to pay the adjusted bill from February 2020 until the final bill of Indra Energy’s rates due on August 5, 2021.” Ms. Graham provided additional explanation regarding a lien on the property and her role as a Trustee for the property, among other things.

On June 6, 2022, PGW filed an answer and new matter in response to Ms. Graham’s complaint. In its answer, PGW admitted or denied the various averments in Ms. Graham’s complaint. In particular, PGW denied that there are incorrect charges on the bill for the service address. PGW also denied that Ms. Graham made a legitimate application for service at the service address. PGW added that Ms. Graham is not and has never been a customer of record at the service address. In its new matter, which was accompanied by a notice to plead, PGW averred that Allen Graham is the customer of record at the service address and that he passed away on June 20, 2020, although PGW was not made aware of his passing at the time and gas service remained in his name at the service address. PGW stated it obtained documentation from Alfred Graham indicating that Allen Graham is deceased as of June 20, 2020. PGW added that Ms. Graham is occupying the property at the service address illegally and was lawfully evicted on November 19, 2021. PGW added that the outstanding balance for gas service at the service address is $3,660.14. PGW argued that Ms. Graham lacks standing to bring this complaint and requested that the complaint be dismissed. PGW attached multiple documents to its answer and new matter in support of its arguments.

Also on June 6, 2022, PGW filed a preliminary objection in response to Ms. Graham’s complaint. In its preliminary objection, which was also accompanied by a notice to plead, PGW reiterated that Ms. Graham lacks standing to bring her complaint. PGW provided extensive legal argument in its preliminary objection and noted that, in general, a complainant must be respondent’s customer to have standing to file a complaint about utility service and that a complainant who is not a customer of a utility generally does not have the requisite substantial, direct and immediate interest necessary to confer standing to bring the complaint about utility service. PGW provided additional argument and concluded that Ms. Graham’s complaint should be dismissed.

On June 30, 2022, PGW filed a motion for judgment on the pleadings. In its motion, which was also accompanied by a notice to plead, PGW argued that, as there has been no reply filed in response to the new matter, the Commission may find that Ms. Graham has admitted the allegations in the new matter. PGW added that it is entitled to judgment as a matter of law as the pleadings show that there is no genuine issue as to a material fact. PGW reiterated its argument that Ms. Graham has been occupying the residence at the service address illegally and has obtained service from PGW by means of fraud and deception. PGW added that Ms. Graham has claimed that there are incorrect charges on her bill although she has never been billed for service at the service address. PGW provided additional arguments and concluded that there is currently no customer of record listed at the service address. PGW requested that the Commission deem the averments in the new matter to be admitted, grant the motion for judgment on the pleadings and dismiss the complaint. PGW also asked for leave to terminate the service to the service address immediately. PGW again attached multiple documents to its motion in support of its arguments.

Ms. Graham’s answer to PGW’s new matter was due June 29, 2022. Ms. Graham’s answer to PGW’s preliminary objection was due June 20, 2022. Ms. Graham’s answer to PGW’s motion for judgment on the pleadings was due July 25, 2022. Ms. Graham did not file an answer to any of PGW’s pleadings.

On August 2, 2022, a call-in telephonic hearing notice was issued setting an initial call-in telephonic hearing for this case for Tuesday, September 20, 2022, at 10:00 a.m., and assigning me as the presiding officer.

The preliminary objection and motion for judgment on the pleadings filed by PGW are ready for disposition. For the reasons discussed below, PGW’s preliminary objection and motion will be denied and Ms. Graham’s complaint will be allowed to proceed to a hearing on September 20, 2022.

**Preliminary objection**

Section 5.101 of the Commission’s rules of administrative practice and procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company*,* 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

(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 a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. Graham and should dismiss the complaint only if it appears that Ms. Graham would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

In this case, Ms. Graham made numerous averments in her complaint. In addition to checking the boxes on the formal complaint form regarding service termination, payment agreement and incorrect charges on the bill, Ms. Graham also averred that she was told by PGW to apply for new service to avoid shut off but her documents were rejected. Ms. Graham also averred that her meter is not reading properly, that she has not been treated fairly by PGW and she has not been receiving hard copies of bills, among other things. When disposing of PGW’s preliminary objection, these averments must be accepted as true and viewed in the light most favorable to Ms. Graham. When doing so, it is not clear that Ms. Graham would not be entitled to any relief as a matter of law.

PGW’s preliminary objection is based on standing. In order to bring a complaint before a tribunal, a complainant must first demonstrate that he has standing to maintain the action. Nye v. Erie Insurance Exchange, 470 A.2d 98, 100 (Pa. 1983) (citation omitted). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. William Penn Parking Garage, Inc. et al. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pennsylvania PUC, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999). *See also,* Pa. Bankers Ass’n v. Dept. of Banking & Trumark Fin. Credit Union, 893 A.2d 864 (Pa. Cmwlth. 2006); South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989) (citations omitted); Bergdoll, et al. v. Kane, et al., 731 A.2d 1261, 1268 (Pa. 1999); Wroblewski v. Pennsylvania Elec. Co., Docket No. C-2008-2058385 (Final Order entered May 15, 2009). The standard set by William Penn Parking Garage is applicable to the Commission cases. *See,* Courier Express, Inc. v. F.L. Shaffer Company, Inc., Order entered August 30, 1990 at Docket No. C-892462, petition for reconsideration denied December 3, 1990.

 The Pennsylvania Supreme Court has addressed the issue of standing as follows:

The requirement of standing under Pennsylvania is prudential in nature and stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete rather than abstract. This principle is reflected in the doctrine’s core conception that a party who is not negatively affected by the matter he seeks to challenge is not aggrieved, and thus, has no right to obtain judicial resolution of his challenge . . . . A party has a substantial interest in the outcome of litigation if his interest exceeds that of all citizens in procuring obedience to the law. The interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative. Thus, the fact that a party may be affected in a general way does not alone give him standing. (citations omitted.)

City of Philadelphia and John F. Street v. Commonwealth of Pennsylvania et al*.*, 575 Pa. 542 at 559-560, 838 A.2d 566 at 577 (2003) (citations omitted.)

In this case, PGW’s preliminary objection regarding standing must be denied because, when accepting as true all well pleaded materials facts in Ms. Graham’s complaint, and all reasonable inferences from those facts, it is clear that Ms. Graham has an interest that is direct, substantial and immediate and may be entitled to relief as a matter of law.

Ms. Graham’s interest is substantial because her interest is not a common interest of all citizens. Rather, her interest pertains to her ability to obtain utility service from PGW as she averred she is attempting to do. Ms. Graham’s interest also involves her being billed properly for service at the service address, including making sure that her meter is reading correctly and that she is not being over charged. This interest pertains specifically to Ms. Graham and is not a common interest of citizens. Ms. Graham’s interest is also direct because, in part, she averred that there is a lien on the property to which she claims she is a beneficiary and Trustee and because she claims that she has not been treated fairly by PGW. Ms. Graham has also averred infringement of her rights. These are all interests that must be accepted as true, are direct for Ms. Graham and satisfy this prong of standing. Finally, Ms. Graham’s interest is also immediate because there is a causal connection between the matters of which Ms. Graham complains and PGW, the party challenging it, because Ms. Graham is attempting to obtain service from PGW. Clearly, when accepting as true the averments in the complaint, Ms. Graham is in the “zone of interest” as it pertains to the matter of which she complains.

The controversy of which Ms. Graham complains in her complaint is real and concrete rather than abstract and Ms. Graham is certainly negatively affected by the matter she seeks to challenge. Ms. Graham’s interest is substantial, direct and immediate. As a result, Ms. Graham has standing.

It is further noted that the fact that PGW believes that Ms. Graham was acting fraudulently or illegally, as alleged in the preliminary objection, does not mean that Ms. Graham lacks standing to bring her complaint. It means that PGW has to take additional actions in response to the alleged fraudulent or illegal activity. It does not mean that Ms. Graham cannot pursue her complaint.

This is especially true where the case law cited by PGW in support of its preliminary objection says that “in general” a complainant must be a customer of the utility to have standing to file a complaint about utility service. The cases cited by PGW are not an absolute bar to non-customers bringing a complaint and the case presented by Ms. Graham is an example of a situation where a non-customer should be able to bring a complaint. To hold otherwise would prohibit everyone who experiences problems ***applying*** for utility service, among other people, from filing a complaint to the extent that any problems in the application process arise, regardless of whether the utility believes such actions may be fraudulent or illegal. Such a result would not be in the public interest. *See also*, 66 Pa. Code § 1501 (“Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities …. for the accommodation, convenience and safety of its patrons, employees ***and the public***.”) (emphasis added). Such people have a direct, immediate and substantial interest in bringing a complaint and so does Ms. Graham.

Finally, if it were true, for example, that the meter at the service address was not reading properly, a credit may be appropriate. In addition, if it were true that Ms. Graham was not being treated fairly or being properly billed, a civil penalty on PGW may be appropriate. Therefore, Ms. Graham may be entitled to relief as a matter of law.

As a result, PGW’s preliminary objection must be denied.

**Motion for Judgment on the Pleadings**

With regard to PGW’s motion for judgment on the pleadings, the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of motions for summary judgment and judgment on the pleadings. In particular, Section 5.102 of the Commission’s Rules provides in relevant part:

**§ 5.102 Motions for summary judgment and judgment on the pleadings.**

1. *Generally*. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

\* \* \*

(d) *Decisions on Motions*.

1. *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part*. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with the affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa.Code § 5.102(a), (d)(1) and (d)(2). When disposing of a motion for summary judgment, the record must be examined in the light most favorable to the nonmoving party. First Mortgage Co. of Pennsylvania v. McCall, 313 Pa. Superior Ct. 54, 56, 459 A.2d 406, 408 (1983). To avoid the motion for summary judgment, the nonmoving party must set forth facts showing that there is a genuine issue for trial. Id. at 58-59.

For purposes of disposing of PGW’s motion for judgment on the pleadings, more than just the averments in Ms. Graham’s complaint are considered. Rather, PGW’s averments in its new matter may be accepted as true because Ms. Graham never filed a responsive pleading denying those averments. 52 Pa. Code § 5.63(b). Even so, however, these averments must be examined in the light most favorable to Ms. Graham, the nonmoving party. Therefore, accepting these averments as true still does not warrant granting PGW’s motion and dismissing Ms. Graham’s complaint on a preliminary basis.

PGW’s averments in its new matter generally pertain to the passing of Allen Graham, the customer of record at the service address, alleged fraudulent activities by Ms. Graham and efforts by Ms. Graham to become the customer of record at the service address. It is unclear, even when accepting these averments as true, how Ms. Graham lacks standing to bring her complaint, particularly when viewing these averments in the light most favorable to Ms. Graham. In particular, PGW averred in its new matter that Ms. Graham contacted PGW to apply for service, she submitted documentation in support of that application and she has been occupying the property at the service address. While PGW maintains that these actions were done fraudulently or illegally, they are all nonetheless actions that give Ms. Graham standing to bring her complaint. These averments demonstrate that Ms. Graham’s interest in the matter in which she complains is substantial, immediate and direct, as noted above. As such, similar to PGW’s preliminary objection, PGW still has not demonstrated that Ms. Graham’s complaint should be dismissed on a preliminary basis due to a lack of standing. For the same reasons why the preliminary objection is denied, Ms. Graham’s interest in the matters she complained of in her complaint are substantial, direct and immediate. Therefore, Ms. Graham has standing to bring those issues, despite the fact that she failed to deny PGW’s new matter.

As a result, PGW’s motion for judgment on the pleadings will also be denied. When viewing the record in the light most favorable to the nonmoving party, Ms. Graham, and accepting as true PGW’s new matter, there is no showing that there is no genuine issue as to a material fact or that PGW is entitled to a judgment as a matter of law on one or more but not all outstanding issues. Ms. Graham’s interest in the matter in which she complained of is substantial, direct and immediate and she therefore has standing to bring the complaint.

Since PGW’s motion will be denied, so too will PGW’s quest that the Commission allow PGW leave to terminate service to the service address immediately.

**Conclusion**

 In conclusion, PGW’s preliminary objection and motion for judgment on the pleadings will be denied. When accepting as true all well plead material averments in Ms. Graham’s complaint, and viewing all averments in the light most favorable to Ms. Graham, as is required when disposing of PGW’s preliminary objection, it is not clear that Ms. Graham is not entitled to any relief as a matter of law. Similarly, when accepting as true PGW’s averments in its new matter, which Ms. Graham did not refute, it is also not clear that Ms. Graham is not entitled to judgment as a matter of law on any issues. Both the preliminary objection and the motion for judgment on the pleadings are based on an allegation that Ms. Graham lacks standing to bring the complaint. Yet, Ms. Graham’s interest in the matter of which she complains is substantial, direct and immediate and, therefore, Ms. Graham has standing to bring the complaint. PGW has otherwise provided no other reason why Ms. Graham’s complaint should be dismissed on a preliminary basis. PGW’s preliminary objection and motion will be denied and Ms. Graham’s complaint will be heard at an evidentiary hearing.

In addition, it is noted that, in Richard Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock), the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. Id. at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Order entered October 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).[[1]](#footnote-1) As a result, in this case, Ms. Graham should be given the opportunity to demonstrate orally during a hearing that PGW violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff and not have her complaint dismissed on a preliminary basis.

Ms. Graham is advised, however, that the standard for disposing of preliminary objections and a motion for judgment on the pleadings is different than the standard for sustaining a complaint. To sustain her complaint, Ms. Graham will have the burden of proving by a preponderance of the evidence that PGW is responsible or accountable for the problem described in the complaint and that such actions are a violation of the Public Utility Code, a Commission order or a Commission regulation. This is a higher standard than used to determine whether a complaint should be dismissed prior to a hearing on a preliminary basis. Nonetheless, Ms. Graham’s complaint will not be dismissed on a preliminary basis.

ORDER

 THEREFORE,

 IT IS ORDERED:

1. That the preliminary objection filed by Philadelphia Gas Works at docket number C-2022-3032494 and dated June 6, 2022 is hereby denied.
2. That the motion for judgment on the pleadings filed by Philadelphia Gas Works at docket number C-2022-3032494 and dated June 30, 2022 is hereby denied.
3. That the request of Philadelphia Gas Works for leave to terminate the service to the service address immediately is hereby denied.
4. That the complaint filed by Dawn Graham against Philadelphia Gas Works at docket number C-2022-3032494 shall be heard at a hearing scheduled for Wednesday, September 20, 2022 beginning at 10:00 a.m.

Date: August 11, 2022 /s/

 Joel H. Cheskis

 Deputy Chief Administrative Law Judge

**C-2022-3032494 - DAWN GRAHAM v. PHILADELPHIA GAS WORKS**DAWN J GRAHAM315 NORTH 54TH STREET PHILADELPHIA PA 19139**215.472.2334**DAWN456@MSN.COMGRACIELA CHRISTLIEB ESQUIREPHILADELPHIA GAS WORKS800 WEST MONTGOMERY AVENUEPHILADELPHIA PA 19122**215.684.6164**GRACIELA.CHRISTLIEB@PGWORKS.COMAccepts EService

1. The Commission’s decision in Carlock was subsequently clarified to allow ALJ’s the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557 (Opinion and Order entered June 12, 1996). [↑](#footnote-ref-1)