

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Daugherty

v.

AmeriGas Propane, LP

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C-2022-3036550

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This decision sustains the Preliminary Objections of AmeriGas Propane, LP and dismisses the Complaint because the Commission does not have jurisdiction over private propane distribution contracts.

**HISTORY OF THE PROCEEDING**

On November 4, 2022, the Complainant, Ronald Daugherty, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against AmeriGas Propane, LP (AmeriGas or Respondent). The Complaint avers that AmeriGas is improperly charging him a fee for paper bills and failed to correctly complete his order for fuel delivery to his 484-gallon tank. As relief, the Complainant requests that AmeriGas reimburse him for: 1) all the paper fees charged on his accounts; 2) the high fuel recovery fees; and 3) all charges for incorrect deliveries.

On November 21, 2022, Preliminary Objections were filed on behalf of AmeriGas. A copy was electronically served upon the Complainant. The Preliminary Objections included a Notice to Plead stating that a written response was due by December 12, 2022.

The Complainant did not file a response to the Preliminary Objections.

On January 9, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

Respondent's Preliminary Objections are procedurally ready for disposition. For the reasons discussed below, the Preliminary Objections will be sustained, and the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Ronald Daugherty.
2. The Respondent is AmeriGas Propane, LP.
3. On November 4, 2022, the Complainant filed a Complaint alleging that AmeriGas is improperly charging him a fee for paper bills and failed to correctly complete his order for fuel delivery to his 484-gallon tank.
4. As relief, the Complainant requests that AmeriGas reimburse him for: 1) all the paper fees charged on his accounts; 2) the high fuel recovery fees; and 3) all charges for incorrect deliveries.
5. On November 19, 2022, the Respondent filed Preliminary Objections asserting that the Commission has no jurisdiction regarding propane service contracts.

6. The Complainant did not file a response to the Preliminary Objections.

### DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Phila. Elec. Co.*, 66 Pa.P.U.C. 24 (1988).

The moving party may not rely on its own factual assertions but must accept, for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *Raynor v. D'Annunzio*, 243 A.3d 41 (Pa. 2020); *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985).

Therefore, in ruling on a preliminary objection, the Commission must assume that the factual allegations of the Complaint are true. *Id.* Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Commonwealth v. UPMC*, 208 A.3d 898 (Pa. 2019); *Dep't of Auditor Gen. v. State Emps. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

Here, AmeriGas has filed Preliminary Objections on the grounds of 52 Pa. Code § 5.101(a)(1), asserting that the Commission does not have jurisdiction over a contractual dispute concerning its propane distribution services.

The Complaint concerns propane delivery services for which the Complainant contracted with the Respondent. The Complainant asserts that the Respondent did not fulfill its promises regarding how much propane was to be delivered and where.

AmeriGas asserts that it owns or operates a limited amount of underground pipeline in Pennsylvania. However, Mr. Daugherty's Complaint does not contain any allegations concerning such pipelines and instead is based solely on a contractual arrangement for AmeriGas to make deliveries via truck to Mr. Daugherty's individual tanks. *See* Attachment to the Complaint, p. 1. AmeriGas further argues that the Commission does not have jurisdiction over private complaints against pipeline operators such as AmeriGas and seeks to dismiss Mr. Daugherty's Complaint for lack of jurisdiction.

The Commission, as a creation of the General Assembly has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code (Code). *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

Section 701 of the Code provides that,

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any *public utility* in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission[.]

66 Pa.C.S § 701 (emphasis added).

Section 102 of the Code defines the term “public utility” as:

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
  - (i) Producing, generating, transmitting, distributing, or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
  - (ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
  - (iii) Transporting passengers or property as a common carrier.
  - (iv) Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.
  - (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.
  - (vi) Conveying or transmitting messages or communications, except as set forth in paragraph (2)(iv), by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.
  - (vii) Wastewater collection, treatment, or disposal for the public for compensation.
  - (viii) Providing limousine service in a county of the second class pursuant to Subchapter B of Chapter 11

(relating to limousine service in counties of the second class).

66 Pa.C.S § 102 “Public Utility” (footnote omitted). This section further provides that the term “public utility” does not include “[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.” 66 Pa.C.S § 102 “Public Utility” (2)(iii).

At issue here is the fulfillment of a private contract between the Complainant and AmeriGas. While the pipeline operations of the Respondent may fall under the jurisdiction of the Commission, contracted delivery of propane services are not a public utility as defined by 66 Pa.C.S § 102 and therefore are not within the jurisdiction of the Commission. As the Commission has stated, “[e]ntities that are in the business of selling propane and delivery of propane to individual tanks located on the customers' property are not considered public utilities subject to Commission jurisdiction under section 102 of the Public Utility Code, 66 Pa. C.S. § 102.” *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 at 7 (Order entered Jan. 26, 2007).

Further, the Complainant here is challenging charges related to AmeriGas’ delivery contract. Complaint at ¶ 4. As held in *Allport Water Authority v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978), “[t]he PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.” Therefore, the Preliminary Objections for lack of jurisdiction will be sustained. See *Poorbaugh v. Pa. Pub. Util. Comm’n*, 666 A. 2d 744 (Pa. Cmwlt. 1995).

Accordingly, the Complaint of Ronald Daugherty against AmeriGas Propane, LP is dismissed.

## CONCLUSIONS OF LAW

1. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008).

2. A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979).

3. A Complaint filed with the Commission may concern any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S § 701; 66 Pa.C.S § 102; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 (Order entered Jan. 26, 2007).

4. Propane distribution under a private contract does not fall within the definition of a "public utility" and does not pertain to any law under the Commission's jurisdiction to administer or any regulation or order of the Commission. 66 Pa.C.S § 102; *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 (Order entered Jan. 26, 2007).

5. The Commission does not have jurisdiction to decide the private contractual disputes between the Complainant and AmeriGas Propane, LP. *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of AmeriGas Propane, LP are sustained.
2. That the Complaint of Ronald Daugherty in Ronald Daugherty v. AmeriGas Propane, LP at Docket No. C-2022-3036550 is dismissed.
3. That the Secretary shall mark this docket closed.

Date: February 9, 2023

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/s/  
Eranda Vero  
Administrative Law Judge