

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Domenic Reda	:	
	:	
v.	:	C-2024-3047908
	:	
Philadelphia Gas Works	:	

**ORDER SUSTAINING IN PART AND DENYING IN PART RESPONDENT’S
PRELIMINARY OBJECTIONS**

HISTORY OF THE PROCEEDING

On March 26, 2024, Domenic Reda (“Mr. Reda”) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (“PGW”). In his Complaint, Mr. Reda indicated that his Complaint involves utility service provided to the Estate of Orlando Bottiglieri (“the Estate”). Mr. Reda identified himself as the administrator for the Estate. On the Complaint form, Mr. Reda checked the box “other” as reason for the Complaint, and stated the following:

PGW is billing the estate of Orlando Bottiglieri (1136 Mercy St. Phila.) for the use of gas by Squatters, that being Syreeta Slaughter who had no legal rite [sic] to enter property this is NOT a case of a rental agreement between renter and landlord.

Complaint ¶ 4. For relief, Mr. Reda stated, “[w]e seek relief of total cost and the lifting of liens and/or judgments against the property.” Complaint ¶ 5.

The Complaint was served on PGW on March 28, 2024.

On April 19, 2024, PGW filed an Answer admitting or denying the allegations of the Complaint. In its New Matter, properly endorsed with a Notice to Plead, PGW averred that

there are outstanding liens on the Estate for gas service pursuant to the Municipal Claim and Tax Lien Law, and that the Commission has no jurisdiction over the filing or administration of liens that exist pursuant to the Municipal Claim and Tax Lien Law. PGW concluded its Answer with New Matter by requesting dismissal of the Complaint.

Also on April 19, 2024, PGW filed Preliminary Objections, properly endorsed with a Notice to Plead, to the Complaint. In its Preliminary Objections, PGW argued that the Commission lacks jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1), stating that Mr. Reda is challenging PGW's right to collect on municipal claims owed to PGW for gas service pursuant to the Municipal Claim and Tax Lien Law and that the Commission has repeatedly held that it does not have subject matter jurisdiction in cases involving a dispute over a municipal lien. PGW concluded its Preliminary Objections by requesting dismissal of the Complaint.

Mr. Reda did not file a Reply to PGW's New Matter nor an Answer to PGW's Preliminary Objections.

On May 29, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer to this proceeding.

For the reasons discussed below, PGW's Preliminary Objections will be sustained in part, and denied in part.

DISCUSSION

Legal Standards

The Commission's Regulations permit parties to file preliminary objections. The grounds for preliminary objections are set forth as follows:

- (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).

The Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). 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 Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Med. Transp., LLC*, Docket No. A-2008-2020353 (Final Order entered July 8, 2008).

In disposing of preliminary objections, the Commission may not rely upon the factual assertions of the moving party but must accept as true all well-pleaded, material facts of the nonmoving party as well as every inference from those facts. *Cnty. of Allegheny v. Commonwealth.*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). Thus, the Commission must view a complaint in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). The Commission must view all well-pleaded facts in the complaint and the response to

preliminary objections in order to determine whether a request for relief is possible. *Wright v. PECO Energy Co.*, Docket No. C-2011-2253839 (Opinion and Order entered Dec. 15, 2011).

Here, PGW's Preliminary Objections assert that the Commission lacks jurisdiction over the Complaint, pursuant to 52 Pa. Code § 5.101(a)(1).

The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code § 5.101(a)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa. Code § 5.101(a)(1) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

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); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). 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).

Analysis

Commission jurisdiction over municipal liens

Accepting the facts alleged in the Complaint as true and viewing the Complaint in the light most favorable to Mr. Reda for the purposes of disposing of the Preliminary Objections, Mr. Reda is the administrator for the Estate of Orlando Bottiglieri. PGW billed the Estate for gas service used by a squatter at the Estate by the name of Syreeta Slaughter. PGW placed a lien against the Estate which Mr. Reda seeks to have removed. PGW argues in its Preliminary Objections that the Commission has no jurisdiction over the filing or administration of municipal liens. I agree.

The Commission has continually reiterated that it lacks subject matter jurisdiction to adjudicate disputes over the validity and enforceability of a municipal lien placed upon a property. *Golan v. Phila. Gas Works*, Docket No. C-2009-2138115 (Final Order entered Feb. 4, 2010); *Charles v. Phila. Gas Works*, Docket No. C-2009-2138638 (Final Order entered Feb. 5, 2010); *Pitt v. Phila. Gas Works*, C-2009-2140025 (Final Order entered Apr. 29, 2010); *Vata v. Phila. Gas Works*, Docket No. C-2009-2149960 (Opinion and Order entered Aug. 24, 2010); *Firman v. Phila. Gas Works*, Docket No. C-2014-2410963 (Order entered June 19, 2014).

This legal conclusion is further supported by two provisions of the Code. First, Section 1414(a) of the Code states the following:

(a) General rule.--A city natural gas distribution operation furnishing gas service to a property is entitled to impose or assess a municipal claim against the property and file as liens of record claims for unpaid natural gas distribution service and other related costs, including natural gas supply, in the court of common pleas of the county in which the property is situated or, if the claim for the unpaid natural gas distribution service does not exceed the maximum amount over which the Municipal Court of Philadelphia has jurisdiction, in the Municipal Court of Philadelphia, pursuant to sections 3 and 9 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and

Tax Lien Law, and chapter 22 (relating to natural gas competition).

66 Pa.C.S. § 1414(a). This section affirms that PGW is entitled to impose liens on property for unpaid natural gas service.

The second provision, Section 2212(n) of the Code, states the following:

(n) Collections.--Nothing contained in this title shall abrogate the power of a city natural gas distribution operation to collect delinquent receivables through the imposition of liens pursuant to section 3 of the act of May 16, 1923 (P.L. 207, No. 153), referred to as the Municipal Claim and Tax Lien Law, or otherwise.

66 Pa.C.S. § 2212(n). The language of this provision supports the legal conclusion that claims involving municipal liens are not properly within the jurisdiction of the Commission.

In conclusion, Mr. Reda challenges the validity of the lien placed on the Estate and asks that the Commission remove the lien; however, the Commission does not have jurisdiction over the validity of the lien placed on the Estate and lacks jurisdiction to order PGW to remove the lien. Mr. Reda must obtain the relief he seeks through the procedures established by the Municipal Claim and Tax Lien Law.

Section 1501 of the Code

Although I agree with PGW that the Commission lacks jurisdiction over the filing or administration of municipal liens, the Complaint will not be dismissed on this basis.

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the

reasonable, safe and adequate service or facilities that a public utility must furnish or employ. 66 Pa. C.S. § 1505. Section 102 of the Code, 66 Pa. C.S. § 102, defines “service” as:

Used in its broadest and most inclusive sense, includes *any and all acts done, rendered, or performed*, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities

(Emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. P.U.C.*, 578 A.2d 75 (Pa. Cmwlt. 1990).

In the instant case, the Complaint in addition to raising issues concerning liens also appears to allege that the Estate is being incorrectly billed. The Complaint does not specifically clarify whether this claim of incorrect billing relates to the lien placed on the Estate or to other charges. If the claim of incorrect charges relates to charges other than the lien and Mr. Reda’s allegations are proven by a preponderance of evidence at a hearing, the allegations may well constitute a violation of the Section 1501’s reasonable and adequate service requirements. *Honey Brook Water Co. v. Pa. Public Utility Commission*, 167 Pa. Cmwlt. 140, 647 A.2d 653 (1994), *app. denied*, 540 Pa. 587, 655 A.2d 518 (1995).

The instant Complaint is sufficient to set forth a claim upon which the Commission can grant relief even though that relief cannot be removal of the subject lien. This is all that is necessary to survive a preliminary objection requesting dismissal of the entire Complaint.

Lack of attorney representation

Although one issue relating to the Commission’s jurisdiction has been discussed above, it is necessary to raise an additional issue impacting the Commission’s jurisdiction created by the fact that the Estate is not represented by an attorney. PGW did not raise this issue in its Preliminary Objections, however, an issue of subject matter jurisdiction may be raised at

any stage of a proceeding by a party or *sua sponte* by the presiding officer or by the Commission. *Blackwell v. State Ethics Comm'n*, 567 A.2d 630 (Pa. 1989).

The Complaint in this matter was filed by Mr. Reda on behalf of the Estate, as the Estate's administrator. Mr. Reda did not indicate that he was an attorney licensed to practice law in Pennsylvania, further, no attorney is listed on paragraph 10 of the Complaint titled "legal representation." Once PGW filed an Answer to the Complaint, this proceeding became adversarial in nature. *See* 52 Pa. Code § 1.8. The Commission's regulations require that persons in adversarial proceedings be represented by an attorney. *See* 52 Pa. Code § 1.21(b). It is well-settled in Commission practice that participation in a formal adversarial proceeding before the Commission constitutes the practice of law. *See, e.g., Lesley A. Scheaffer for Leslie W. Scheaffer v. Pa. Pub. Util. Comm'n*, Docket No. F-2016-2577647 (Opinion and Order entered Apr. 3, 2018). As such, that participation is limited to those who either file as individuals and represent themselves or to attorneys who are representing others. *Id.*

Accordingly, upon the filing of the Answer in this matter, the Estate was required to be represented by an attorney. *See Daniel v. Phila. Gas Works*, Docket No. F-2019-3013371 (Initial Decision issued May 20, 2020; Final Order entered July 10, 2020) (estates must be represented by an attorney in adversarial proceedings before the Commission). The absence of an attorney where one is required deprives the Commission of jurisdiction to adjudicate the matter. *Adventure Alley CLC, LLC v. PECO Energy Co. and Great Am. Power*, Docket No. C-2014-2430850 (Final Order entered Nov. 25, 2014) (*citing McCain v. Curione, Pa. Bd. of Prob. and Parole*, 527 A.2d 591 (Pa. Cmwlth. 1987)).

Conclusion

In conclusion, for the reasons discussed above, the Preliminary Objections will be sustained in part and denied in part. An evidentiary hearing will be scheduled in this matter. Further, an Interim Order will be issued directing Mr. Reda to have an attorney enter his or her appearance on behalf of the Estate by a date certain. Failure of Mr. Reda to comply with this Interim Order will result in dismissal of the Complaint.

**C-2024-3047908 - ORLANDO BOTTIGIERI C/O DOMENIC REDA v. PHILADELPHIA
GAS WORKS**

DOMENIC REDA
1934 SOUTH HOLLYWOOD STREET
PHILADELPHIA PA 19145
215.520.0316
dreda07@comcast.net
Accepts eService

GRACIELA CHRISTLIEB ESQUIRE
PHILADELPHIA GAS WORKS
800 WEST MONTGOMERY AVE
PHILADELPHIA PA 19122
215.684.6164
Graciela.Christlieb@pgworks.com
Accepts eService
(Counsel for PGW)