

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ernest L. Turner	:	
	:	
v.	:	F-2024-3049464
	:	
Philadelphia Gas Work	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTIONS

On May 30, 2024, Ernest L. Turner (Complainant or Mr. Turner) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the present Complaint, the Mr. Turner alleges that the utility is threatening to shut off his gas service or has already shut off his service. In addition, the Complainant alleges as follows,

I/We, The Customers of Philadelphia Gas Works (P.G.W.) and Residents of Philadelphia, Pennsylvania have been and “ARE” subject to Unfair & Unjust PRICE GOUGING through the Delivery Charge Rate from Philadelphia Gas Works. The Delivery Charge Rate of (P.G.W.) is approximately 290% More than the Actual Usage Charge.

Complaint ¶ 4. The Complainant then proceeds to provide examples of supply charges and delivery charges. As relief, the Complainant requests that the Commission establish a payment arrangement for him and it “Convene Pertinent Relevant Authorities to Restructure the Funding and charges for the market that it serves to accommodate a more Fair and Just business agreement between the Public and the provider.” Complaint ¶ 5.

This Complaint is a timely appeal of the informal decision issued but the Commission’s Bureau of Consumer Services at BCS Case No. 3973706.

On June 27, 2024, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, PGW denied the material allegations of the Complaint; whereas, in its New Matter, Respondent avers that the challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter as they exceed the Commission's powers given that the Commission has no authority to allow a public utility to deviate from its tariff. New Matter ¶ 12. In addition, PGW avers that the challenge to PGW's Delivery Charge is legally insufficient as it fails to support a claim that PGW has violated a Commission regulation, statute, or order given that a public utility may not charge a rate other than the rates set forth in its tariff. New Matter ¶ 13. Lastly, PGW states that the Complainant does not have the standing to represent other customers; while an individual customer may represent himself or herself before the Commission, an individual cannot act on behalf of other customers and make requests for relief on their behalf. New Matter ¶ 14.

Also on June 27, 2024, the Respondent filed Preliminary Objections to the Complaint. The Respondent seeks dismissal of the Formal Complaint because: 1) the challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter as they exceed the Commission's powers given that the Commission has no authority to allow a public utility to deviate from its tariff; 2) the challenge to PGW's Delivery Charge is legally insufficient as it fails to support a claim that PGW has violated a Commission regulation, statute, or order; and 3) the Complainant does not have the standing to represent other customers.

The Preliminary Objections contained a Notice to Plead, requiring Complainant to file a response within ten days of service. Complainant did not file a response to the Preliminary Objections.

By Motion Judge Assignment Notice dated August 1, 2024, PGW's Preliminary Objection was assigned to me for disposition.

PGW's Preliminary Objections are ready for disposition.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 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.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa.*

State Ethics Comm'n, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlt. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In his Formal Complaint, Mr. Turner challenges PGW's Delivery Charge as abnormally large and requests that the Commission "Convene Pertinent Relevant Authorities to Restructure the Funding and charges for the market that it serves to accommodate a more Fair and Just business agreement between the Public and the provider." Complaint ¶ 5.

The Respondent seeks dismissal of the Formal Complaint because: 1) the challenge to PGW's Delivery Charge and associated prayer for relief are impertinent matter as they exceed the Commission's powers given that the Commission has no authority to allow a public utility to deviate from its tariff; 2) the challenge to PGW's Delivery Charge is legally insufficient as it fails to support a claim that PGW has violated a Commission regulation, statute, or order; and 3) the Complainant does not have the standing to represent other customers.

Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlt. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Citing Shenano Twp. bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlt. 1996).

While in the present case, Mr. Turner's challenge to PGW's Delivery Charge carries a heavy burden of proof for the Complainant, neither the related claims nor the relief requested constitute impertinent matter. See *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Order entered July 28, 2012). The same applies to PGW's objection on the ground of legal insufficiency of the pleading. It is well within this Commission's jurisdiction and power to review and investigate the reasonableness of the tariff provisions of a utility. However, it bears repeating that the Complainant must successfully carry the heavy burden of proving that the facts and circumstances leading to the creation of the Commission's approval of PGW's current Delivery Charge have changed so drastically as to render the application of the tariff provision unreasonable for him to prevail on this issue.

Finally, PGW objects to Mr. Turner's standing to bring a claim or claims on behalf of "We, The Customers of Philadelphia Gas Works." I agree with PGW. Pursuant to 52 Pa. Code § 1.21, individuals may represent themselves in adversarial proceedings before this Commission. However, only an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice*, may represent other individuals, persons or entities. 52 Pa. Code § 1.22. After viewing all the Complainant's averments in the Complaint as true for purposes of deciding the preliminary objection, I still find no evidence that Mr. Turner fulfils the requirements of 52 Pa. Code § 1.22 by being an attorney licensed to practice law in the Commonwealth of Pennsylvania or admitted *pro hac vice*. Mr. Turner, therefore, cannot make claims or represent the interest of other PGW customers in a proceeding before this Commission. Consequently, I shall grant PGW's Preliminary Objection and dismiss the portion of the Complaint where he makes such claims. However, the remaining issues regarding the termination of his gas service, his request for a payment arrangement, and his challenge to the reasonableness of the Delivery Charge must still be addressed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Philadelphia Gas Works in the matter of Ernest L. Turner v. Philadelphia Gas Works at Docket No. F-2024-3049464 is granted, in part, and denied, in part.

2. That the portion of the Complaint purporting to raise claim or represent the interest of other customers of Philadelphia Gas Works is dismissed.

3. That matter shall be set for a hearing to address the remaining issues raised in the Complaint.

Date: September 18, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge