

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joe Yarzebinski	:	
	:	
v.	:	C-2024-3051085
	:	
Peoples Natural Gas Company LLC	:	

**INTERIM ORDER
DISMISSING PRELIMINARY OBJECTIONS**

On August 21, 2024, Joe Yarzebinski (Complainant) filed a formal complaint against Peoples Natural Gas Company LLC (Peoples). Checking the “other” box on the complaint form, Complainant alleges that Peoples killed a 50-year-old maple tree on his property when Peoples replaced a gas main through his front yard. As relief, he wants Peoples to cut down the dead tree, grind the stump and replant a like-kind tree.

Peoples filed an answer on September 30, 2024. Peoples denies that it is responsible for the death of the tree, but states that it is willing to cut down the dead tree and grind the stump.

Peoples also filed preliminary objections. According to Peoples, the Complainant wants the Commission to award monetary damages. The legal basis for Peoples’ preliminary objection is that the Commission does not have jurisdiction to award monetary damages. Peoples has mischaracterized the Complainant’s request for relief and the preliminary objections will be dismissed.

Preliminary objections are permitted under Commission regulations.¹ Preliminary objection practice before the Commission is similar to Pennsylvania civil practice

¹ 52 Pa.Code § 5.101.

respecting preliminary objections.² In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.³ 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.⁴ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁵

Peoples correctly stated in its Preliminary Objections that the Commission has no authority to award monetary damages.⁶ However, the Complainant is not requesting monetary damages. He is requesting the restoration of his property. The Commission has held that a claim that a public utility damaged a person's property and failed to repair the damage in a satisfactory manner fall squarely within the issue of whether the utility has rendered reasonable service:

The Public Utility Code imposes a duty on every public utility to furnish and maintain adequate, efficient and reasonable service to the public. 66 Pa.C.S. § 1501. The statutory definition of "service" is to be broadly construed. *County Place Waste Treatment Company, Inc. v. Pennsylvania Public Utility Commission*, 654 A.2d 72 (Pa. Cmwlt. 1995).

Furthermore, service is confined not only to the distribution of the primary service but includes any and all acts related to that function, including the maintenance practices the public utility undertakes with its facilities in a right-of-way. *West Penn Power Company v. Pennsylvania Public Utility Commission*, 578 A.2d 75 (Pa. Cmwlt. 1990).

We find that the controversy before us concerns the reasonableness of a public utility's service to the public and lies within the authority delegated to the Commission by the Legislature in the Public Utility Code. Whether Columbia damaged the Complainant's driveway and sidewalk when it

² *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

³ *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlt. 1996).

⁴ *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlt. 1997).

⁵ *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002).

⁶ *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977).

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