

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Teyauna-Michelle Pendleton	:	
	:	
v.	:	F-2024-3051398
	:	
Philadelphia Gas Works	:	

**ORDER
DENYING THE PRELIMINARY OBJECTIONS OF PHILADELPHIA GAS WORKS**

HISTORY OF THE PROCEEDING

On September 23, 2024, Teyauna-Michelle Pendleton (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service” and “Other.”

On October 16, 2024, PGW filed Preliminary Objections to the Complaint with attached Notice to Plead. In its Preliminary Objections, PGW alleges insufficient specificity of the pleading and legal insufficiency of the pleading. PGW requested that the Complaint be dismissed.

The Complainant’s Answer to PGW’s Preliminary Objections was due within ten days of the date of service of the Preliminary Objections. 52 Pa. Code § 5.101. The Complainant did not file an Answer to PGW’s Preliminary Objections.

By Motion Judge Assignment Notice dated November 7, 2024, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

PGW's Preliminary Objections are now ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be denied and the case will proceed to a hearing.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. The Commission's Rules provide, in relevant part:

§ 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(a).

When deciding preliminary objections, the Commission must accept as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A. 2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the pleadings in the light most favorable to the nonmoving party and should dismiss a pleading only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); see also, *Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). “For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). 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 Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

A formal complaint must set forth "the act or thing done or omitted to be done" by a 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; 52 Pa. Code § 5.22(a)(5).

In this case, in paragraph four of the Complaint, the Complainant placed a checkmark in the box indicating: “The utility is threatening to shut off my service or has already shut off my service.” This clearly is an allegation of an act or thing done by PGW over which the Commission has jurisdiction. 66 Pa. C.S. § 701; 52 Pa. Code § 5.22(a)(5). Accordingly, PGW’s Preliminary Objections must be denied.

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