

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tasha Alisa Underwood Estate	:	
	:	
v.	:	F-2024-3051673
	:	
Philadelphia Gas Works	:	

ORDER
DENYING PRELIMINARY OBJECTIONS AND
SCHEDULING AN EVIDENTIARY HEARING

On October 7, 2024, Tasha Alisa Underwood Estate (Complainant) filed a Formal Complaint against Philadelphia Gas Works (PGW). The Formal Complaint was served on PGW on October 17, 2024. In the Complaint, Complainant asserts that PGW is threatening to shut off service or has already shut off service. The Formal Complaint also states, in part:

According to workers Thursday 3 October 2024 4948 was abandoned. Due to the vital nature of services, the impact it will have due to weather changing it is imperative that the service is restored within 7 days, with all payments redeemable in Lawful Money of The United States of America.

On November 7, 2024, PGW filed preliminary objections to the Formal Complaint. PGW’s preliminary objections included a notice to plead. PGW requests that the Formal Complaint be dismissed for insufficient specificity pursuant to 52 Pa. Code § 5.101(a)(3) and because it is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4). PGW asserts that the Complaint does not contain information specific enough to allow PGW to understand the allegations against it in order to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense. PGW also asserts that the Complaint fails to set forth any facts that could be construed as a violation of a Commission regulation, statute, or order by PGW. No response to PGW’s preliminary objections has been filed.

On December 10, 2024, a motion judge assignment notice was issued, assigning me as the presiding officer.

PGW's preliminary objections are ready for disposition.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69 (Pa. P.U.C. 1994) (*Equitable*). Section 5.101(a) provides:

(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 a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa.

1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Complainant and should dismiss the complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; see also, *Interstate Traveler Services, Inc. v. Commonwealth, Dep't of Env'tl. Res.*, 406 A.2d 1020 (Pa. 1979).

Under the standards of disposing preliminary objections and viewing the Complaint in a light most favorable to Complainant, I disagree with PGW that the Formal Complaint should be dismissed. Regarding the legal sufficiency of the Formal Complaint, to grant PGW's preliminary objection, I would need to accept that, even if all the facts set forth in the Formal Complaint are true, the Complainant fails to set forth a claim for which the Commission can grant relief as a matter of law. *Scott v. Metro. Edison Co.*, C-2009-2083345 (Initial Decision issued Mar. 20, 2009). Preliminary objections in the form of legal insufficiency, also known as a demurrer, will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. *Cnty. Life Support Sys., Inc. v. Commonwealth*, 689 A.2d 1014 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. *Id.*; see also, *Hoffman v. Misericordia Hosp. of Phila.*, 267 A.2d 867 (Pa. 1970) ("the question presented by the demurrer is whether on the facts averred, the law states with certainty that no recovery is possible").

The Formal Complaint alleges PGW is either threatening to shut off service or has already shut off service, and requests restoration of service. Various provisions of the Public Utility Code and Commission regulations govern under what circumstances a public utility may terminate service to a customer, and under what circumstances service may be restored. See, e.g., 66 Pa.C.S §§ 1406, 1407; 52 Pa. Code §§ 56.81 – 56.131, 56.191-192. Therefore, the Formal Complaint clearly sets forth facts for which the Commission may be able to grant relief as a matter of law.

PGW's preliminary objections also state that the Formal Complaint is insufficiently specific. The Commission has held that, in the normal course, a *pro se* complaint should not be dismissed without first providing a hearing during which the *pro se* complainant

could further explain his or her position and the factual basis for the complaint. *Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). *Pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. There are some cases where a hearing would not enable the complainant to better explain her position or provide additional facts that would alter the inevitable conclusion that the complaint should be dismissed. *See Vata v. Phila. Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010). This case is not one of those instances. Although PGW, in its preliminary objections, states that it is not clear on its face what alleged act or act to be omitted by PGW is raised by the Formal Complaint, at a hearing Complainant may be able to further explain why PGW is responsible for issues raised in the Formal Complaint. Therefore, PGW's preliminary objections are denied.

The Formal Complaint will now be scheduled for an evidentiary hearing on March 26, 2025, starting at 10:00 a.m., and a hearing notice will be issued. Complainant will be responsible at the hearing to demonstrate by a preponderance of the evidence that PGW has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PGW's preliminary objections.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa.Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Philadelphia Gas Works at Docket Number F-2024-3051673 on November 7, 2024 are denied.

2. That the Formal Complaint filed by Tasha Alisa Underwood Estate at Docket Number F-2024-3051673 will proceed to a hearing to be held on Wednesday, March 26, 2025 beginning at 10:00 a.m. To participate in the hearing on March 26, 2025, parties must call 888-456-5124 and enter pin number 9563241 when prompted.

Date: January 7, 2025

/s/
John M. Coogan
Administrative Law Judge

F-2024-3051673 - TASHA UNDERWOOD v. PHILADELPHIA GAS WORKS

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