

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Harry Borbonus	:	
	:	
v.	:	C-2025-3052901
	:	
Peoples Natural Gas Company, LLC	:	

**ORDER GRANTING PRELIMINARY OBJECTION OF
PEOPLES NATURAL GAS COMPANY, LLC**

This Order grants the preliminary objection of Peoples Natural Gas Company, LLC (“Peoples Gas” or “Respondent” or “Company”) because the Pennsylvania Public Utility Commission (“Commission”) does not have the authority to award monetary damages as a remedy. Therefore, that portion of the Formal Complaint (“Complaint”) will be dismissed. However, this Order also directs that a hearing will be scheduled and held on the claims raised in the Formal Complaint and over the remedies which the Commission does have the authority to grant, as discussed below.

History of the Proceeding

On January 12, 2025, Harry Borbonus (“Complainant”) filed a Complaint against the Company and checked the box “other” as the reason for the Complaint. Complainant averred that he owns a rental property located at 51 West Burrell Street, Blairsville, Pennsylvania 15717 (“property”) and that Respondent dug through a drain line for the property causing water to back up into the basement. (Complaint ¶ 4). Complainant further alleged that Respondent never notified him of this action. (Complaint ¶ 4). As relief, Complainant states that he “would like Peoples Gas to either dig up and fix the drain that they broke or install a sump pump” in Complainant’s basement. (Complaint ¶ 5).

On February 3, 2025, the Company timely filed an Answer and a Preliminary Objection (“PO”). In its Answer, the Company denied the material allegations and conclusions

of law in the Complaint. (Answer ¶ 4). Specifically, the Company acknowledged that it encountered storm sewer drain lines at the property while digging, but the Company was advised that the lines were abandoned and closer inspection reflected that the lines were filled with mud/debris/water and penetrated with tree roots. (Answer ¶ 4).

In its PO, the Company argues that Complainant's request for relief in the form of having the Company fix or pay to fix the alleged damaged drain or install a sump pump is essentially a request for monetary damages. The Company argues that the portion of the Complaint pertaining to a request for monetary damages should be stricken as impertinent. Specifically, the Company avers that under Section 5.101(a)(2) of the Commission's regulations, a request for damages constitutes impertinent matter which should be dismissed because the Commission does not have the authority to award monetary damages. *See*, 52 Pa. Code § 5.101(a)(2).

On February 18, 2025, in response to the Company's Preliminary Objection, Complainant filed a response, docketed as "Answer to Preliminary Objection" wherein Complainant stated his disagreement with the Company's stance that the drain lines were abandoned and asserted that he should have been notified by the Company that they were going to "cap off" the drain line.

On February 25, 2025, a Motion Judge Assignment Notice was issued informing the parties that I was responsible for resolving any issues which may arise during the preliminary phase of this proceeding and a hearing would be scheduled, if necessary. The Company's preliminary objection is now ready for disposition.

Legal Standards

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 Transp.*

Intervenors v. Equitable Gas Co., Docket No. C-00935435 (Opinion and Order entered 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(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp's. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the PO. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the PO, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emp's. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). The POs can be granted only if recovery or relief is not possible after all the Complainant's averments in the complaint are viewed as true for purposes of deciding the PO, using only those facts specifically admitted. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

Therefore, the primary focus is on whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Id.*

Disposition

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility company is responsible or accountable for the problem described in the complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (“Code”), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with 66 Pa.C.S. § 3301 or other provisions of the Code.

In this case, Complainant alleges that Respondent damaged a sewer drain line on his property while they were digging causing water to back up into the basement of the property. This allegation qualifies as a claim for reasonable service under 66 Pa.C.S. § 1501. As relief, Complainant requests that the Company be made to repair the damaged sewer drain, pay someone to repair it or pay to have a sump pump installed at the property. Respondent’s PO asserts that the portion of the Complaint requesting repair or payment for repair is equivalent to a request for monetary damages and it should be summarily dismissed as impertinent matter under 52 Pa. Code § 5.101(a)(2) because the Commission lacks authority to award damages.

It is well-settled that the Commission lacks jurisdiction to award damages. *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). A finding, if any, that the Company violated a Commission Order, regulation or statute, may result in the imposition of a civil penalty, but does not require it, consistent with 66 Pa.C.S. § 3301 or other provision of the Code. Further, it should be noted that a fine, if any, that is imposed on the Company is payable to the Commonwealth of Pennsylvania, not the customer—Mr. Borbonus, in this instance. However, a finding that the Company violated a Commission Order, regulation or statute may potentially result in the Commission ordering the Company to repair damage.

Williams v. Pittsburgh Water and Sewer Authority, Docket No. C-2020-3019223 (Opinion and Order entered November 18, 2021). Thus, to the extent Complainant requests that the Commission award monetary damages, such claims may be appropriate for a Court of Common Pleas but are not pertinent to Commission proceedings. *Snyder v. West Penn Power Company*, Docket No. C-2024-2451483, 2015 WL 1754585 (Pa.P.U.C.) (April 7, 2015).

Thus, Respondent's Preliminary Objection will be granted and Complainant's request for monetary damages will be stricken/dismissed and Complainant shall be precluded from introducing any evidence related to a monetary or compensatory claim for damages.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Peoples Natural Gas Company LLC at Docket No. C-2025-3052901, which requests that the Complainant's request for monetary damages be stricken/summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2) is hereby GRANTED.

2. That by separate Hearing Notice, an evidentiary hearing will be scheduled on the claims raised by the Complainant, Harry Borbonus, in his Formal Complaint at Docket No. Docket No. C-2025-3052901.

Date: February 28, 2025

/s/ Chad L. Allensworth
Chad L. Allensworth
Administrative Law Judge

C-2025-3052901 - HARRY BORBONUS v. PEOPLES NATURAL GAS CO LLC

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