

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vera Scroggins	:	
	:	
v.	:	C-2023-3039609
	:	
Pennsylvania American Water Company	:	

**INTERIM ORDER ON MOTION TO STRIKE
AND PRELIMINARY OBJECTIONS**

This Interim Order addresses the Motion to Strike the further Amended Complaint and Preliminary Objections of Pennsylvania American Water Company (PAWC).

LEGAL DISCUSSION

Motion to Strike the Further Amended Complaint

In this matter, the Respondent requests that the most recent Amended Complaint filed by the Complainant in this matter be struck. In this case, the Complainant filed an Amended Complaint and then was allowed to further explain or expand her Complaint in a prehearing conference. At this point, I agree with the Respondent that the Complainant has had numerous opportunities related to this case. I will strike the last further Amended Complaint.

Preliminary Objections

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small*

Transp. Intervenors v. Equitable Gas Co., 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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.

For purposes of disposing of the 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. Cmwlth of Pa.*, 490 A. 2d 402 (Pa. 1985); *Cmwlth of Pa. v. Bell Tele. 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 Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also, Interstate Traveler Serv., Inc. v. Pa. Dept of Envir. 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 Tele. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991).

With respect to a preliminary objection regarding insufficient specificity of a pleading, the Commission's regulations state: (1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission. (2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will

be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).
Id. at § 5.101(e).

The Respondent alleges that the Complainant does not have standing in this matter. Specifically, the Respondent notes that the Complainant does not receive service at her residence from PAWC. However, the Complainant is named on an account for another customer. At this point, there is no indication in the record that the Complainant's name was added to the account in error or contrary to PAWC's policy. Taking all information available at this time and viewing in favor of the Complainant, I believe there is sufficient information to establish that the Complainant is a customer of PAWC as her name is on an account for PAWC, and therefore, the Complainant has standing to bring this Complaint.

Additionally, the Respondent asserts that the Commission does not have jurisdiction in this matter. Specifically, the Respondent contends that the Complainant's issues are more policy related and should not be addressed by the Commission. The Complainant asserts that further testing should be done to make sure that the water is safe for human consumption. The Complainant points to the fact that there is fracking in the area that may be releasing toxic chemicals into the drinking water supply. The Complainant contends that the Company should be testing for PFAs and other "forever" chemicals in the drinking water. The Complainant also contends that the PAWC should be testing more frequently to ensure the safety of the water.

I agree with the Respondent that these matter noted above are more related to public policy rather than an actual violation of the Public Utility Code, Commission regulations or order. These concerns are better addressed by the Pennsylvania General Assembly and the Complainant can contact her state representatives to address these concerns. While I understand the Complainant's concerns, these are not within the jurisdiction of the Commission. As such, these portions of the Complaint are dismissed.

However, the Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Kim Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa.C.S. § 102.

In the matter, it is clear that the Complainant is concerned with the safety of the service provided by PAWC. The Complainant has concerns about the testing of the water for pollutants and the time frame of the testing. These matters are addressed by the Pennsylvania Department of Environmental Protection (DEP) as it sets the regulations regarding drinking water testing in Pennsylvania. While the Commission does not have jurisdiction over these regulations, the Commission can review whether the Company is complying with those regulations in terms of providing utility service safely. The Complainant may provide evidence of PAWC not complying with DEP regulations and testing requirements. The Complainant may also present evidence of any DEP violations that the Company may have in the area, or action plans that have been implemented by the DEP to bring PAWC into compliance. The Complainant can provide evidence of boil water advisories or issues with water quality (color, smell, taste, turbidity, etc.). It is noted that the Complainant has the burden of proof in this

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