

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sabrina Lee	:	
	:	
v.	:	C-2025-3057922
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

**INTERIM ORDER
GRANTING PRELIMINARY OBJECTION
AND TRANSFERRING CASE TO MEDIATION UNIT**

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This order grants Respondent’s Preliminary Objection (PO) and strikes, as impertinent matter, Complainant’s request for an award of monetary damages as beyond the Commission’s jurisdiction and refers the case to the Commission’s Mediation Unit on remaining issues

HISTORY OF THE PROCEEDING

On October 2, 2025, Sabrina Lee (Complainant) filed a Formal Complaint against Aqua Pennsylvania Wastewater, Inc. (Aqua) in which she seeks an award of monetary damages as reimbursement for alleged damage to personal property that resulted from a broken sewer line during a pole replacement project by PECO Energy at her property. Complainant indicated in the Complaint that Aqua did not mark the location of its facilities for PECO.

On November 3, 2025, Aqua filed an Answer and New Matter in response to the Complaint. In its Answer, Aqua denied the material allegations in the Complaint. In its New Matter, Aqua averred that the Commission does not have jurisdiction to order the payment of monetary damages. Aqua seeks dismissal of the Complaint. Aqua further requests in its Answer and New Matter that the case be referred to the Commission's Mediation Unit.

Also on November 3, 2019, Aqua filed a Preliminary Objection, arguing that the Complainant's request for an award of monetary damages should be stricken as impertinent material on the basis that the Commission does not have the legal authority to order the payment of monetary damages. Complainant did not file an Answer to either the New Matter or POs.

On December 5, 2019, this matter was assigned to me for disposition.

DISCUSSION

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

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (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 preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). 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 Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997). Therefore, the primary focus is on the Complainant's pleadings.

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

A prayer for damages, which are not legally recoverable in the cause of action, is impertinent matter in the sense that it is irrelevant to that cause of action, and is correctly

challenged through a motion to strike the requested relief as impertinent matter. *Third Avenue Realty, supra* (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

Aqua correctly argues in its POs that the Commission does not have the legal authority to order the payment of monetary damages. Complainant seeks reimbursement for damage to her kitchen, landscaping and other personal property. Since the Commission may not grant her this requested relief, Aqua's PO is granted.

However, Complainant also indicated in her Complaint that Aqua did not mark the location of its facilities for PECO. If proven true, this may constitute the provision of unreasonable or unsafe service under 66 Pa.C.S. § 1501, an allegation over which the Commission clearly has jurisdiction. Accordingly, the case will proceed on the jurisdictional issues.

Upon review of the remaining allegations, I believe this case is suitable for further review through the Commission's mediation process. Accordingly, I will transfer this case to the Commission's Mediation Unit.

ORDER

THEREFORE

IT IS ORDERED:

1. That Aqua Pennsylvania Wastewater, Inc's Preliminary Objection that the Commission lacks jurisdiction to award monetary damages is granted and the Complainant's request for an award of monetary damages is stricken from the Complaint.

2. That the remaining matters be and hereby are referred to the Commission's Mediation Unit for mediation review.

Date: December 19, 2025

_____/s/
Steven K. Haas
Administrative Law Judge

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