**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alice Ann Belmonte-Gates :

:

v. : F-2012-2332583

:

PECO Energy Company :

Alice Ann Belmonte-Gates :

:

v. : F-2012-2332589

:

Pennsylvania-American Water Company :

**ORDER GRANTING PRELIMINARY OBJECTIONS AND**

**DIRECTING COMPLAINANT TO FILE A MORE SPECIFIC PLEADING**

On October 19, 2012, Alice Ann Belmonte-Gates filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission). In her Complaint, Ms. Gates left blank section 2 of the complaint form that asks for the name of the utility company which the complaint is being filed against. In section 3 of the complaint form that asks for the “type of utility (check one),” Ms. Gates checked every utility type except for steam heat. The Commission served the Complaint on Pennsylvania-American Water Company (PAWC), docket number F-2012-2332589, and directed PAWC to file a response. The Complaint was an appeal of a prior decision of the Commission’s Bureau of Consumer Services (BCS), case number 3026921. Ms. Gates provided an attachment to her Complaint that detailed numerous issues of which she complained about.

On November 16, 2012, PAWC filed Preliminary Objections in response to Ms. Gates’ Complaint. The Preliminary Objections were accompanied by a Notice to Plead. In its Preliminary Objections, PAWC argued that Ms. Gates is requesting relief awarded by federal courts to which the Commission lacks subject matter jurisdiction. PAWC also argued that Ms. Gates’ Complaint is insufficiently specific and that the Company does not have sufficient notice as to the nature of the allegations against it and therefore cannot adequately respond. PAWC argues that its Preliminary Objections should be granted based on Sections 5.101(a)(1) and (a)(3) of the Commission’s regulations and that Ms. Gates’ Complaint should be dismissed unless Ms. Gates files an amended formal Complaint that is plead with sufficient specificity on the issues the Commission has jurisdiction.

By Motion Judge Assignment Notice dated November 21, 2012, Ms. Gates and PAWC 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.

Also on October 19, 2012, Ms. Gates filed a formal Complaint with the Commission in which she wrote “Ms. Heather Green” in section 2 of the complaint form that asks for the name of the utility company which the complaint is being filed against. In section 3 of the complaint form that asks for the “type of utility (check one),” Ms. Gates checked every utility type except for steam heat. The Commission served the Complaint on PECO Energy Company (PECO), docket number F-2012-2332583, and directed PECO to file a response. The Complaint was an appeal of a BCS decision, case number 3026947. Ms. Gates also provided an attachment to her Complaint that detailed numerous issues of which she complained about. The attachment appears to be the same exact attachment that Ms. Gates attached to her Complaint against PAWC.

On November 12, 2012, PECO filed a Preliminary Objection in response to Ms. Gates’ Complaint. The Preliminary Objection was accompanied by a Notice to Plead. In its Preliminary Objection, PECO argued that Ms. Gates did not provide sufficient information in her Complaint to permit the Company to provide a meaningful response or address Ms. Gates’ concerns. PECO further averred that it conducted an independent investigation to determine the issues Ms. Gates is alleging but was still unable to respond to the Complaint. PECO argues that its Preliminary Objection should be granted based on Section 5.101(a)(3) of the Commission’s regulations and that Ms. Gates should be directed to provide more specificity regarding her Complaint.

By Motion Judge Assignment Notice dated November 21, 2012, Ms. Gates and PECO were informed that Administrative Law Judge (ALJ) Kandace F. Melillo was assigned as the Presiding Officer in the matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

Neither PAWC nor PECO filed an Answer to the respective Complaints filed by Ms. Gates.

On November 27, 2012, both ALJ Melillo and I received a six-page, single-spaced document with a one page attachment. Both documents had listed at the top the docket numbers for both the Complaint against PAWC and the Complaint against PECO. Both documents appear to be identical with identical attachments and presumably are Ms. Gates’ Answers to the Preliminary Objections filed by PECO and PAWC.

On December 4, 2012, an Order consolidating the two Complaints was issued. The December 4th Order noted that there are common questions of fact and that consolidation will avoid unnecessary delay or cost. As such, the Complaints were consolidated pursuant to Section 5.81 of the Commission’s regulations. 52 Pa. Code § 5.81. The December 4th Order noted that the Preliminary Objections filed by PECO and PAWC will be addressed at the same time and heard before an Administrative Law Judge at the same time to the extent necessary.

This Order grants the Preliminary Objections filed by PAWC and PECO pertaining to the issues of subject matter jurisdiction and insufficient specificity of pleading and directs Ms. Gates to file and serve an Amended Complaint with the Commission within thirty (30) days of the date of this Order.

The Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide 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 Transportation Intervenors v. Equitable Gas Company*,* 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Both PAWC and PECO aver in their Preliminary Objection that Ms. Gates’ Complaint is not sufficiently specific for them to be able to respond. PAWC also averred in its Preliminary Objection that Ms. Gates’ Complaint should be dismissed based on a lack of jurisdiction. The Commission’s Rules provide, in relevant part:

(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.

52 Pa. Code § 5.101(a)(1)-(6).

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. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaints in this case in the light most favorable to the Complainant and should dismiss the complaints only if it appears that the 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, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

The purpose of requiring a complaint to be sufficiently specific is to insure that the respondent’s right and ability to answer and defend the complaint will not be unduly impaired by a vague pleading when stating the ground of the complaint. A preliminary objection seeking a more specific pleading should only be granted where the pleading is not sufficiently clear enough to enable the objecting party to prepare its case. Landau v. Western Pennsylvania National Bank, 445 Pa. 217, 282 A.2d 335 (1971); Paz v. Commonwealth, Dept of Corrections, 135 Pa.Commw. 162, 580 A.2d 452 (1990). Furthermore, Section 5.22 of the Commission’s regulations require that a formal complaint set forth a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation, as well as a clear and concise statement of the relief sought. 52 Pa. Code §§ 5.22(a)(5) and (6).

In this case, PAWC stated in its Preliminary Objections that it does not have sufficient notice as to the nature of the allegations against it and cannot adequately respond. PAWC added that it is not familiar with the individuals identified in paragraph 4.b of the Complaint where complainants are required to state the facts of the complaint. PAWC further added that it is not familiar with the capacities those individuals allegedly represent and the legal authority granted to each individual. PAWC also stated that it does not have access to such information and is therefore unable to adequately respond to the Complaint as filed. PAWC concluded that it is unable to comply with the Commission’s requirements that a respondent “admit or deny specifically all material allegations of the complaint” or “state concisely the facts and matters of law relied upon.” 52 Pa. Code §§ 5.61(b)(3) and (b)(4). PAWC referred to the attachment to the Complaint as incoherent.

Similarly, PECO stated in its Preliminary Objection that the Complaint does not provide sufficient information to permit the Company to provide a meaningful response or address Ms. Gates’ concerns. PECO added that the Complaint does not explain what Ms. Gates seeks from the Commission. PECO also added that it conducted an independent investigation to determine the issues Ms. Gates is alleging but there is insufficient information for the company to respond and craft a targeted Answer. PECO referred to the attachment to the Complaint as gibberish.

Both PAWC and PECO are correct and Ms. Gates will be directed to file and serve an Amended Complaint within thirty (30) days of the date of this Order. The Amended Complaint must be served on the Presiding Officer and counsel for PECO and PAWC.

As noted above, Section 5.22 of the Commission’s regulations require that a formal complaint set forth a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation, as well as a clear and concise statement of the relief sought. 52 Pa. Code §§ 5.22(a)(5) and (6). Ms. Gates’ Complaint fails to comply with these requirements. PAWC and PECO have the right to know what the complaint against them is about and must have the ability to answer and defend the complaint without the burdens of a vague pleading. Ms. Gates has failed to adequately advise PECO and PAWC so as to enable them to prepare an answer and present a defense. Indeed, it is not even entirely clear that PECO and PAWC are the correct respondents.

With regards to PAWC’s argument regarding lack of Commission jurisdiction, PAWC states that the Commission is not empowered to award the relief requested by Ms. Gates. In her Complaint, Ms. Gates wrote in response to paragraph 5, “Relief,”: “Civil Federal Abuse, Trial by Jury of Facts Under Sub Sec 402b of the United States Supreme Court Code! See Attached!” The attached document that is referred to makes no clear and concise statement of relief over which the Commission has jurisdiction.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. P.U.C., 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq*. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

The attachment to Ms. Gates’ Complaint, as well as the six-page Answer to the Companies’ respective Preliminary Objections, is confusing. It contains statements such as:

* “CIVIL FEDERAL RIGHTS OF FULL REPRESENTATION NOT; MEDIATION; EX PARTE; or Collaborative LAWS… Trial by Jury of Evidentiary Facts under sub Section 402(b) of the United States Supreme Court Code “Under Color of Law” Free From conflicts of my Interests and the refusal’s to recues and remove. PFA filed reversed against me by Judge T. Delrecci.”
* “Friday October 19, 2012 164MT2006 my Writs of Mandamus: 2030EDA2003 malfeasance of the Banks and Bankruptcy’s Chapters (7, 11, 13) and Tax Loopholes Judicial and Legislative and Fraud of Separations of Church & State from the Collusions of the Federal ACTS and State Statues as researched and the Abuses of this Fraud of IRS and “Operation Twist” QE1, 2, 3 by the Federal Reserve B. Bernanke and The U.S. States Treasury’s T. Geithner … (PA)… R. McCord…”
* “This is all by Fraud of Consent; Legally Formally Notified; Legally Informed; Legally Advised Consent that I have been completely without from this Civil and Federal Abuse to my Rights of Requested Legal Access to be Abused and by the abandonments of the incompetence’s and abuses to them my children bribed and informed to claim frightened of me; to alienate; ignore and abuse me of any communications for this Abuse of their legal accesses and social Greed and abuse.”

Most of the attachment is written in incomplete sentences and uses abbreviations that are unclear.

What is clear, however, is that aside from references to the names and addresses of the Commission’s Secretary and Office of Administrative Law Judge, there are no well-pleaded, material facts raised over which the Commission has jurisdiction, even when viewing the Complaint and every reasonable inference in a light most favorable to Ms. Gates, as is required when addressing Preliminary Objections. Ms. Gates must raise an issue over which the Commission has jurisdiction in her Amended Complaint.

As such, the Preliminary Objections filed by PAWC and PECO are granted. Ms. Gates’ Complaints are not sufficiently specific; nor do they raise an issue over which the Commission has jurisdiction. Ms. Gates will be directed to file and serve an Amended Complaint within thirty (30) days of the date of this Order raising an issue over which the Commission has jurisdiction.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Pennsylvania American Water Company at Docket Number F-2012-2332589 and by PECO Energy Company at Docket Number F-2012-2332583, consolidated by Order entered December 4, 2012, are hereby granted.
2. That Alice Ann Belmonte-Gates shall file and serve an Amended Complaint with the Pennsylvania Public Utility Commission within thirty (30) days of the date of this Order, with a copy sent to the Presiding Officer and counsel for the Pennsylvania American Water Company and PECO Energy Company.
3. That upon timely filing and service of an Amended Complaint by Alice Ann Belmonte-Gates, the Pennsylvania American Water Company and PECO Energy Company shall timely file and serve a responsive pleading.

Date: December 10, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joel H. Cheskis

Administrative Law Judge

**F-2012-2332583 - ALICE ANN BELMONTE GATES v. PECO ENERGY COMPANY**

**F-2012-2332589–ALICE ANN BELMONTE GATES v. PENNSYLVANIA AMERICAN WATER COMPANY**SHAWANE L LEE ESQUIREEXELON BUSINESS SERVICES2301 MARKET STREET S23-1PHILADELPHIA PA 19103215-841-6841Eserve

ALICE ANN BELMONTE GATES1007 N FORREST AVENUEW NORRISTOWN PA 19401610.505.6895

SUSAN SIMMS MARSH ESQUIREPENNSYLVANIA AMERICAN WATER COMPANY800 HERSHEYPARK DRIVEHERSHEY PA 17033717-531-3208Eserve