

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM TOWNE,

Complainant,

v.

PITTSBURGH WATER AND SEWER  
AUTHORITY,

Respondent.

Docket No. C-2019-3008437

**ANSWER TO  
PRELIMINARY OBJECTIONS**

FILED ON BEHALF OF  
COMPLAINANT:  
WILLIAM TOWNE

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NOW COMES Complainant, William Towne, and sets forth this Answer to Preliminary Objections as required and noted in the Notice To Plead. The Preliminary Objections contain sections only for Introduction (I), Argument (II), and Conclusion (IV); this document responds primarily to section II.

**A. Applicable Legal Standards**

3 (2<sup>nd</sup>)-6. Part A presents conclusions of law to which no response is required.

**B. Commission Jurisdiction**

7. ¶7 presents conclusions of law to which no response is required.

8. Reply to ¶8 is under ¶11 and part C below.

9. ¶9 claims to quote from the Complaint document, which speaks for itself.

10. PWSA's Answer and New Matter are not relevant at the stage of PWSA's Preliminary Objections against the Complaint, nor are a moving party's factual assertions which may also be contained therein. See ¶5 and related law. The information available to Complainant at the time

of the filing, based on direct communication from Respondent, was that Complainant's service was in grave danger of being promptly shut off. This was in fact followed by interruption of service a few days later with timing consistent with what had been threatened in the message. The Complainant also had to pay fees for restoration of service following this interruption. Those specific facts were not available at the time of filing the complaint, which sought to avoid such an outcome, but the possibility of these facts may be fairly inferred from the facts available at the time of filing the Complaint. Allegations of fact contained within the Respondent's Answer and New Matter may not be properly considered at this stage.

11. Portions of the Complaint describing harm done to a member of the public based on misconduct by the Utility should not be stricken as impertinent matter, even if the Commission knows at the Preliminary Objections stage that it will not award Complainant an order of direct monetary compensation, because facts regarding harms caused remain relevant to the PUC's determinations related to the public interest and protection of consumers, as well as Complainant's standing to request enforcement of public utilities laws and/or consequences for violations thereof.

12-13. Courts of common pleas may have jurisdiction over public utilities, though when a utility asserts sovereign immunity exemption as PWSA indicates it would likely do (see footnote 6), the Court tends to recommend proceeding to the Public Utilities Commission for any possibility of accountability for harms caused. Any decision by the PUC to not award monetary damages, whether at the Preliminary Objections or later stage, should be clearly worded so as to not preclude the bringing of any related claim in the Court of Common Pleas or Magisterial District Court. Further, it is within the Commission's jurisdiction to order some of the requested

individual-specific outcomes such as not shutting off service, and to take action against a utility violating such customer-specific orders.

### **C. Commission Jurisdiction**

14. ¶14 presents conclusions of law to which no response is required.

15-17. Part C, and to a lesser extent, part B (esp. ¶8) argues that the Commission lack jurisdiction to decide cases when several customers have been affected by wrongdoing on the part of a utility. In fact, the PUC's asserted statement of purpose as published on its Web site, is to protect the public interest. To the extent that tens of thousands of customers may have been similarly affected by the same wrongdoing, the PUC has the duty to protect public interest, with an individual Complainant bringing this case to request the PUC's action on the matter.

18-19. It is within the PUC's jurisdiction to protect the public interest and issue orders requiring compliance with public utilities laws, especially where the utility is found to be in violation of those laws as alleged in the complaint. To the extent that such an order provides relief (e.g. an order to not shut off service to customers who are current on their accounts but against whom the utility has decided to trigger shutoff proceedings), such an action is within the PUC's jurisdiction.

### **D. Commission Jurisdiction**

20. ¶20 presents conclusions of law to which no response is required.

21-22. A "fine fund" is a fund into which fines, or financial civil penalties, are paid. Where such amounts are paid into the Commonwealth of Pennsylvania's General Fund, that is the fund referred to in the requested relief.

23. The PUC has jurisdiction to order that civil penalties be paid to the Commonwealth, which is consistent with the relief requested. Therefore, such a request for relief should not be dismissed on grounds of commission jurisdiction.

#### **E. Legal Sufficiency**

24. The events alleged in the Complaint do amount to a violation of the Public Utility Code. For example, PA Code Title 52 Chapter 56 Subchapter E contains requirements around termination of service, including permissible grounds for termination and proper notice procedures prior to termination. §56.91 requires a written notice of termination at least 10 days prior to the date of the proposed termination, which was not provided. If the utility had been compliant with this requirement of the law before continuing to the next step in shutoff proceedings, and the Complainant had received such a notice, Complainant's would have had the option of responding on a less than immediately urgent timeframe. That would have mitigated harms by avoid the components of damages in this case which were the result of sudden urgency given only three days' notice, when three to five days are conventionally required to be able to take the appropriate steps (such as attorney consultation and urgent legal action regarding an unauthorized person who may be requesting shutoff). For example, with a 10-day written notice, the Complainant would not have had to immediately leave work without advance notice to his employer in order to try to begin the steps of contesting the shutoff. Additionally, §56.93 requires the 3-day notice to include certain information including how to contact the public utility, and the notice provided did not include information regarding an adequate means of contacting the utility, as alleged in the complaint.

25. ¶25 presents argument which appears to rely on assertions of facts by PWSA, not contained in the Complaint, which are disputed and which the PUC may not consider at this

stage. For example, the PWSA appears to be relying on an assertion that the placed call represents "one mistake, which is promptly corrected." Complainant disputes that this is an accurate characterization of the facts of this case, especially as alleged in the Complaint. This paragraph does not provide a Preliminary Objection on which the Complaint can be appropriately dismissed.

26-27. Complainant's response to ¶25 is hereby incorporated. Complainant disputes the factual allegations contained in this paragraph and argues that the PUC may not consider such allegations as a basis for dismissal based on Preliminary Objections. At the stage of preliminary objections, evidence and allegations of fact must be considered in the light most favorable to the non-moving party. As noted in ¶5, "the moving party may not rely on its own factual assertions."

28. Therefore, the Complaint should not be dismissed based on legal insufficiency because the alleged events do amount to a violation of the Public Utility Code.

WHEREFORE, Plaintiff requests that the Preliminary Objections be dismissed with prejudice.

Respectfully Submitted,

A handwritten signature in cursive script that reads "William Towne". The signature is written in black ink and is positioned above a horizontal line.

William Towne

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Answer to Preliminary Objections was mailed by First Class U.S. Mail, postage prepaid, to the following this 11th day of April, 2019, in addition to electronic service provided by the PUC's eFiling service.

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Daniel Clearfield and/or Carl Shultz  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101

A handwritten signature in cursive script that reads "William Towne". The signature is written in black ink and is positioned above a horizontal line.

William Towne