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December 4, 2019

Via Electronic Filing

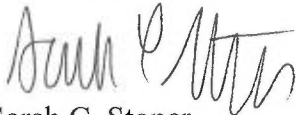
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Shawnece Moore ex rel. Ikhana-hal-makina v. The Pittsburgh Water and Sewer Authority; Docket No. C-2019-3013315

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The Pittsburgh Water and Sewer Authority's Preliminary Objections in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Sarah C. Stoner

Enclosure

cc: Cert. of Service w/enc.

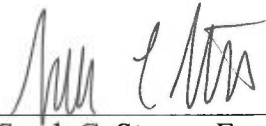
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Shawnece Moore ex rel. Ikhana-hal-makina
924 Millerdale Street
Pittsburgh, PA 15201

Date: December 4, 2019



Sarah C. Stoner, Esquire
Attorney for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawnece Moore ex rel. Ikhana-hal-	:	
makina,	:	Docket No. C-2019-3013315
	:	
Complainant	:	
	:	
	:	
v.	:	
	:	
	:	
Pittsburgh Water And Sewer Authority,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

To: Shawnece Moore ex rel. Ikhana-hal-makina
924 Millerdale Street
Pittsburgh, PA 15201

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of The Pittsburgh Water and Sewer Authority (“Authority”) must be filed within 10 days of the date of service.

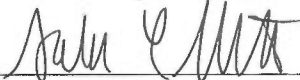
All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and the Office of Administrative Law Judge.

File with:

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

With a copy to:

Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101



Sarah C. Stoner, Esquire

Date: December 4, 2019

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawnece Moore ex rel. Ikhana-hal-	:	
makina,	:	Docket No. C-2019-3013315
	:	
Complainant	:	
	:	
v.	:	
	:	
	:	
Pittsburgh Water And Sewer Authority,	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF THE PITTSBURGH WATER AND SEWER
AUTHORITY**

Pursuant to 52 Pa. Code § 5.101(a) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits the following Preliminary Objections to the Complaint of Shawnece Moore ex rel. Ikhana-hal-makina (“Complainant”) requesting dismissal of the Complaint. Pursuant to 52 Pa. Code §§ 5.61 and 5.101(d) of the Commission’s regulations, PWSA filed an Answer to the Complaint on this same date. In support of these Preliminary Objections, PWSA states as follows:

I. INTRODUCTION

1. PWSA was not served with a complete copy of Ms. Moore’s Formal Complaint until November 14, 2019.

2. Through the Complaint, the Complainant asserts that, because she is an aborigine American woman that is not required to pay taxes or pay for natural resources such as water, the Commission should direct PWSA to: (1) remove any balance on her account; and (2) discontinue

billing/charges for water and wastewater service. To support her “sovereign citizen” claim, Complainant cites the phrase “Indians not taxed” in the Constitution, resolutions of the House of Representatives, and the United Nations Declaration on the Rights of Indigenous People.

3. None of the allegations contained in the Complaint involve matters over which the Commission has jurisdiction.

4. Moreover, the Commission does not have statutory authority to grant the relief that is requested in the Complaint.

5. Therefore, the Complaint should be dismissed.

II. ARGUMENT

A. Applicable Legal Standards

6. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

7. Under Section 5.101(a) of the Commission’s regulations, preliminary objections must specifically state 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;

¹ 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and

(7) Standing of a party to participate in the proceeding.

8. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

9. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁴

B. Dismissal Based on Lack of Commission Jurisdiction/Legal Insufficiency of Pleading, 52 Pa. Code §§ 5.101(a)(1) and (4).

10. Under Section 5.101(a)(1) of the Commission's regulations, preliminary objections may be filed against a Complaint on the basis of a lack of Commission jurisdiction.⁵ Under Section 5.101(a)(4), preliminary objections may be filed on the basis of the legal insufficiency of a pleading.⁶

11. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.⁷ It is

² *County of Allegheny v. Cmwth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007).

⁴ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwth. 1996).

⁵ 52 Pa. Code § 5.101(a)(1).

⁶ 52 Pa. Code § 5.101(a)(4).

⁷ *See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d

well-settled that the Commission must act within, and cannot exceed, its jurisdiction.⁸ Jurisdiction may not be conferred by the parties where none exists.⁹ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹⁰

12. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”¹¹

13. Accepting the factual averments as true in connection with Complainant’s claims, the Commission does not have jurisdiction to resolve any claims of sovereign citizenship or whether Complainant is subject to taxation. That being said, the power to tax is derived entirely from the state. PWSA is organized and exists under the Municipality Authorities Act (“MAA”). The MAA, properly construed, does not delegate taxing power to PWSA.

14. Accepting all of the factual averments set forth in the Complaint as true, they do not provide a basis upon which the Commission can conclude that PWSA has violated the Code, Commission regulations or a Commission order. Rates are charges for a commodity or service provided;¹² they are not taxes.¹³ The provision of free service to the Complainant would be unfair

791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

⁸ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

⁹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹⁰ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

¹¹ 52 Pa. Code § 5.22(a)(4).

¹² Public utility service is defined as providing a commodity or service to or “for the public for compensation.” 66 Pa.C.S. § 102 (definitions). See, e.g., *Shirk v. Lancaster*, 169 A. 557 (Pa. 1933).

¹³ *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949); *Supervisors of Manheim Tp. v. Workman*, 38 A.2d 273 (Pa. 1944). See also *National Biscuit Co. v. Philadelphia*, 98 A.2d 182, 188 (Pa. 1953) (comparing tax and license fee). A tax is a legislation function. *City of Philadelphia v. Pennsylvania PUC*, 676 A.2d 1298 (Pa. Cmwlth. 1996). A tax is where a payment is imposed, regardless of the benefits received. *Id.*

to customers who are paying for the service and the practice is prohibited by the Commission.¹⁴ Accordingly, PWSA is required to charge and bill all users of PWSA's services.¹⁵

15. Even if all of the factual averments set forth in the Complaint are accepted as true, the Commission does not have jurisdiction to (1) require PWSA to waive appropriate charges for services performed; or (2) direct PWSA to perform services for the Complainant without billing her for services provided and water consumed.

16. On the basis that the Commission lacks subject matter jurisdiction to hear the issues raised by the Complaint and to grant the relief that is requested, and that the Complaint does not contain averments that, if proven, show any violation of the Code, Commission regulations or Commission orders, the Complaint should be dismissed.

C. Dismissal Based on Inclusion of Impertinent Matter, 52 Pa. Code § 5.101(a)(2).

17. Under Section 5.101(a)(2) of the Commission's regulations, preliminary objections may be filed against a Complaint on the basis of the inclusion of impertinent matter.¹⁶

18. Complainant requests that PWSA resolve her of her obligation to pay her outstanding account balance and that PWSA discontinue billing the Complainant due to her status as an aborigine American woman.

19. Complainant's sovereign citizen claims include that natural resources such as water "belong to the people" and that she does not pay for her own belongings.¹⁷

¹⁴ See 66 Pa C.S. § 1304; *Philadelphia Suburban Water Co. v. PUC*, 808 A.2d 1044 (Pa.Cmwlth. 2002) (free public utility service is anathema to a system of regulation and publication of a utility's tariffs); *West Penn Power Co. v. Nationwide Mut. Ins. Co.*, 228 A.2d 218 (Pa.Super. 1967).

¹⁵ See, e.g., *PUC v. Templeton Water Company*, R-2009-2123244, Opinion and Order entered November 19, 2009; 2009 Pa. PUC LEXIS 1937.

¹⁶ 52 Pa. Code § 5.101(a)(2).

¹⁷ Complaint at ¶ 4.

20. The Complaint seeks relief that is beyond the Commission's jurisdiction to grant, in terms of requiring PWSA to: (1) address her sovereign citizen claims; and (2) address her claims relating to the federal tax status of aborigine American women.

21. Since the Complaint requests relief that could not be granted even if all of the factual averments were proven, it contains impertinent matter and should be dismissed.

D. Dismissal Based on Insufficient Specificity of a Pleading, 52 Pa. Code § 5.101(a)(3)

22. Under Section 5.101(a)(3) of the Commission's regulations, preliminary objections may be filed against a Complaint on the basis of insufficient specificity of a pleading.¹⁸

23. The Complaint does not conform to the requirements of 52 Pa. Code § 5.22(a)(5), which provides that a formal complaint must set forth "... (5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation."¹⁹

24. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa. Code § 5.22.

25. A complaint should contain information specific enough to allow the respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response.

26. In the instant matter, Complainant did not provide any facts or assertions to support her complaint that there are incorrect charges on her bill. The Complainant did not cite a particular

¹⁸ 52 Pa. Code § 5.101(a)(3).

¹⁹ 52 Pa. Code § 5.22(a)(5),

charge or bill that she is challenging. Complainant claims that there are incorrect charges on her bill because she should not be responsible for paying any utility charges or bills due to a claimed tax exemption resulting from her status as an aborigine American woman.

27. The Complaint contains unintelligible statements regarding the federal constitution, resolutions of the House of Representatives, and the United Nations Declaration on the Rights of Indigenous People.

28. The Complaint does not provide sufficient information to permit the Company to provide a meaningful response.

29. The statements made in the Complaint reflect her view that she is a sovereign citizen but do not specifically address any act or omission of PWSA that is in claimed violation of any law which the Commission has jurisdiction to administer.

30. Due to the infirmities in the Complaint, neither PWSA nor the Commission should be required to dedicate additional resources to this matter.

31. Accordingly, PWSA preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(3) and requests dismissal of the Complaint with prejudice.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, The Pittsburgh Water and Sewer Authority respectfully requests dismissal of the Complaint filed by Shawnece Moore ex rel. Ikhana-hal-makina and such other relief as may be deemed appropriate.

Respectfully submitted,




Sarah C. Stoner
Attorney I.D. No. 313793
Eckert Seamans Cherin & Mellott
213 Market St., 8th Floor
Harrisburg, PA 17101

Date: December 4, 2019

Counsel for
The Pittsburgh Water and Sewer Authority

Verification

I, Julie A. Quigley, am the Director of Administration for The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority"), and I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect the Authority to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).



Julie A. Quigley
Director of Administration
The Pittsburgh Water and Sewer Authority