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March 2, 2020

**Via Electronic Filing**

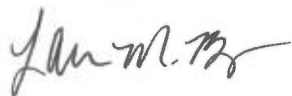
Rosemary Chiavetta, Secretary  
Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Shawnece Morre a/k/a Ikhana-hal-makina vs Pittsburgh Water and Sewer Authority  
Docket No. C-2019-3013315

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pittsburgh Water and Sewer Authority's Reply to Exceptions with regard to the above-reference matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Lauren Burge

LB/mo  
Enclosure

cc: Administrative Law Judge Katrina L. Dunderdale  
Cert. of Service w/enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawnece Moore a/k/a Ikhana-hal-	:	
makina,	:	Docket No. C-2019-3013315
Complainant	:	
	:	
v.	:	
	:	
Pittsburgh Water and Sewer Authority,	:	
Respondent	:	

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**THE PITTSBURGH WATER AND SEWER  
AUTHORITY’S REPLY TO EXCEPTIONS**

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**I. INTRODUCTION**

On September 24, 2019, Shawnece Moore, also known as Ikhana-hal-makina (“Complainant”) filed a Formal Complaint against The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) with the Pennsylvania Public Utility Commission (“Commission”)<sup>1</sup> claiming that, as an aborigine American, she is not required to pay taxes or pay for natural resources such as water. She requested that PWSA eliminate her account balance and discontinue billing/charges for water and wastewater services.

As explained in PWSA’s December 4, 2019 Answer and Preliminary Objections, the Commission does not have jurisdiction over the matters raised in the Complaint. The Complaint does not include any allegations that PWSA has violated the Public Utility Code or Commission regulations or orders. Rather, the Complainant is simply attempting to avoid paying for water and wastewater conveyance services to her home. The Complainant’s account balance is based on actual meter readings and accurately reflects unpaid water and wastewater charges. PWSA is

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<sup>1</sup> PWSA did not receive a complete copy of the Formal Complaint until November 14, 2019.

authorized to bill and collect for water consumed at the subject property. Therefore, PWSA requested that the Complaint be dismissed in its entirety.

On January 27, 2020, the Administrative Law Judge (“ALJ”) issued an Initial Decision granting PWSA’s Preliminary Objections and dismissing the complaint for lack of subject matter jurisdiction and lack of statutory authority to grant the relief requested. The Complainant submitted late-filed exceptions to the Initial Decision<sup>2</sup> in which she repeated the arguments made in her Formal Complaint and generically accused PWSA of unlawful conduct in charging her, as an aborigine American, for water and wastewater services. The Exceptions do not include any basis for the Commission to assert jurisdiction over these issues and do not allege any violation of the Public Utility Code, Commission regulations or orders by PWSA.

Pursuant to 52 Pa. Code § 5.353 and the Secretarial Letter issued on February 21, 2020, PWSA submits the following replies to the Complainant’s Exceptions. PWSA respectfully requests that the Commission deny the Complainant’s Exceptions, adopt the recommendations in the Initial Decision, and dismiss the Complaint in its entirety.

## **II. REPLIES TO EXCEPTIONS**

### **A. Reply Exception No. 1 – The ALJ Properly Found That the Commission Lacks Jurisdiction Over the Issues Presented and Does Not Have Statutory Authority to Grant the Relief Requested.**

The Initial Decision correctly found that the Commission does not have jurisdiction over the subject matter raised in the Complaint and does not have statutory authority to grant the relief requested. The Exceptions do not provide any basis upon which the Commission may assert jurisdiction over these issues. Therefore, the Complaint must be dismissed.

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<sup>2</sup> The Complainant did not serve PWSA with her Exceptions. The Commission received her Exceptions on February 20, 2020, and a Secretarial Letter was issued to provide service to PWSA and to set a deadline of March 2, 2020 for these Replies to Exceptions.

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.<sup>3</sup> It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction.<sup>4</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>5</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>6</sup>

The Complaint and the Exceptions contain vague claims regarding alleged violations of the U.S. Constitution, resolutions of the House of Representatives, and the United Nations Declaration on the Rights of Indigenous People. As the ALJ appropriately found in the Initial Decision, the Commission does not have subject matter jurisdiction over these issues. I.D. at 5-6. The Commission has no authorization to resolve disputes between a member of a foreign state and a public utility. I.D. at 5. Further, neither the Complaint nor the Exceptions contain any allegation that PWSA has violated the Pennsylvania Public Utility Code or any Commission regulation or order.

Additionally, the Complainant requested that the Commission absolve her of the obligation to pay outstanding account balances to PWSA and require PWSA to discontinue issuing future bills to her for water and wastewater services because of her status as an aborigine American. The Initial Decision correctly found that this requested relief is outside the

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<sup>3</sup> 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 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

<sup>4</sup> *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

<sup>5</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>6</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

Commission's jurisdiction because the legislature has not authorized the Commission to address the Complainant's sovereign citizen claim or to address the Federal tax status of an individual aborigine American. I.D. at 6-7. In her Exceptions, the Complainant responds by stating that "[t]he relief sought is not beyond the jurisdictional boundaries of the PUC," but does not provide any basis for this assertion. The Initial Decision appropriately dismissed the Complaint for lack of jurisdiction to grant the relief requested.

For these reasons and those discussed in PWSA's Answer and Preliminary Objections, the Commission lacks jurisdiction over the issues raised in the Complaint and does not have statutory authority to grant the relief requested. Therefore, the Complaint must be dismissed in its entirety.

B. Reply Exception No. 2 – PWSA's Rates Charged for Services Rendered Are Not Taxes.

In her Exceptions, the Complainant repeats her argument implying that PWSA's charges for water and wastewater services are a tax, and any tax or fee imposed on the Complainant, as an aborigine American, is illegal because the U.S. Constitution uses the phrase "Indians not taxed." First, this issue is not within the Commission's jurisdiction, as discussed above. Further, PWSA's rates charged for service are not taxes. 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. Rates are charges for a commodity or service provided;<sup>7</sup> they are not taxes.<sup>8</sup> The provision of free service to the

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<sup>7</sup> 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).

<sup>8</sup> *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.*

Complainant would be unfair to customers who are paying for the service, and the practice is prohibited by the Commission.<sup>9</sup> Accordingly, PWSA is required to charge and bill all users of PWSA's services.<sup>10</sup>

C. Exception No. 3 – The ALJ Properly Found that the Complaint is Legally Insufficient Because it Fails to Allege a Violation of the Public Utility Code or a Commission Regulation or Order by PWSA.

PWSA has not engaged in any unlawful conduct simply by charging the Complainant for water and wastewater conveyance service received. The Complaint did not allege any violation of the Public Utility Code or a Commission regulation or order; likewise, the Exceptions also have not made any such allegation. The Public Utility Code requires a complaint to allege “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.”<sup>11</sup> The Commission’s regulations also require that a complaint include a “clear and concise statement of the act or omission being complained of”<sup>12</sup> which shows the utility is in violation of a law which the Commission has jurisdiction to administer. See I.D. at 7.

The Initial Decision correctly found that the Complainant has failed to allege any violation by PWSA of the Public Utility Code or a Commission regulation or order. The Exceptions also have not made any such allegation. Therefore, the Complaint is legally insufficient and must be dismissed.

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<sup>9</sup> See 66 Pa C.S. § 1304; *Philadelphia Suburban Water Co. v. PUC*, 808 A.2d 1044 (Pa.Cmwlt. 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).

<sup>10</sup> See, e.g., *PUC v. Templeton Water Company*, R-2009-2123244, Opinion and Order entered November 19, 2009; 2009 Pa. PUC LEXIS 1937.

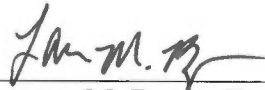
<sup>11</sup> 66 Pa. C.S. § 701.

<sup>12</sup> 52 Pa. Code § 5.22(a)(5).

### III. CONCLUSION

Therefore, for the reasons discussed above, PWSA respectfully requests that the Commission deny the Complainant's Exceptions and adopt the recommendations in the Initial Decision.

Respectfully submitted,



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Date: March 2, 2020

Counsel for The Pittsburgh Water and Sewer  
Authority

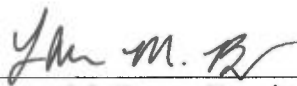
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Reply to Exceptions** 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

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924 Millerdale Street  
Pittsburgh, PA 15201

Date: March 2, 2020



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