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April 21, 2020

**Via Electronic Filing**

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

Re: Ya Ping Wu a/k/a/ Mabel Wu v. Pittsburgh Water and Sewer Authority  
Docket No. C-2020-3019410

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Dear Secretary Chiavetta:

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

Very truly yours,

/s/ *Shannon F. Barkley*

Shannon F. Barkley  
Corporate Counsel for the Pittsburgh Water and Sewer Authority ("PWSA")

**CERTIFICATE OF SERVICE**

I, the undersigned, 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 Email Only (due to the current pandemic emergency)**

David M. Tkacik, Esquire  
Tkacik Law Office  
9500 Brooktree Road, Suite 205  
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Charles E. Rainey, Jr. Administrative Law Judge  
crainey@pa.gov

Date: April 21, 2020

/s/ Shannon F. Barkley

Shannon F. Barkley, Esquire  
Attorney for Pittsburgh Water and Sewer Authority

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ya Ping Wu a/k/a/ Mabel Wu	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3019410
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent	:	
	:	

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**NOTICE TO PLEAD**

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To: Ya Ping Wu a/k/a Mabel Wu  
C/o David Tkacik, Esquire  
Tkacik Law Office, P.C.  
722 Seth Drive  
Cranberry Township, PA 16066

You are hereby notified that a reply to the new matter in the enclosed **Preliminary Objections** of The Pittsburgh Water and Sewer Authority (“Authority”) must be filed within 20 days of the date of service.

All pleadings, such as a Reply 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, where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Shannon F. Barkley, Esquire  
Pittsburgh Water and Sewer Authority  
Penn Liberty Plaza I  
1200 Penn Avenue  
Pittsburgh, PA 15222

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
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Pittsburgh, PA 15219

/s/ Shannon F. Barkley

Shannon F. Barkley, Esquire

Date: April 21, 2020

Attorneys for  
The Pittsburgh Water and Sewer Authority

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ya Ping Wu a/k/a/ Mabel Wu	:	
Complainant	:	
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	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent	:	
	:	

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**THE PITTSBURGH WATER AND SEWER AUTHORITY'S  
PRELIMINARY OBJECTIONS**

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Pursuant to 52 Pa. Code § 5.101(a), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits these Preliminary Objections to the Formal Complaint of Ya Ping Wu, also known as Mabel Wu (“Complainant”), which was served on PWSA on April 1, 2020. In support of these Preliminary Objections, the PWSA avers as follows:

**I. INTRODUCTION**

1. Contemporaneously with the filing of these Preliminary Objections, PWSA has filed an Answer to the Complaint, which is incorporated herein by reference. PWSA’s Answer denies the material allegations set forth in the Complaint.

2. Paragraph 5 of the Complaint requests that the Commission: (1) remove all erroneous charges other than the monthly fee since 2015; (2) require PWSA to pay all reasonable counsel fees incurred by the Complainant in this matter; and (3) impose a fine on PWSA.

3. PWSA submits, pursuant to 52 Pa. Code § 5.101(a)(1), that the claims and issues related to the award of attorneys’ fees and costs, should be dismissed because the Commission lacks jurisdiction over those issues.

## II. PRELIMINARY OBJECTIONS

### A. Applicable Legal Standards

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>1</sup> The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

5. 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;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

6. 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.<sup>2</sup> However, the

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<sup>1</sup> 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).

<sup>2</sup> *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>3</sup>

7. 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.<sup>4</sup>

8. PWSA submits these preliminary objections pursuant to 52 Pa. Code § 5.101(a)(1), based on the lack of Commission jurisdiction over specific issues presented. The Commission lacks jurisdiction to grant any attorneys' fees or costs to the Complainant, and therefore such issues and claims must be dismissed.

**B. Dismissal Based on Lack of Jurisdiction to Award Attorneys' Fees and Costs**

9. Paragraph 5 of the Complaint also requests that "PWSA pay all reasonable counsel fees incurred by the Complainant in this matter."

10. It is well established in the courts of this Commonwealth that legal fees are not generally recoverable except where permitted by statute or other recognized exception to this general rule.<sup>5</sup>

11. The Commission lacks the statutory authority to award attorneys' fees and costs.<sup>6</sup> Nothing in the Commission's statutes, regulations or orders gives the Commission the power to grant attorneys' fees in the factual setting of the present Complaint.

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

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

<sup>5</sup> *See, e.g., Corace v. Balint*, 418 Pa. 262, 271 (1965); *Becker v. Borough of Schuylkill Haven*, 200 Pa. Super. 305, 312 (1963).

<sup>6</sup> *See, e.g., Pa. Pub. Util. Comm'n v. Duquesne Light Co.*, 61 Pa. PUC 485 (1986).

12. Therefore, PWSA respectfully requests that all issues and claims related to the award or reimbursement of attorneys' fees and costs be dismissed or stricken because of a lack of jurisdiction.

### III. CONCLUSION

WHEREFORE, PWSA respectfully requests that this Commission (a) grant PWSA's preliminary objections; (b) dismiss the Complaint related to attorneys' fees and costs; and (c) grant any other relief to PWSA that is deemed to be reasonable and appropriate.

Respectfully submitted,

*/s/ Shannon F. Barkley*

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Date: April 21, 2020

Attorneys 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).

/s/ Julie A. Quigley

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