



*SBarkley@pgh2o.com*  
*(412)-676-6685 (Office)*  
*(412) 737-0297 (Business Cell)*

May 7, 2020

**Via Electronic Filing**

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

Re: Beth Reefer v. Pittsburgh Water and Sewer Authority  
Docket No. C-2020-3019509

---

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)**

Beth Reefer  
reeferbk@gmail.com

Date: May 7, 2020

/s/ Shannon F. Barkley

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH REEFER	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3019509
	:	
PITTSBURGH WATER AND SEWER	:	
AUTHORITY	:	
Respondent	:	

---

**NOTICE TO PLEAD**

---

**TO:** Beth Reefer  
300 Merrimac Street  
Pittsburgh, PA 15211

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that an answer to the enclosed **Preliminary Objections** of The Pittsburgh Water and Sewer Authority (“PWSA”) must be filed within 10 days of the date of service of the Preliminary Objections.

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 PWSA 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:

Shannon F. Barkley, Esquire  
Corporate Counsel  
Pittsburgh Water and Sewer Authority  
1200 Penn Ave  
Pittsburgh, PA 15222

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219

/s/ Shannon F. Barkley

Shannon F. Barkley, Esquire

Date: May 7, 2020

Attorneys for  
The Pittsburgh Water and Sewer Authority

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH REEFER	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3019509
	:	
PITTSBURGH WATER AND SEWER	:	
AUTHORITY	:	
Respondent	:	

---

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

---

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 Beth Reefer (“Complainant”), which was served on PWSA on April 17, 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 require PWSA to reimburse the Complainant for damage caused by the water main break to her basement, driveway and sidewalk.

3. PWSA submits, pursuant to 52 Pa. Code § 5.101(a)(1), that the claims and issues related to property damage and/or monetary compensation 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 Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>3</sup>

---

<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. Cmwlt. of Pa.*, 490 A.2d 402 (Pa. 1985).

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

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 monetary compensation to the Complainant, and therefore such issues and claims must be dismissed.

**B. Dismissal Based on Lack of Commission Jurisdiction to Award Monetary Damages**

9. Paragraph 5 of the Complaint requests that the Commission require PWSA to reimburse the Complainant for damage caused by the water main break to her basement, driveway and sidewalk.

10. Claims for property damage and/or diminution of property values<sup>5</sup> are not determined by the Commission. The Commission's jurisdiction does not include actions that sound in either contract or tort. The powers of the Commission do not include the power to award

---

<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> The Commission has not been given authority under any other statute to assess damage to private property value caused by the activities of a public utility. See *Letter of Notification of Philadelphia Electric Company*, PUC Docket No. A-110550F055, Opinion and Order entered March 26, 1993; 1993 Pa. PUC LEXIS 32 (determination of damages due to alleged decreases in market value is not within the Commission's jurisdiction to hear and determine).

monetary damages,<sup>6</sup> such as damages to property.<sup>7</sup> It is well settled that the courts of common pleas have jurisdiction over suits for damages, including claims against public utilities.<sup>8</sup>

11. Therefore, PWSA respectfully requests that all issues and claims related to the award of monetary compensation 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 monetary compensation; and (c) grant any other relief to PWSA that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Shannon F. Barkley

Shannon F. Barkley, Esquire  
Corporate Counsel  
Pittsburgh Water and Sewer Authority  
1200 Penn Ave  
Pittsburgh, PA 15222

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219

Attorneys for The Pittsburgh Water and Sewer  
Authority

---

<sup>6</sup> See, e.g., *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell Telephone Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>7</sup> The Commission possesses no jurisdiction over real property issues. See, e.g., *Leonard Kapel v Peoples Natural Gas Company LLC*, PUC Docket No. C-2010-2153364, Final Order (Act 294) entered October 6, 2011, adopting Initial Decision dated August 12, 2011; *David E. Stefanoski v. Pennsylvania-American Water Company*, PUC Docket No. C-20078219, PUC Opinion and Order entered September 22, 2008.

<sup>8</sup> That being said, all local governments in the Commonwealth of Pennsylvania (including PWSA) are afforded immunity against third party claims for property loss damage under the Political Subdivision Tort Claims Act. Some exceptions do apply, but generally conditions are very specific for exceptions to be validated.

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