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October 5, 2020

Via Electronic Filing

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

Re: Dorothy E. Debow v. The Pittsburgh Water and Sewer Authority
Docket No. C-2020-3021937

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The 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 First Class Mail

Dorothy E. Debow
7208 Kedron Street
Pittsburgh, PA 15208

Adrienne Diane Kurtanich, Esquire
Fiffick Law Firm, P.C.
Foster Plaza 7
661 Anderson Drive, Suite 315
Pittsburgh, PA 15220

Date: October 5, 2020

/s/ *Shannon F. Barkley*

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DOROTHY DEBOW :
Complainant :
 :
v. : Docket No. C-2020-3021937
 :
THE PITTSBURGH WATER AND SEWER :
AUTHORITY :
Respondent :

NOTICE TO PLEAD

TO: Dorothy Debow
7208 Kedron Street
Pittsburgh, PA 15208

Adrienne Diane Kurtanich, Esquire
Fiffik Law Firm, P.C.
Foster Plaza 7
661 Anderson Drive, Suite 315
Pittsburgh, PA 15220

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, 44th Floor
Pittsburgh, PA 15219

/s/ *Shannon F. Barkley*

Shannon F. Barkley, Esquire

Date: October 5, 2020

Attorneys for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DOROTHY DEBOW	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-30121937
	:	
THE 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 Dorothy Debow (“Complainant”), which was served on PWSA on September 15, 2020. PWSA submits that the claims raised by the Complainant are wholly outside the Commission’s jurisdiction, and therefore the Complaint must be dismissed in its entirety. 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 with New Matter to the Complaint, which is incorporated herein by reference. PWSA’s Answer denies the material allegations set forth in the Complaint.

2. In Paragraphs 4 and 5 of the Complaint, the Complainant alleges that her property was not restored to its original state following a lead service line replacement. The Complainant requests that that PWSA restore her yard to its original state, repair the grass area where a board was placed for approximately one month, and install a new light post or repair the existing light post to its original state.

3. PWSA submits, pursuant to 52 Pa. Code § 5.101(a)(1), that the Commission lacks jurisdiction over the claims raised by this complaint, and thus the Complaint must be dismissed.

4. This Complaint involves a private contractual dispute between Ms. Debow and PWSA. When the Complainant accepted a free lead service line replacement as part of PWSA's Lead Service Line Replacement ("LSLR") program, she signed a contract releasing PWSA of all claims related to property restoration. The Complainant now claims that PWSA must restore her yard to its original condition. Such private contractual issues are outside the Commission's jurisdiction.

5. Similarly, Ms. Debow's claims related to property damage should be dismissed because the Commission lacks jurisdiction over those issues.

6. For these reasons, the claims raised in this Complaint are outside the Commission's jurisdiction, and therefore the Complaint must be dismissed in its entirety.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

7. 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.*

8. 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;

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).

- (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.

9. 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

10. 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

11. 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 decide a private contractual dispute between a customer and a utility, and also does not have jurisdiction over claims related to property damage. Therefore, such issues and claims must be dismissed.

B. Dismissal Based on Lack of Commission Jurisdiction Over Contractual Matters

² *County of Allegheny v. Cmwlt. 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. Cmwlt. 2007).

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

12. As explained in more detail in PWSA's Answer, the Complainant signed a contract accepting a lead service line replacement provided by PWSA at no charge. As part of this contract, the Complainant agreed that PWSA is not responsible for yard restoration work. However, the Complainant now attempts to claim that PWSA must restore her yard to its original condition.

13. At its core, this Compliant is a private contractual dispute in which the customer is disputing the level of yard restoration work that PWSA is required to complete under the LSLR Program contract.

14. It is well established that the Commission lacks jurisdiction over private contractual disputes between a utility and its customers.⁵ Jurisdiction over such contractual disputes instead lies with the Court of Common Pleas.

15. Therefore, PWSA submits that the Complainant's claims must be dismissed because such contractual disputes are beyond the Commission's jurisdiction.

C. Dismissal Based on Lack of Commission Jurisdiction Regarding Property Damages

16. Paragraph 5 of the Complaint requests that PWSA restore the Complainant's yard to its original state, repair the grass area where the board was placed for approximately one month, and install a new light post or repair the existing light post to its original state.

17. Claims for property damage and/or diminution of property values⁶ are not determined by the Commission. The Commission's jurisdiction does not include actions that

⁵ See, e.g., *Odesa McCastle v. Philadelphia Gas Works*, PUC Docket No. F-2013-2345223, Final Order entered May 21, 2013, adopting Initial Decision dated Mar. 21, 2013; *Allport Water Authority et al. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) ("...the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility."); *Leveto v. National Fuel Gas Dist. Corp.*, 366 A.2d 270, (Pa. Super. 1976) ("Since the case at bar involves a private contractual dispute between a citizen and a utility, the PUC is not jurisdictionally empowered to decide it.").

⁶ 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).

sound in either contract or tort. The powers of the Commission do not include the power to award monetary damages,⁷ such as damages to property.⁸ It is well settled that the courts of common pleas have jurisdiction over suits for damages, including claims against public utilities.⁹

18. Therefore, PWSA respectfully requests that all issues and claims related to the claim for damages 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 in its entirety; 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
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Pittsburgh Water and Sewer Authority
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Lauren M. Burge, Esquire
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Pittsburgh, PA 15219

⁷ 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).

⁸ 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.

⁹ 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.

Date: October 5, 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