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June 7, 2021

Via Electronic Filing

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

Re: Proventus Holdings, LLC v. The Pittsburgh Water and Sewer Authority
Docket Nos. C-2020-3022592, C-2020-3023420, C-2020-3023421, C-2020-3023422,
C-2020-3023423, C-2020-3023424, C-2020-3023425, C-2020-3023426,
C-2020-3023427, C-2020-3023429, C-2020-3023430, C-2020-3023431, C-2020-
3023433, C-2020-3023434, C-2020-3023435, C-2020-3023438, C-2020-3023439,
C-2020-3023440, C-2020-3023442, C-2020-3023443, C-2020-3023444, and
C-2020-3023445

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

cc: Cert. of Service

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of PWSA's Entry of Appearance upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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Hon. Darlene Heep
Administrative Law Judge
PA Public Utility Commission
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801 Market Street
Philadelphia, PA 19107
dheep@pa.gov
sdelvillar@pa.gov

Dated: June 7, 2021

Karen O. Moury
Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--------------------------------|---|---------------------------|
| PROVENTUS HOLDINGS, LLC | : | (Consolidated) |
| | : | Docket No. C-2020-3022592 |
| | : | Docket No. C-2020-3023420 |
| Complainant | : | Docket No. C-2020-3023421 |
| v. | : | Docket No. C-2020-3023422 |
| | : | Docket No. C-2020-3023423 |
| THE PITTSBURGH WATER AND SEWER | : | Docket No. C-2020-3023424 |
| AUTHORITY, | : | Docket No. C-2020-3023425 |
| Respondent | : | Docket No. C-2020-3023426 |
| | : | Docket No. C-2020-3023427 |
| | : | Docket No. C-2020-3023429 |
| | : | Docket No. C-2020-3023430 |
| | : | Docket No. C-2020-3023431 |
| | : | Docket No. C-2020-3023433 |
| | : | Docket No. C-2020-3023434 |
| | : | Docket No. C-2020-3023435 |
| | : | Docket No. C-2020-3023438 |
| | : | Docket No. C-2020-3023439 |
| | : | Docket No. C-2020-3023440 |
| | : | Docket No. C-2020-3023442 |
| | : | Docket No. C-2020-3023443 |
| | : | Docket No. C-2020-3023444 |
| | : | Docket No. C-2020-3023445 |

NOTICE TO PLEAD

TO:

John D. Eddy, Esquire
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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
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/>

With electronic copy to:

Hon. Darlene Heep
Administrative Law Judge
PA Public Utility Commission
801 Market Street
Philadelphia, PA 19107
dheep@pa.gov

With electronic copies to:

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/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: June 7, 2021

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| | : | Docket No. C-2020-3023444 |
| | : | Docket No. C-2020-3023445 |

**THE PITTSBURGH WATER AND SEWER AUTHORITY’S
PRELIMINARY OBJECTIONS TO AMENDED COMPLAINTS**

Pursuant to 52 Pa. Code § 5.101(a) of the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits the following Preliminary Objections to the Amended Formal Complaints of Proventus Holdings, LLC (“Proventus”), which were filed on May 25, 2021 and served on PWSA on May 27, 2021. By these Preliminary Objections, PWSA seeks dismissal of the Amended Complaints. In support of these Preliminary Objections, PWSA states as follows:

I. INTRODUCTION

1. Proventus originally filed a Formal Complaint (“Complaint”) against PWSA with the Commission, which was served on PWSA on October 27, 2020, alleging that there are “incorrect charges” on the bill and that the bills are “extremely high.” Proventus thereafter filed twenty-one (21) nearly identical Complaints, which were served on PWSA on December 24, 2020. The first Complaint involved property owned by Proventus and the other Complaints pertain to rental property managed by the Complainant. Each of the Complaints alleged that there are “incorrect charges” on the bill. The Complaints did not specify which charges the Complainant believes to be incorrect for each specific property or identify the bills in question.

2. On January 27, 2021, PWSA filed a Motion to Consolidate all twenty-two (22) of the Complaints filed by Proventus, which Administrative Law Judge (“ALJ”) Darlene Heep granted by Interim Order issued on May 5, 2021.

3. On January 27, 2021, PWSA also filed Preliminary Objections seeking dismissal of the Complaints on the basis that they lacked sufficient specificity. By Interim Order issued on May 5, 2021, ALJ Heep sustained PWSA’s Preliminary Objections and dismissed the Complaints if the Complainant does not file Amended Complaints within 20 days.

4. On May 25, 2021, the Complainant filed Amended Complaints. Although the Amended Complaints provide a general timeframe for the disputed bills, which spans August 1, 2019 through August 31, 2020, they do not identify specific bills on which they claim incorrect charges appear. Further, the Amended Complaints offer the identical timeframe for the disputed bills for each of the accounts. They also fail to explain the basis for the disputes.

5. PWSA is filing these Preliminary Objections because the Complainant has still not sufficiently alleged specificity in the Complaints as necessary to enable PWSA to prepare a defense.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

4. 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.*

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.² However, the Commission

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).

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

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

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.⁴

8. While the filing of a formal complaint generally entitles the complainant to a formal hearing, the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”⁵ A hearing is necessary only to resolve disputed questions of fact.⁶

B. Dismissal Based on Insufficient Specificity of Pleading

9. Section 5.101(a)(3) permits a party to file a preliminary objection based on insufficient specificity of a pleading.⁷

10. The original Complaints filed by the Complainant for twenty-two separate properties are nearly identical, alleging “incorrect charges” and that its bills were “extremely high.” As PWSA argued in its Preliminary Objections to those Complaints, it defies credulity that every one of the Complainant’s properties have the same alleged incorrect changes and high bills.

11. In sustaining PWSA’s Preliminary Objections, ALJ Heep ruled that “the Complainant should identify at a minimum the period during which it is alleged that there were incorrect charges at each service address.” Interim Order at p. 5. She further noted that one of the

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

⁴ *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).

⁵ 52 Pa. Code § 5.21(d).

⁶ *Lehigh Valley Power Comm. v. Pa. P.U.C.*, 128 Pa. Cmwlth. 259, 563 A.2d 548 (1989).

⁷ 66 Pa. C.S. § 5.101(a)(3).

Complaints had a bill attached that was dated September 10, 2020, but that a cover letter sent to PWSA questioning charges to the service address was dated December 2, 2020. Therefore, ALJ Heep concluded that “it is not clear for which dates the Complainant is seeking redress.” *Id.* The ALJ also referred to other Complaints “identifying a service address but with no specific billing period noted or bill attached.” *Id.*

12. The Complainant’s Amended Complaints likewise fail to provide any details about the specific billing period for each service address that it is disputing charges. Merely alleging that the disputed bills for all twenty-two accounts were rendered during a thirteen-month period between August 1, 2019 and August 31, 2020 is still insufficient to notify PWSA of the particular bills and charges that the Complainant is disputing.

13. In *Smith v. UGI Utilities, Inc.*, 2010 Pa. PUC LEXIS 1868, Docket No. C-2010-2195084, the ALJ issued an Initial Decision dismissing a complaint on the basis of insufficient specificity of pleading.⁸ Citing 52 Pa. Code § 5.22, the ALJ noted that a billing dispute is “started with the filing of a complaint, which must set forth the clear and concise statement of the act or omission being complained of.” *Smith* at *4. The ALJ further observed that the Commission’s rule is based on Pennsylvania’s Rule of Civil Procedure 1019, which requires a complaint to plead all the facts that must be proven in order to prevail in cause of action. She explained that the pleading must be “sufficiently specific so that the defending party will know how to prepare a defense.” *Id.* at *8. In the Initial Decision, the ALJ also found that a respondent “is not required to guess” what the complainant is alleging. *Id.* at *9.

14. In *Belmont-Gates v. PECO Energy Company and Pennsylvania-American Water Company*, 2013 Pa. PUC LEXIS 1024 at *13, Docket Nos. F-2012-2332583 and F-2012-2332589,

⁸ The Commission issued an Act 294 Final Order adopting the Initial Decision on March 3, 2011.

the Commission observed that even “under the present system of liberalized pleading, blind suspicions and unsupported allegations will not support a cause of action,” *citing Feingold v. Hendrzak*, 15 A.3d 937, 942-943 (Pa. Super. 2011). As explained by the Commission, the purpose of requiring a complaint to contain sufficient material facts is to enable the adverse party to prepare a defense. *See Landau v. Western Pennsylvania National Bank*, 445 Pa. 217, 225, 282 A.2d 335, 339 (1971).

15. General claims of “incorrect charges” and “excessive bills” at 22 separate properties over the course of 13 months do not provide sufficient specificity for PWSA to prepare a defense. While the Complainant, in responding to the Preliminary Objections PWSA filed to the original Complaints, contended that PWSA possesses information regarding charges and billing, that does not mean PWSA knows which charges and bills the Complainant is disputing at each of the service addresses. Without the required specificity of pleading, PWSA would need to review 13 months of bills for 22 separate properties, for a total of 286 bills, and “guess” which bills the Complainant is disputing (and why) for each of those properties. That is exactly the exercise that the Commission’s regulations seek to prevent. It would be a waste of valuable PWSA resources to comb through 286 bills in an effort to determine what charges the Complainant might be disputing at each service address. Particularly since PWSA is a municipal authority and its only resources are the revenues collected from other ratepayers, this type of unfocused review should not be required.

16. While PWSA understands that the Commission is reluctant to dismiss complaints of *pro se* consumers without giving them an opportunity to orally articulate their complaint to the ALJ (*See Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617, Order entered July 14, 1993), this is not a *pro se* complainant. The Complainant is a limited

liability corporation owning several properties and is represented by an attorney licensed to practice in Pennsylvania since 1980.⁹

III. CONCLUSION

WHEREFORE, PWSA respectfully requests that this Commission (a) grant PWSA's Preliminary Objections; (b) dismiss the Amended Complaints; and (c) grant any other relief to PWSA that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ *Karen O. Moury*

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Date: June 7, 2021

Counsel for
The Pittsburgh Water and Sewer Authority

⁹ <https://www.padisciplinaryboard.org/for-the-public/find-attorney/attorney-detail/32150>

Verification

I, Julie A. Quigley, am the Director of Customer Service 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 unsworn falsification to authorities).

Dated: June 7, 2021

/s/ Julie A. Quigley
Julie A. Quigley
Director of Customer Service
The Pittsburgh Water and Sewer Authority