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File #: 190159

June 15, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Elizabeth Goheen v. The York Water Company
Docket No. C-2021-3026068

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objection of The York Water Company to the Complaint of Elizabeth Goheen for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/jl
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

Elizabeth Goheen
270 Charles Circle
York, PA 17406
E-mail: elizagoh@comcast.net

Date: June 15, 2021



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Goheen,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026068
	:	
The York Water Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY WITHIN TEN (10) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR ANSWER SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Devin T. Ryan (ID # 316602)
Nicholas A. Stobbe (ID # 329583)
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Of Counsel:

Post & Schell, P.C.

Date: June 15, 2021

Attorneys for The York Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Goheen,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026068
	:	
The York Water Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
THE YORK WATER COMPANY TO THE
COMPLAINT OF ELIZABETH GOHEEN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes the York Water Company (“York Water” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the portion of the Formal Complaint filed by Elizabeth Goheen (“Complainant”) requesting damages be dismissed because the Commission has no power to award damages.

In support thereof, York Water states as follows:

I. BACKGROUND

1. York Water is a “public utility” as defined in Section 102 of the Pennsylvania Public Utility Commission Code, 66 Pa. C.S. § 102. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission.

2. By Secretarial Letter dated May 26, 2021, York Water was served with the above captioned Complaint. In the Complaint, Complainant seeks damages of \$2,000 as reimbursement for costs she allegedly incurred by hiring a third-party contractor to fix a water leak. (Complaint ¶ 4, attachment.)

3. York Water herein files this Preliminary Objection to the Complaint. For the reasons explained below, the Company respectfully requests that the portion of the Complaint pertaining to a request for monetary damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because a request for damages constitutes impertinent matter. 52 Pa. Code § 5.101(a)(2).

II. STANDARD OF REVIEW

4. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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 a 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.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a)(2) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom.

Stilp v. Commonwealth, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. V. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. 1992)).

III. PRELIMINARY OBJECTION

THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES.

7. York Water incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

9. In the Complaint, the Complainant requests that the Company reimburse her for \$2,000, which the Complainant allegedly incurred by hiring a third-party contractor to fix a leak. (Complaint ¶ 4, attachment.) The Complainant further claims that “it was the water company’s faulty equipment that needed to be repaired and caused the leak in the first place.” (Complaint ¶ 4, attachment.)

10. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

11. Here, the Complainant's request for damages is impertinent matter "in the sense that it is irrelevant to [the] cause of action" because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary objections)). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g. id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Comm'n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Comm'n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

12. Therefore, consistent with longstanding Commission precedent, the Complainant's request for damages is impertinent matter and should be stricken from her Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

IV. CONCLUSION

WHEREFORE, The York Water Company respectfully requests that the Complainant's request for damages be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

Respectfully submitted,



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Devin T. Ryan (ID # 316602)
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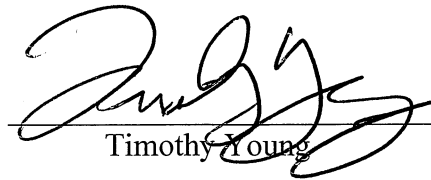
Date: June 15, 2021

Attorneys for The York Water Company

VERIFICATION

I, Timothy Young, Distribution Superintendent of The York Water Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect 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).

Date: June 15, 2021


Timothy Young