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July 13, 2021

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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Eric Schiller v. The Pittsburgh Water and Sewer Authority
Docket No. C-2021-3026697

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Certificate of Service (with Enclosures)

CERTIFICATE OF SERVICE

I 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

Eric Schiller
2328 Lucina Avenue
Pittsburgh, PA 15210
daburgh001@yahoo.com

Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
bobbwillia@pa.gov

Date: July 13, 2021

/s/ Karen O. Moury

Karen O. Moury, Esquire

Counsel for

The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Schiller,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026697
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

NOTICE TO PLEAD

TO: Eric Schiller
2328 Lucina Avenue
Pittsburgh, PA 15210
daburgh001@yahoo.com

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 an Answer 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
<https://efiling.puc.pa.gov/>

With an electronic copy to:

Karen O. Moury, Esquire
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kmoury@eckertseamans.com

Lauren M. Burge, Esquire
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lburge@eckertseamans.com

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: July 13, 2021

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Complainant,	:	
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	:	
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The Pittsburgh Water and Sewer Authority,	:	
	:	
Respondent.	:	

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

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 Formal Complaint of Eric Schiller (“Complainant”), which was served on PWSA on June 23, 2021. Pursuant to 52 Pa. Code § 5.61 and 5.101(d) of the Commission’s regulations, PWSA filed an Answer to the Formal Complaint on this same date. In support of these Preliminary Objections, PWSA states as follows:

I. INTRODUCTION

1. Contemporaneously with the filing of these Preliminary Objections, PWSA has filed an Answer to the Formal Complaint, which is incorporated herein by reference.

2. The only dispute raised by the Complaint concerns Allegheny County Sanitary Authority (“ALCOSAN”) sewage treatment charges.

3. PWSA includes ALCOSAN’s charges for sewage treatment services on its bills and pays ALCOSAN for those charges, pursuant to a provision in its tariff. However, PWSA is not part of ALCOSAN, which is not regulated by the Commission, and has no control over ALCOSAN charges. ALCOSAN does not issue adjustments for filling swimming pools, and any potential adjustment would have to be initiated and come directly from ALCOSAN.

4. Pursuant to 52 Pa. Code § 5.101(a)(4), PWSA respectfully requests dismissal of the Complaint. Accepting the factual averments as true, the Complainant is not entitled to any relief from PWSA. As no material factual averments are in dispute, the public interest would not be served by holding a hearing in this matter. Requiring PWSA to further defend this Complaint would unnecessarily consume valuable resources, the costs of which would be unfairly absorbed by other ratepayers.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

5. 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.*

6. 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;

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).

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and

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

7. 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

8. 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

9. 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

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).

⁵ 52 Pa. Code § 5.21(d).

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

B. Dismissal Based on Lack of Commission Jurisdiction

10. To act on the Complaint, the Commission must have jurisdiction. Under Section 5.101(a)(1) of the Commission’s regulations, preliminary objections may be filed against a Complaint on the basis of a lack of Commission jurisdiction.⁷

11. Not all acts or functions performed by a regulated entity fall under the jurisdiction of the Commission. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code (“Code”).⁸ It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction.⁹ Jurisdiction may not be conferred by the parties where none exists.¹⁰ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹¹

12. The only allegation in the Complaint relates to ALCOSAN sewage treatment charges, which PWSA includes on its bills in accordance with its tariff. The rates for wastewater treatment are established by ALCOSAN, and are not regulated by the Commission.¹²

13. Since the Commission does not regulate ALCOSAN charges, which PWSA merely passes through on its bills, the Commission has no jurisdiction over the issues raised by this Complaint.

⁷ 52 Pa. Code § 5.101(a)(1).

⁸ 66 Pa. C.S. §§ 101 *et seq.* See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

⁹ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

¹⁰ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹¹ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

¹² [Tariff Wastewater](#) – Pa. P.U.C. No. 1, Original Page No. 10.

14. Therefore, the Complaint should be dismissed in its entirety.

B. Dismissal Based on Legal Insufficiency of the Complaint

15. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has the jurisdiction to administer, or of any regulation or order of the Commission.”¹³

16. Section 5.101(a)(4) permits a party to file a preliminary objection if the complaint is legally insufficient.¹⁴

17. The Complaint alleges no violation by PWSA of the Public Utility Code (“Code”),¹⁵ a Commission regulation or a Commission order. The Complaint further alleges no facts that would support a finding that PWSA has violated the Code, a regulation or an order.

18. The Complaint does not dispute PWSA’s reliance on the meter reading of the Pennsylvania American Water Company (“PAWC”), upon which the bill was based, and acknowledges that a swimming pool was filled, resulting in higher consumption and a larger bill. PWSA does not apply credits for filling up swimming pools because the charges are based on the water consumption that is provided from PAWC and assessed by ALCOSAN.

19. The only allegation in the Complaint relates to the Complainant’s sewage treatment charges from ALCOSAN. PWSA is not part of ALCOSAN and has no control over ALCOSAN charges. ALCOSAN no longer issues adjustments for filling swimming pools, and any potential adjustment would have to be initiated and come directly from ALCOSAN.

¹³ 66 Pa. C.S. § 701 (emphasis supplied).

¹⁴ 66 Pa. C.S. § 5.101(a)(4).

¹⁵ 66 Pa. C.S. §§ 101 *et seq.*

20. Even when all factual averments set forth in the Complaint are accepted as true, they do not show that PWSA violated the Code, a Commission regulation or Commission order. Therefore, the Complaint should be dismissed without a hearing, which would needlessly consume valuable resources of PWSA and the Commission.

III. CONCLUSION

WHEREFORE, PWSA respectfully requests that this Commission (a) grant PWSA's preliminary objections; (b) dismiss the Complaint; 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: July 13, 2021

Counsel for
The Pittsburgh Water and Sewer Authority

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: July 13, 2021

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