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September 29, 2021

**Via Electronic Filing**

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

Re: Constance Jean Pukanic-Smail v. Pittsburgh Water and Sewer Authority  
Docket Nos. C-2021-3024214 (wastewater) and C-2021-3024468 (water)

Dear Secretary Chiavetta:

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

Sincerely,

/s/ *Lauren M. Burge*

Lauren M. Burge

Enclosure

cc: Cert. of Service w/enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Constance Jean Pukanic-Smail,	:	
Complainant,	:	
	:	
v.	:	Docket Nos. C-2021-3024214 (wastewater)
	:	C-2021-3024468 (water)
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	
	:	

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**THE PITTSBURGH WATER AND SEWER AUTHORITY’S  
MOTION TO DISMISS FORMAL COMPLAINT**

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Pursuant to 52 Pa. Code § 5.103, The Pittsburgh Water and Sewer Authority (“PWSA” or the “Authority”) submits this Motion to Dismiss the Formal Complaint of Constance Jean Pukanic-Smail (“Motion”).<sup>1</sup> In support of this Motion, PWSA avers as follows:

**I. INTRODUCTION**

The Complainant claims that PWSA is nearly double charging the account for utility service. She also seeks to see the complete account history from January 1, 2014 to present to assess how much the account has been charged for water before and after alleged extensive plumbing and sewer line improvements, and other updates to the property. Ms. Pukanic-Smail further avers that after she sees the account history, she requests a reasonable payment arrangement based on improvements stated above and due to limited financial resources as a result of COVID-19.

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<sup>1</sup> In the alternative, PWSA requests that the Administrative Law Judge treat this as a Motion for Summary Judgment pursuant to 52 Pa. Code § 5.102(a). To the extent insufficient time exists between the response period and the hearing for the ALJ to issue a ruling, PWSA plans to reiterate this request for dismissal at the outset of the hearing. However, by filing the Motion in advance, PWSA is alerting the ALJ and the Complainant of its intent to seek dismissal on the grounds set forth herein.

On March 29, 2021, PWSA filed an Answer with New Matter to the Formal Complaint in which the Authority denied the allegations in the complaint.<sup>2</sup> The Answer with New Matter was accompanied by a Notice to Plead. PWSA records indicated that the account was accurately charged in accordance with PWSA's prior and current PUC-approved tariffs, and that the monthly consumption at the property was based on actual meter readings.

PWSA denied double billing the account associated with the property at 1134 Yetta Avenue. Instead, PWSA explained that the balance on the account grew due to inconsistent payments and nonpayment over time, as well as debt recalled from Jordan Tax Service, Inc. ("JTS"). Of note, PWSA has offered the Complainant multiple payment arrangements. The Authority also noted that the Complainant is neither the owner nor the customer of record at the property that is the subject of the Complaint, which raises an issue regarding her standing to pursue this matter. PWSA further averred that any claims related to bills issued before 2018 are outside the three (3) year statute of limitations and thus the Commission lacks jurisdiction to address those claims.<sup>3</sup> PWSA set forth factual averments and raised the legal issues regarding standing and the statute of limitations in its New Matter; however, the Complainant did not file any response. Under the Commission's regulations, a failure to respond to new matter within 20 days "may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted."<sup>4</sup>

PWSA now files this Motion to Dismiss the Formal Complaint based on (1) the Complainant's lack of standing to pursue the complaint, as she is neither the property owner or

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<sup>2</sup> The same Formal Complaint was docketed at Docket Nos. C-2021-3024468 (water) and C-2021-3024214 (wastewater). PWSA filed its Answer with New Matter at each docket, as well as a Motion to Consolidate the two proceedings.

<sup>3</sup> See 66 Pa. C. S. § 3314.

<sup>4</sup> 52 Pa. Code § 5.63(b).

customer of record; and (2) the Commission's lack of jurisdiction over claims related to bills issued before 2018, as these claims are outside the statute of limitations.

## II. MOTION

### A. The Complainant Lacks Standing Because She Is Neither the Customer of Record Nor the Owner of the Property.

1. In order to bring a complaint before a tribunal, a complainant must first demonstrate that he or she has standing to maintain the action.<sup>5</sup> To establish standing, a complainant must show that he or she has been aggrieved.<sup>6</sup> To be aggrieved, a complainant must have a direct, substantial and immediate interest, and the interest must be pecuniary, rather than a remote consequence.<sup>7</sup>

2. The Commission has held that, in general, a complainant must be the customer of the utility in order to have standing to file a complaint about its utility service.<sup>8</sup> Stated differently, a complainant who is not a customer of a utility, generally, does not have the requisite direct, substantial and immediate interest to confer standing to file a complaint about the service of the utility.

3. The customer of record for the account that is the subject of the Complaint is Leonard Pukanic. In its New Matter, PWSA averred that: (a) Mr. Pukanic has been the owner of the property since April 21, 2008; (b) Mr. Pukanic rents the property to the Complainant; and (c) the Complainant previously owned the property from September 18, 2003 through November 8,

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<sup>5</sup> *Nye v. Erie Ins. Exchange*, 504 Pa. 3 (1983).

<sup>6</sup> *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 191 (1975).

<sup>7</sup> *Wm. Penn* at 191-192.

<sup>8</sup> *See Re: Pennsylvania American Water Company*, 85 Pa. PUC 548 (1995); *Pa. PUC v. Marietta Gravity Water Company*, 87 Pa. PUC 864 (1997).

2006.<sup>9</sup> As no Reply to the New Matter was filed, these factual averments may be deemed to be admitted.<sup>10</sup>

4. The Complainant never notified PWSA of the ownership change, as alleged by PWSA in its New Matter,<sup>11</sup> to which no Reply was filed, such that this factual averment may be deemed to be admitted.<sup>12</sup> PWSA became aware of the change in ownership while investigating outstanding debt to be lienied, pursuant to the Municipal Claims and Tax Lien Act.<sup>13</sup> Under the Municipal Claims and Tax Lien Act, the owner of the property is responsible to pay the charges for services related to water consumed at the property.<sup>14</sup>

5. As further averred in New Matter, upon discovering the change in ownership, PWSA updated the account on September 16, 2020 to reflect Mr. Pukanic as the property owner and customer of record and assigned a new account number. In a rental situation, the property owner is the customer of record absent the filing of an Owner-Tenant Form, which has not been filed for the account that is the subject of the Complaint. As a result, the Complainant is not the customer of record.<sup>15</sup> Again, these factual averments, to which no Reply was filed, may be deemed to be admitted.

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<sup>9</sup> New Matter, ¶ 17.

<sup>10</sup> 52 Pa. Code § 5.63(b).

<sup>11</sup> New Matter, ¶ 18.

<sup>12</sup> 52 Pa. Code § 5.63(b).

<sup>13</sup> 53 P.S. § 7101, *et seq.*

<sup>14</sup> 53 P.S. § 7107; *City of Philadelphia v. Perfetti*, 119 A.3d 396, 400 (Pa.Cmwlth. 2015).

<sup>15</sup> New Matter, ¶ 19.

6. As the Complainant is not responsible for the PWSA bills and is not the customer of record, she does not have a direct, substantial, immediate or pecuniary interest in the outcome of this proceeding. Therefore, she lacks standing to pursue the Complaint.

**B. Allegations Regarding Bills Issued Prior to January 2018 are Beyond the Statute of Limitations.**

7. Section 3314(a) of the Public Utility Code provides a general limitation period of three years for any action filed under the Public Utility Code, except as otherwise provided.<sup>16</sup>

8. The statute of limitations in Section 3314(a) cannot be waived. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside of the three-year statute of limitations.<sup>17</sup>

9. The Formal Complaint makes allegations regarding actions or inactions that occurred more than three years before January 8, 2021, when the Complainant filed this proceeding.<sup>18</sup>

10. Those allegations that are outside the three-year statute of limitations, *i.e.* any disputed bills that were issued prior to January 8, 2018, must be dismissed.

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<sup>16</sup> 66 Pa. C.S. § 3314(a); *See Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa.Cmwlt. 1992).

<sup>17</sup> *See, e.g., Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, (Final Order entered January 27, 2015 adopting the Initial Decision dated November 18, 2014).

<sup>18</sup> Although this fact is in the Complaint, PWSA's New Matter also set forth this factual averment. New Matter, ¶ 13.

### III. CONCLUSION

WHEREFORE, The Pittsburgh Water and Sewer Authority respectfully requests that the Commission (a) dismiss the Complaint; and, (b) grant any other relief deemed appropriate.

Respectfully submitted,

*/s/ Lauren M. Burge*

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Date: September 29, 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 **Motion to Dismiss** 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: September 29, 2021

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

**CERTIFICATE OF SERVICE**

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

**Via Email Only**

Constance Jean Pukanic-Smail  
1134 Yetta Ave.  
Pittsburgh, PA 15212  
conmedia@comcast.net

Hon. Mark A. Hoyer  
Office of Administrative Law Judge  
PA Public Utility Commission  
301 5<sup>th</sup> Avenue, Suite 220  
Pittsburgh, PA 15222  
mhoyer@pa.gov  
nmiskanic@pa.gov

Dated: September 29, 2021

*/s/ Lauren M. Burge*

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Lauren M. Burge, Esq.