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April 18, 2022

Karen O. Moury
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Via Electronic Filing

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

RE: Thelmika Griffin v. The Pittsburgh Water and Sewer Authority
Docket No. C-2022-3030841

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The 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/ 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 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

Thelmika Griffin
7306 Idlewild Street
Pittsburgh, PA 15208
thelmikag@yahoo.com

Hon. Emily I. DeVoe
Administrative Law Judge
Pa. Public Utility Commission
201 Fifth Avenue
Pittsburgh, PA 15222
edevoe@pa.gov

Date: April 18, 2022

/s/ Karen O. Moury

Karen O. Moury, Esquire
Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thelmika Griffin,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3030841
	:	
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Thelmika Griffin
7306 Idlewild Street
Pittsburgh, PA 15208
thelmikag@yahoo.com
(Electronic mail only)

You are hereby notified that an Answer to the enclosed **Motion to Dismiss** of The Pittsburgh Water and Sewer Authority (“Authority”) must be filed within 20 days of the date of service.

All pleadings, such as an Answer to Motion To Dismiss, 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
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/>

With an electronic copy to:

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: April 18, 2022

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thelmika Griffin,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2022-3030841
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

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

Pursuant to 52 Pa. Code § 5.103 of the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits the following Motion to Dismiss the Formal Complaint of Thelmika Griffin (“Ms. Griffin” or “Complainant”). The basis for this Motion is that the Complainant failed to comply with the March 24, 2022 Interim Order Granting PWSA’s Preliminary Objection and Ordering an Amended Complaint, which was issued by Administrative Law Judge (“ALJ”) Emily I. DeVoe. In support of this Motion to Dismiss, PWSA states as follows:

I. BACKGROUND

1. The Complainant filed a Formal Complaint against PWSA with the Commission on February 9, 2022. Ms. Griffin checked the “incorrect charges” box on the Formal Complaint form. By way of requested relief, the Complainant asked that the PUC direct PWSA to determine the source of a leak at her property and fix it. The Complainant also requested that PWSA install a new water meter because a plumber allegedly advised Ms. Griffin that her current meter is very old.

2. Although Ms. Griffin checked the “incorrect charges” box in Paragraph 4 of the Formal Complaint form, she provided no further explanation about the charges she is disputing,

such as dates of bills and an explanation as to any amounts of charges that she believes are not correct. Further, the Complainant did not specify details about the alleged leak. PWSA was unable to respond to Ms. Griffin's claim regarding the leak without additional information. PWSA was also unable to decipher what is meant by Ms. Griffin's request for a new meter since a new meter was already installed on October 15, 2021.

3. Based on the lack of specificity regarding the allegations, PWSA filed a Preliminary Objection on March 1, 2022 in an effort to secure the just, speedy and inexpensive dismissal of the Complaint. The Preliminary Objection was accompanied by a Notice to Plead.

4. The Complainant did not file an Answer to the Preliminary Objection, which was due on March 11, 2022, pursuant to the Commission's regulations at 52 Pa. Code § 5.101(b).

5. By Interim Order dated March 24, 2022, ALJ DeVoe granted PWSA's Preliminary Objection, finding that the checked box indicating there are "incorrect charges" on the bill, without further information or explanation about the specific bills or charges in dispute, was insufficient specificity for PWSA to defend against the Complainant's averments. ALJ DeVoe reached the same conclusion regarding the alleged leak and the request for a new meter.

6. The Interim Order further directed the Complainant to file an Amended Complaint by April 4, 2022, specifying in as much detail as possible: (1) which charges on which bills she claims are incorrect; (2) when she first noticed the leak and/or what makes her believe that she has a leak, and when she first made PWSA aware of the leak; and (3) whether Ms. Griffin received a new meter on October 15, 2021, and if so, whether she is seeking replacement of that meter.

7. To date, the Complainant has not filed an Amended Complaint, which was due two weeks ago.

II. APPLICABLE LEGAL STANDARDS

8. The Commission's Rules of Administrative Practice and Procedure permit the filing of motions for relief that is desired. A motion must set forth the ruling or relief sought, and state the grounds therefor, as well as the statutory or other authority upon which it relies. 52 Pa. Code § 5.103(a).

9. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(4). The Commission's regulations further require that a complaint contain a clear statement of the relief sought. 52 Pa. Code § 5.22(a)(5).

9. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail.¹ This must be shown by a preponderance of the evidence.²

10. As an administrative body, the Commission is bound by due process principles.³ Due process in matters before the Commission requires that a party be afforded reasonable notice of the nature of the allegations against it so that the party can prepare a suitable defense.⁴

¹ *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

² *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

³ *Popowsky v. Pa. PUC*, 805 A.2d 637, 642 (Pa. Cmwlth. 2002).

⁴ *Duquesne Light Co. v. Pa. PUC*, 96 Pa. Cmwlth. 168, 507 A.2d 433, 437 (1986).

11. Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint.⁵

III. ARGUMENT

12. Dismissal of the Complaint is warranted on the basis of the Complainant's failure to comply with the March 24, 2022 Interim Order to file an Amended Complaint by April 4, 2022.

13. Without the filing of an Amended Complaint, PWSA is unable to respond to the allegations raised by the Complainant due to the lack of specificity about alleged incorrect charges and a water leak, as well as the request for a new meter.

14. As such, in the absence of the filing of an Amended Complaint, proceeding with the original Complaint would violate PWSA's fundamental right to due process since the Authority has not been sufficiently apprised of the allegations raised by Ms. Griffin and therefore cannot adequately prepare for and present a defense at a hearing.

15. Further, given the Complainant's failure to file an Answer to the Preliminary Objections or to file an Amended Complaint pursuant to the Interim Order, Ms. Griffin has shown no interest to participate in the legal proceeding she initiated and which has caused PWSA to devote substantial resources. Therefore, the Complaint should be dismissed with prejudice.⁶

⁵ *Zack Weston c/o Riva Ridge v. Pittsburgh Water and Sewer Authority*, Docket Nos. F-2021-3027112 and F-2021-3027486 (Order entered February 14, 2022, adopting Initial Decision dated January 10, 2022 at 7-9) (sets forth Commission precedent for dismissing complaint for failure to comply with a presiding officer's order and dismisses complaint on that basis).

⁶ *See, e.g., Stephen Little v. Pittsburgh Water and Sewer Authority*, Docket No. F-2021-3027107 (Order entered February 3, 2022 at 8-9) (complaint dismissed with prejudice for failure to prosecute).

III. CONCLUSION

The Pittsburgh Water and Sewer Authority respectfully requests that the Commission: (a) grant this Motion to Dismiss; and (b) grant any other relief in favor of PWSA that is deemed to be reasonable, appropriate and in the public interest.

Respectfully submitted,

/s/ *Karen O. Moury*

Karen O. Moury, Esquire (I.D. No. 36879)

Eckert Seamans Cherin & Mellott, LLC

213 Market St., 8th Floor

Harrisburg, PA 17101

(717) 237-6036 (phone)

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kmoury@eckertseamans.com

Date: April 18, 2022

Counsel for
The Pittsburgh Water and Sewer Authority

Attorney Verification

I, Karen O. Moury, am the Counsel of record in this proceeding for The Pittsburgh Water and Sewer Authority (“PWSA”) and authorized to make the statements set forth in the foregoing Motion to Dismiss. 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. 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: April 18, 2022

/s/ *Karen O. Moury*

Karen O. Moury, Esq.
Counsel for PWSA