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June 10, 2022

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Via Electronic Filing

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

RE: Tirlochan S. Walia v. The Pittsburgh Water and Sewer Authority
Docket No. F-2022-3032572

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 First Class Mail

Tirlochan S. Walia
100 Denniston Street, Apt. # 232
Pittsburgh, PA 15206
(no email address)

Via Email Only

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

Date: June 10, 2022

/s/ Karen O. Moury

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tirlochan S. Walia,	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2022-3032572
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Tirlochan S. Walia
100 Denniston Street, Apt #232
Pittsburgh, PA 15206

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 Objection, 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 a copy to:

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

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: June 10, 2022

Counsel for
The Pittsburgh Water and Sewer Authority

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Complainant,	:	
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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 Tirlochan S. Walia (“Mr. Walia” or “Complainant”), which was served on PWSA on May 23, 2022. In support of these Preliminary Objections, PWSA states as follows:

I. INTRODUCTION

1. Complainant filed a Formal Complaint against PWSA with the Commission. As the reason, Mr. Walia checked the “other” box on the Formal Complaint form and alleged that PWSA’s practice of billing in blocks of 1,000 gallons, while at the same time varying the billing period from 26 to 35 days, is inequitable. By way of requested relief, the Complainant asks that the PUC direct PWSA to bill by the actual amount of gallons and maintain a constant billing period. If that is not feasible, he requests that PWSA be required to at least apply the concept of rounding so that any consumption up to 1,499 gallons would be billed as 1,000 gallons and usage between 1,500 and 2,499 would be billed as 2,000 gallons, etc.

2. Nothing in the Public Utility Code, Commission regulations or Commission orders requires PWSA to change its billing practices¹ or billing periods.² PWSA is charging Mr. Walia pursuant to PWSA's Commission-approved tariff, the Public Utility Code, and the Commission's regulations.

3. As Complainant has not alleged any violations of the Public Utility Code, Commission regulations or Commission orders and may not obtain the relief he has requested from the Commission, the Complaint should be dismissed in its entirety.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a).

¹ [Tariff Water](#) - Pa. P.U.C. No. 1, Second Revised Page No. 8, Part I: Schedule of Rate and Charges Section A – Rates for Metered Service. The applicable tariff provision is attached as Attachment A.

² The Commission's regulations define a billing month as being 26 to 35 days. 52 Pa. Code § 56.2. Definitions. **Billing month** —A period of not less than 26 days and not more than 35 days except in the following circumstances:

(i) An initial bill for a new customer may be less than 26 days or greater than 35 days. However, if an initial bill exceeds 60 days, the customer shall be given the opportunity to amortize the amount over a period equal to the period covered by the initial bill without penalty.

(ii) A final bill due to discontinuance may be less than 26 days or greater than 35 days but may never exceed 42 days. In cases involving termination, a final bill may be less than 26 days.

(iii) Bills for less than 26 days or more than 35 days shall be permitted if they result from a rebilling initiated by the company or customer dispute to correct a billing problem.

(iv) Bills for less than 26 days or more than 35 days shall be permitted if they result from a meter reading route change initiated by the public utility. The public utility shall informally contact the Director of the Bureau of Consumer Services at least 30 days prior to the rerouting and provide information as to when the billing will occur, the number of customers affected and a general description of the geographic area involved. If a bill resulting from a meter rerouting exceeds 60 days, the customer shall be given the opportunity to amortize the amount over a period equal to the period covered by the bill without penalty.

(v) Bills for less than 26 days shall be permitted when there is a change of the customer's electric generation or natural gas supplier.

5. Under Section 5.101(a) of the Commission's regulations, 52 Pa. Code § 5.101(a)(1)-(7), 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.³ However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.⁴

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.⁵

³ *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

⁴ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁵ *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).

8. The filing of preliminary objections serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.⁶

B. Legal Insufficiency of Pleading, 52 Pa. Code §5.101(a)(4).

9. Under Section 5.101(a)(4) of the Commission's regulations, preliminary objections may be filed against a complaint alleging legal insufficiency of a pleading.

10. The material factual averments in the Complaint are that PWSA bills for water consumption in 1,000-gallon increments and that the Authority's billing period varies from 26 to 35 days. In the Complainant's opinion, which the Commission is not required to accept as true for purposes of preliminary objections,⁷ PWSA should either bill for consumption based upon each gallon used or implement a rounding method for billing. It is further the Complainant's opinion that PWSA should maintain a constant billing period each month.

11. Assuming for purposes of these Preliminary Objections that the material factual averments in the Complaint are true, they do not demonstrate a violation of the Public Utility Code, Commission regulations, or a Commission order.

12. PWSA's Commission-approved water tariff provides for the Authority to bill in 1,000-gallon increments.⁸ Under this tariff, a residential customer with a 5/8" meter pays a minimum water consumption charge of \$27.00 for 1,000 gallons and for any additional consumption pays a \$13.10 rate per 1,000 gallons. Section 1303 of the Public Utility Code requires public utilities to adhere to their tariffs.⁹ Further, the appellate courts in Pennsylvania

⁶ 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

⁷ See footnote 4.

⁸ See footnote 1 and Attachment A.

⁹ 66 Pa.C.S. § 1303.

have long and consistently held that tariffs have the force of law and are binding on both the utility and its customer.¹⁰ Therefore, it is not within PWSA's power to change its billing period that is set forth in a Commission-approved tariff.

13. The Commission's regulations define a billing month as being 26 to 35 days. Although the regulations permit variations from the 26 and 35 day billing periods, for specific reasons set forth therein, they do not require public utilities to maintain a constant number of days each billing month. Thus, a variation in the billing period of 26 to 35 days, for whatever reason, is consistent with the Commission's regulations.¹¹

14. As the Complainant has made no allegations that could lead to a finding that PWSA violated the Public Utility Code, Commission regulations or a Commission order, there is no reason for going to a hearing. Dismissal of the complaint would conserve valuable resources and promote judicial economy.

III. CONCLUSION

The Pittsburgh Water and Sewer Authority respectfully requests that the Commission: (a) grant these Preliminary Objections; (b) dismiss the Complaint; and (c) grant any other relief in favor of PWSA that is deemed to be reasonable, appropriate and in the public interest.

¹⁰ See, e.g., *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 63 Pa. Cmwlth, 238, 242, 437 A.2d 1067 (1981).

¹¹ 52 Pa. Code § 56.2. See footnote 2 for the full definition of a billing month..

Respectfully submitted,

/s/ *Karen O. Moury*

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

Sarah C. Stoner, Esquire (I.D. No. 313793)

Eckert Seamans Cherin & Mellott, LLC

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Date: June 10, 2022

Counsel for

The Pittsburgh Water and Sewer Authority

Verification

I, Julie A. Mechling, 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).

Date: June 10, 2022

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

Attachment A

Excerpt of PWSA's Water Tariff

Supplement No. 9
Tariff Water - Pa. P.U.C. No. 1

THE PITTSBURGH WATER AND SEWER AUTHORITY

RATES, RULES AND REGULATIONS GOVERNING

THE PROVISION OF WATER SERVICE

TO THE PUBLIC IN THE TERRITORY DESCRIBED HEREIN

Issued: December 30, 2021

Effective: January 12, 2022

BY: William J. Pickering, Chief Executive Officer
1200 Penn Avenue, Pittsburgh, PA 15222
Tel: 412-255-8800

NOTICE

This tariff makes increases and changes in existing rates,
rules, and regulations as approved by the Commission in its
Final Order dated November 18, 2021
at Docket No. R-2021-3024773.

PART I: SCHEDULE OF RATES AND CHARGES

Section A - Rates for Metered Service

1. Minimum Charge*: Each customer will be assessed a service charge based upon the size of the customer's meter as follows except that residential customers residing in newly constructed townhomes who are required to install a meter larger than 5/8" for fire protection and due to City ordinance requirements, may request assessment of the 5/8" minimum charge and usage allowance: (C)

<u>Meter Size</u>	<u>Minimum Gallons</u>	<u>Per Month Rate</u> <u>(Effective January 12, 2022)</u>	<u>Per Month Rate</u> <u>(Effective January 1, 2023)</u>	(C)
5/8"	1,000	\$27.00	\$26.52	(I)/(I)
3/4"	2,000	\$45.12	\$46.47	(I)/(I)
1"	5,000	\$94.17	\$102.08	(I)/(I)
1 1/2"	10,000	\$184.73	\$201.85	(I)/(I)
2"	17,000	\$306.23	\$337.28	(I)/(I)
3"	40,000	\$685.83	\$766.42	(I)/(I)
4"	70,000	\$1,165.81	\$1,313.93	(I)/(I)
6"	175,000	\$2,777.07	\$3,174.80	(I)/(I)
8"	325,000	\$5,018.53	\$5,784.48	(I)/(I)
10" or Larger	548,000	\$8,249.44	\$9,582.36	(I)/(I)

2. Consumption Charge: In addition to the Minimum Charge, the following water consumption charges will apply for each 1,000 gallons above the Minimum Gallons for each meter size:

Consumption Charge
Rate per 1000 Gals.

<u>Customer Class</u>	<u>Effective</u> <u>January 12, 2022</u>	<u>Effective</u> <u>January 1, 2023</u>	(C)
Residential	\$13.10	\$14.64	(I)/(I)
Commercial*	\$12.61	\$13.80	(I)/(I)
Industrial**	\$10.96	\$12.13	(I)/(I)
Health or Education	\$15.65	\$16.29	(I)/(I)

The rate under this schedule applies to all customers, except public fire protection and private fire protection customers, unless otherwise specifically identified in this tariff.

* Rate applies to City of Pittsburgh Municipal Accounts but bills will be calculated based on a phase-in factor pursuant to 71 P.S. §§ 720.211 to 720.213.

** Rate applies to any new bulk water customers.

(I) = Increase (C) = Change