



Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

June 23, 2022

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

Via Electronic Filing

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

RE: GLX Properties v. The Pittsburgh Water and Sewer Authority
Docket Nos. F-2022-3031726 and C-2022-3031740

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The Pittsburgh Water and Sewer Authority's Motion for Judgment on the Pleadings with regard to the above-referenced matters. 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 for Judgment on the Pleadings upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

GLX Properties
P.O. Box 99732
Pittsburgh, PA 15214
msg@glxprop.com

The Honorable Mark A. Hoyer
Deputy Administrative Law Judge
Pa. Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222
mhoyer@pa.gov
nmiskanic@pa.gov

/s/ *Karen O. Moury*

Date: June 23, 2022

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLX Properties, :
Complainant, :
Docket Nos. F-2022-3031726
v. : C-2022-3031740
:
The Pittsburgh Water and Sewer Authority, :
Respondent. :

NOTICE TO PLEAD

To: Via Email Only
GLX Properties
P.O. Box 99732
Pittsburgh, PA 15233
msg@glxprop.com

You are hereby notified that an Answer or other responsive pleading to the enclosed **Motion for Judgment on the Pleadings** 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 for Judgment on the Pleadings, 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
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
cshultz@eckertseamans.com

/s/ *Karen O. Moury*

Karen O. Moury, Esquire

Date: June 23, 2022

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLX Properties,	:	
	Complainant,	:
		Docket Nos. F-2022-3031726
v.	:	C-2022-3031740
	:	
The Pittsburgh Water and Sewer Authority,	:	
	Respondent.	:

**THE PITTSBURGH WATER AND SEWER AUTHORITY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to 52 Pa. Code § 5.102 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 for Judgment on the Pleadings to dismiss the Formal Complaint of GLX Properties (“GLX” or “Complainant”). The basis for this Motion is that GLX failed to file a Reply to PWSA’s New Matter and therefore the relevant facts should be deemed admitted, warranting dismissal of the Complaint. In support of this Motion, PWSA states as follows:

I. BACKGROUND AND INTRODUCTION

1. The Complainant filed a Formal Complaint against PWSA with the Commission on March 2, 2022, which was served on PWSA on April 5, 2022. In the Complaint, GLX is disputing a high consumption bill dated September 13, 2021 for 15,000 gallons of water in the amount of \$472.82.

2. Based upon a series of allegations relating to the property being vacant during the high consumption period and checks of the property showing that no leaks were found, the Complainant does not believe GLX is responsible for the bill. Therefore, GLX requests that the

PUC order PWSA to remove the high consumption charges that occurred between the dates of August 25, 2021 through September 2, 2021 from the bill.

3. On April 25, 2022, PWSA timely filed an Answer and New Matter, which was accompanied by a Notice to Plead. In Paragraphs 11-16 of the New Matter, PWSA alleged that GLX is a limited liability company and needs to be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania. In Paragraphs 17-26, PWSA made a series of factual averments regarding the accuracy of the meter, meters not correcting themselves and GLX's responsibility to pay the September 13, 2021 bill.

4. A Reply to New Matter was due on May 15, 2022. GLX did not file a Reply to the New Matter. A failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.¹

5. Due to GLX's failure to file a Reply to New Matter, the Commission should deem the facts stated in PWSA's New Matter to be admitted and dismiss the Complaint. The Complainant's meter was functioning properly and the September 13, 2021 bill was caused by high consumption at the property over a period of 8 days. The high consumption occurred during the middle of a billing period and usage returned to normal levels before the meter was tested or replaced. As meters do not fix themselves, it would be a waste of resources for this Complaint to proceed to hearing.

6. Dismissal of the Complaint under these circumstances is appropriate and would conserve valuable resources of the Commission and PWSA. As a municipal authority, PWSA does not have shareholders and its ratepayers would be required to shoulder the burden of

¹ 52 Pa. Code § 5.63.

defending the Complaint. No purpose would be served by holding a hearing in this matter, and PWSA respectfully requests that the Complaint be dismissed on the basis of the pleadings.

II. APPLICABLE LEGAL STANDARDS

7. The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions.² Specifically, the Commission's regulations at 52 Pa. Code §5.102(a) permit any party to move for judgment on the pleadings after the pleadings are closed, but within such time as not to delay a hearing. The presiding officer must grant a motion for judgment if the pleadings show that the moving party is entitled to judgment as a matter of law.³

8. Judgment on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a hearing would be a fruitless exercise.⁴ Judgment on the pleadings should be entered only when the case is clear and free from doubt.⁵

9. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing when a party is entitled to a judgment as a matter of law.

10. The Commission has the discretion to dismiss any complaint without a hearing if a hearing is not in the public interest.⁶ A hearing is necessary only to resolve disputed questions of fact, and, when the question presented is one of law, the Commission need not hold a hearing.⁷

² 52 Pa. Code §§5.101-103.

³ 52 Pa. Code § 5.102(d)(1).

⁴ *Kenneth E. Nein v. UGI Utilities, Inc.*, Docket No. C-2012-2298099 (Order entered November 9, 2012).

⁵ *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20028539 (Order entered December 19, 2003).

⁶ 66 Pa.C.S. §703(b); 52 Pa. Code §5.21(d).

⁷ *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa.Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993).

III. ARGUMENT

11. Dismissal of the Complaint is warranted on the basis of the Complainant's failure to file a Reply to PWSA's New Matter, which was accompanied by a Notice to Plead. Under the Commission's regulations, a failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

12. In the Complaint, the Complainant checked the box on the form labeled "incorrect charges" and identified the period of August 25, 2021 to September 2, 2021 as in dispute. GLX requested removal of these charges, claiming that the property was vacant and no leaks occurred.

13. PWSA timely filed an Answer and New Matter, setting forth several factual averments and attaching the actual daily meter readings showing the period of high consumption as Appendix A; the September 13, 2021 bill that is in dispute as Appendix B; and a decision of the Commonwealth Court recognizing that it is impossible for a meter to malfunction and then correct itself as Appendix C.

14. Among the factual averments set forth in Paragraphs 17- 26 of the New Matter are:

- (a) The bill covered the period of August 4, 2021 through September 6, 2021;
- (b) The period of high consumption occurred on August 25, 2021 through September 2, 2021;
- (c) Usage returned to its prior levels on September 3, 2021;
- (d) Meters do not repair themselves;
- (e) The meter was replaced on September 23, 2021 and submitted to PWSA's Central Warehouse for testing;
- (f) On September 27, 2021, the meter passed testing with an accuracy rating of 99.91%, which is within allowable guidelines in accordance with the Commission's regulations at 52 Pa. Code § 65.8(a);
- (g) The September 13, 2021 bill is correct as rendered;

- (h) GLX rents the property to tenants; and
- (i) Although PWSA's Customer Usage Portal went live on December 18, 2018, which would have enabled GLX to immediately receive an alert of high consumption at the property, GLX has not signed up for usage alerts even after being given material during the dispute process about this tool.

15. When these factual averments are deemed admitted due to the Complainant's failure to file a Reply to PWSA's New Matter, consistent with the Commission's regulations, it is clear that no purpose would be served by proceeding to a hearing on the Complaint. To the contrary, it would be a waste of valuable resources of both the Commission and PWSA to proceed any further with this Complaint.

16. PWSA's meter was functioning properly and the high consumption bill was due to nothing other than high consumption at the property. Indeed, the Complaint does not even allege that the meter was malfunctioning. GLX simply seeks to be relieved of paying for water and wastewater services that were rendered to the property without even taking any measures to protect itself from charges that may result from high consumption that is occurring at the rental property. As it would not be appropriate to require other ratepayers to absorb the costs of services provided to GLX, the Complaint should be dismissed.

IV. CONCLUSION

The Pittsburgh Water and Sewer Authority respectfully requests that the Commission: (a) grant this Motion for Judgment on the Pleadings; 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)
Carl R. Shultz, Esquire (I.D. No. 70328)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
(717) 237-6036 (phone)
(717) 237-6019 (fax)
kmoury@eckertseamans.com
cshultz@eckertseamans.com

Date: June 23, 2022

Counsel for
The Pittsburgh Water and Sewer Authority

Attorney Verification

I, Karen O. Moury, am 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 for Judgment on the Pleadings. I hereby state that the facts set forth in the foregoing Motion for Judgment on the Pleadings 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).

/s/ *Karen O. Moury*

Date: June 23, 2022

Karen O. Moury, Esq.
Counsel for PWSA