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October 21, 2022

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**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 to Dismiss 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 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**

GLX Properties  
P.O. Box 99732  
Pittsburgh, PA 15214  
[msg@glxprop.com](mailto:msg@glxprop.com)

The Honorable Mark A. Hoyer  
Deputy Administrative Law Judge  
Pa. Public Utility Commission  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
[mhoyer@pa.gov](mailto:mhoyer@pa.gov)  
[nmiskanic@pa.gov](mailto:nmiskanic@pa.gov)  
[dalban@pa.gov](mailto:dalban@pa.gov)

Date: October 21, 2022

*/s/ Karen O. Moury*

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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.	:	

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**NOTICE TO PLEAD**

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**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 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  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
kmoury@eckertseamans.com  
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/s/ *Karen O. Moury*

Karen O. Moury, Esquire

Date: October 21, 2022

Counsel for  
The Pittsburgh Water and Sewer Authority

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
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v.	:	C-2022-3031740
	:	
	:	
The Pittsburgh Water and Sewer Authority,	:	
Respondent.	:	

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

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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 GLX Properties (“GLX” or “Complainant”). The grounds for this Motion are that: (i) as a limited liability company, GLX failed to obtain legal representation as required by the Prehearing Order dated August 16, 2022, and the Commission’s regulations at 52 Pa. Code §§ 1.21 & 1.22; and (ii) the factual averments in PWSA’s New Matter, to which GLX filed no Reply, should be deemed admitted pursuant to the Commission’s regulations at 52 Pa. Code § 5.63. 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 22, 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.<sup>1</sup>

5. Despite the allegations in PWSA's New Matter relating to GLX's need for legal representation, and Paragraph 6 of the Prehearing Order of Administrative Law Judge Mark A. Hoyer ("ALJ Hoyer") dated August 16, 2022 noting the requirement for corporations to be represented by licensed attorneys at hearings, no attorney entered an appearance on behalf of GLX in this proceeding. Individuals appearing for GLX at the hearing scheduled for October 20, 2022 acknowledged that the entity is a corporation and that they did not have an attorney representing GLX at the hearing. Therefore, the hearing on the merits of the Complaint did not proceed.

6. At the hearing, counsel for PWSA moved for dismissal of the Complaint on the grounds that GLX was not represented by legal counsel, which deprives the Commission of jurisdiction to hear the matter.

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<sup>1</sup> 52 Pa. Code § 5.63.

7. Further, since GLX did not file a Reply to the factual averments set forth in PWSA's New Matter regarding the functioning of the meter, counsel for PWSA moved for dismissal of the Complaint on substantive grounds. 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.

8. ALJ Hoyer directed counsel for PWSA to reduce the oral motion to dismiss into writing and file it separately, along with a notice to plead served upon the Complainant.

9. 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 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**

10. The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions.<sup>2</sup> Specifically, the Commission's regulations at 52 Pa. Code §5.103(a) permit any party to make a motion for relief desired.

11. When a motion is orally made during a hearing, the presiding officer may require that the motion be reduced to writing. 52 Pa. Code §5.103(b).

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<sup>2</sup> 52 Pa. Code §§5.101-103.

12. The Commission has the discretion to dismiss any complaint without a hearing if a hearing is not in the public interest.<sup>3</sup> 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.<sup>4</sup>

### III. ARGUMENT

#### (a) No Legal Representation

13. As set forth in Paragraphs 11-16 of PWSA's New Matter filed on April 25, 2022, GLX is a corporate entity which must be represented in an adversarial proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania.<sup>5</sup>

14. Non-attorneys are prohibited from representing companies and other business entities before the Commission.<sup>6</sup> The absence of an attorney where one is required deprives the forum of jurisdiction to adjudicate the matter.<sup>7</sup>

15. Paragraph 6 of the Prehearing Order of ALJ Hoyer issued on August 16, 2022 informed GLX of the requirement for legal representation.

16. Due to the failure of GLX to have an attorney enter an appearance on its behalf prior to the hearing scheduled for October 20, 2022, or to provide legal representation at the hearing scheduled for October 20, 2022, the Complaint should be dismissed.

#### (b) Bill Is Correct As Rendered

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<sup>3</sup> 66 Pa.C.S. §703(b); 52 Pa. Code §5.21(d).

<sup>4</sup> *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).

<sup>5</sup> 52 Pa. Code § 1.22; *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994); *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, PUC Docket No. C-2008-2033437 (Order entered Feb. 4, 2010).

<sup>6</sup> *See* 52 Pa. Code. §§ 1.21–1.23.

<sup>7</sup> *Adventure Alley CLC, LLC v. PECO Energy Company and Great American Power*, Docket No. C-2014-2430850 (Final Order entered November 25, 2014) (*citing McCain v Curione, Pa. Board of Probation and Parole*, 527 A.2d 591 (Pa.Cmwlth. 1987)).

17. In Paragraphs 17-26 of New Matter, 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. PWSA also attached to the New Matter 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.

18. GLX did not file a timely Reply to the New Matter, and the relevant facts may be deemed to be admitted. 52 Pa. Code § 5.63.

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

- (i) The disputed bill covered the period of August 4, 2021 through September 6, 2021;
- (ii) The period of high consumption occurred on August 25, 2021 through September 2, 2021;
- (iii) Usage returned to its prior levels on September 3, 2021;
- (iv) Meters do not repair themselves;
- (v) The meter was replaced on September 23, 2021 and submitted to PWSA's Central Warehouse for testing;
- (vi) 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);
- (vii) The September 13, 2021 bill is correct as rendered;
- (viii) GLX rents the property to tenants; and
- (ix) 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 had not signed up for usage alerts even after being given material during the dispute process about this tool.



20. 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.

21. 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 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 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)

Carl R. Shultz, Esquire (I.D. No. 70328)

Eckert Seamans Cherin & Mellott, LLC

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cshultz@eckertseamans.com

Date: October 21, 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 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: October 21, 2022

*/s/ Karen O. Moury*

Karen O. Moury, Esq.  
Counsel for PWSA