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September 23, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Francis Eaton v. Pennsylvania-American Water Company
Docket No. C-2024-3051001**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is its Preliminary Objections to the above-referenced Complaint. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANCIS EATON	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3051001
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

To: *Francis Eaton*

You are hereby notified to file a written response to the attached Preliminary Objections of Pennsylvania-American Water Company within ten (10) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Preliminary Objections within ten (10) days of service, the facts set forth by Pennsylvania-American Water Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

You must also serve a copy of your response on the undersigned counsel for Pennsylvania-American Water Company. Failure to respond to the Preliminary Objections could result in the dismissal of your case.

STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
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Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR PENNSYLVANIA
AMERICAN WATER COMPANY

DATE: September 23, 2024

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FRANCIS EATON	:	
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**PRELIMINARY OBJECTIONS OF RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY**

AND NOW, Pennsylvania-American Water Company (“PAWC” or “Company”), by and through its attorneys Stevens & Lee, P.C., hereby files these Preliminary Objections requesting dismissal of the Complaint of Francis Eaton (hereinafter “Complainant”). As set forth below, the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4) because it is legally insufficient in that the relief sought by the Complaint cannot be granted by the Commission as a matter of law.

I. INTRODUCTION

1. On September 4, 2024, the Company was served with a notice of the Formal Complaint (“Complaint”) filed by the Complainant against the Company. A copy of the Formal Complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. See, 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency. The

Company's Preliminary Objection requests the dismissal of the Formal Complaint for legal insufficiency under 52 Pa. Code § 5.101(a)(4).

3. The Complaint does not allege any violation of the Public Utility Code, Commission regulation or Order, or tariff.

4. The Complaint does not allege any billing error, incorrect charges, reliability, safety or quality problem, improper shut-off, or a request for a payment plan.

5. The Complaint's sole request is for the Commission to reconsider the methodology that is used by PAWC's to bill for wastewater charges under its tariff.

II. Preliminary Objection under 52 Pa. Code § 5.101(a)(4) – Legal Insufficiency

6. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency. 52 Pa.Code § 5.101(a)(4) is comparable to Pa.R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

7. The principles applied in ruling upon a demurrer are well-settled:

[W]hen ruling on preliminary objections, [the] Court considers as true all well-pleaded facts which are material and relevant. Specifically, a preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. In determining whether to sustain a demurrer the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. A demurrer will not be sustained unless the face of the complaint shows that the law will not permit recovery, and any doubts should be resolved against sustaining the demurrer. *Giffin v. Chronister*, 151 Pa.Cmwlth. 286, 290, 616 A.2d 1070, 1072 (1992) (citations omitted).

8. The relief requested by the Complaint in this case is stated as follows:

"The PUC has set up the tariff for Wastewater usage to be equal in gallons to the amount of Water usage. Water out of the tap is consumed in drinking water, making hot beverages/soups and in Food preparation. Therefore wastewater usage cannot equal water use.

I am asking the PUC to reconsider this method. I am told there are no meters to measure wastewater, but there is likely enough verifiable information to

determine a reasonable calculation of the average amount of water consumed out of the tap. As a general example the States population in the 2020 Census was 13,003,700 living in 5,294,065 households with Family and Living Arrangements. If each Household consumed 1/2 gallon of water each day of an average 30 day month 2,647,033 gallons equates to 79.4 million gallons wuch equates to 794.1 billing units. on my bill the rate is \$2.875 per unit equating to \$2,283,000 in excess waste water charges monthly, \$27,397,000 Annuallized.”

9. The Commission approved the rates and billing methodology reflected in PAWC’s wastewater tariff in its July 22, 2024 Order in PAWC’s last rate case in Docket No. R-2023-3043190, et. al. ¹.

10. Following the Commission’s approval, PAWC’s current wastewater rates became effective on August 7, 2024 with the filing of PAWC’s Supplement No. 52 to Tariff Wastewater PA P.U.C. No. 16.

11. The Company’s Commission-approved wastewater tariff states that wastewater charges to customers are based on water usage or sewage flows, determined at PAWC’s discretion. See, Tariff Wastewater PA P.U.C. No. 16. At Ninth Revised Page 11.1.

12. Under Section 316 of the Public Utility Code, the Commission’s approval of the Company’s service rate is conclusive and binding. Section 316 of the Code provides that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby...”

13. To overcome the presumption of the reasonableness of the service charge based on the Commission’s prior approval of the charge, Complainant must demonstrate the existence of “recent significant changes in circumstances in the interim.” Schellhammer v. Public Utility Commission, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

¹ *Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Company*, Docket No. R-2023-3043190 et al. (Order entered July 22, 2024)

14. In the absence of such a showing of “recent significant change in circumstances” in Complainant, the prior Commission rate determination remains conclusive under Section 316 of the Public Utility Code, Pa.C.S. §316.

15. The Complaint makes no assertion whatsoever of recent significant changes in circumstances that would allow Complainant to overcome the presumption that the Company’s wastewater rates approved by the Commission on July 22, 2024 are just and reasonable.

16. Furthermore, the Commission has repeatedly recognized that PAWC’s methodology for billing wastewater based on metered water usage is fair and reasonable, even though the amount of water that passes through a customer’s meter is not exactly equal to the amount of water that is discharged into the wastewater system. See, *Seamon v. Pennsylvania-American Water Co.*, Docket No. C-2018-3004588 (Final Order entered May 29, 2019) and *Genova v. Pennsylvania-American Water Co.*, Docket No. C-2022-3035314 (Initial Decision issued January 18, 2023; Final Order entered February 21, 2023)

17. The Complaint should be dismissed as legally insufficient under 52 Pa. Code §5.101(a)(4).

18. For these reasons, Complainant’s request for the Commission to “Reconsider” PAWC’s methodology for calculating wastewater charges must fail for legal insufficiency under 52 Pa.Code §5.101(a)(4) and the Complaint must be dismissed, because the wastewater rates and methodology being challenged were approved by the Commission on July 22, 2024, and are set forth in the Company’s Commission-approved tariff, and because there have been no change in circumstances alleged since the wastewater rates and methodology were approved by the Commission that would permit a finding that the charge is unreasonable.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, Respondent Pennsylvania-American Water Company respectfully requests that the Commission grant its Preliminary Objection and dismiss the Formal Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,
STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
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Harrisburg, PA 17101
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COUNSEL FOR PENNSYLVANIA
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objections upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Francis Eaton
105 Stoyer Rd.
Coatesville, PA 19320



Michael A. Gruin

DATED: September 23, 2024