



February 21, 2025

VIA E-FILE

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Filing Room
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: In re: Petition of Pennsylvania-American Water Company for a Declaratory Order
Regarding Holly Ridge Estates, Inc.; Docket No. P-2025-_____**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Petition of Pennsylvania-American Water Company for Declaratory Order. Copies of this filing have been served as shown on the attached Certificate of Service.

Please contact me if you have any question regarding this filing. Thank you for your attention to this matter

Sincerely,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over a light blue circular stamp.

By: David P. Zambito
Counsel for *Pennsylvania-American Water
Company*

DPZ:kmg

Enclosure

cc: Per Certificate of Service
Elizabeth Rose Triscari, Director, Corporate Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Petition of Pennsylvania-American Water :
Company for a Declaratory Order Regarding Holly : Docket No. P-2025- _____
Ridge Estates, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of February, 2025 served a true copy of the foregoing **Petition of Pennsylvania-American Water Company for a Declaratory Order**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

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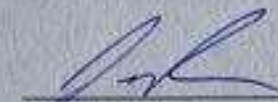


David P. Zambito, Esquire
Counsel for
Pennsylvania-American Water Company

VERIFICATION

I, Jacob Rowe, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect 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: 2-21-2025



Jacob Rowe
Senior Project Engineer
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Petition of Pennsylvania-American Water Company for a Declaratory Order Regarding Holly Ridge Estates, Inc. : Docket No. P-2025-_____

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.61, you are hereby notified that you have twenty (20) days from the service of the enclosed Petition of Pennsylvania-American Water Company for a Declaratory Order to file an answer to the Petition. All pleadings, such as an answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania-American Water Company, and where applicable the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

David P. Zambito, Esq. (PA ID #80017)
Jonathan P. Nase, Esq. (PA ID #44003)
William Lesser, Esq. (PA ID # 332951)
Cozen O'Connor
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Elizabeth Rose Triscari, Esq. (PA ID #306921)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Dated: February 21, 2025



David P. Zambito
Counsel for
Pennsylvania-American Water Company

water service. At all times PAWC complied with its Tariff, in addition to the Commission’s regulations and orders and the Pennsylvania Public Utility Code (“Code”).

2. On November 18, 2024, Holly Ridge initiated an action in the Court of Common Pleas of Lackawanna County (the “Court”) for declaratory judgment and injunctive relief to permit Holly Ridge to install water meters in utility rooms, to direct PAWC to approve Holly Ridge’s application for water service, and to find that PAWC is in violation of its Commission-approved Tariff. The Commission has jurisdiction over this dispute, and accordingly, PAWC requests that the Commission exercise its jurisdiction and declare that PAWC is in compliance with its Tariff and that water meters must be installed in an outdoor meter pit by Holly Ridge pursuant to PAWC’s Tariff unless otherwise approved or specified by PAWC.

3. Holly Ridge has not filed a complaint with the PUC regarding the installation of water meters at its premises. Instead, it sought to circumvent the PUC’s authority over PAWC’s Tariff by commencing a lawsuit in the Court and filing a Complaint and Petition for Preliminary Injunction on November 18, 2024. On February 14, 2025, the Court permitted Holly Ridge to file an amended complaint, which PAWC received from Holly Ridge on February 18, 2025 (“Amended Complaint” or “Am. Compl.”). A copy of Holly Ridge’s Amended Complaint is attached hereto as **Appendix A**.¹

4. The Amended Complaint asserts one cause of action for declaratory relief, requesting the Court declare that Holly Ridge may have water meters installed in indoor water meter rooms at its premises, declare that PAWC is in violation of its Tariff, and direct PAWC to approve Holly Ridge’s application for water service.²

¹ All references herein are made to the Amended Complaint, which is the operative complaint pending before the Court.

² The Amended Complaint added a request for money damages, which, as discussed below, does not divest the Commission of its primary jurisdiction over the matters raised in the Amended Complaint.

5. On February 3, 2025, the Court denied PAWC's preliminary objections and found that the Commission lacked exclusive jurisdiction over this matter. The Court explained that "[e]xpertise in the area of the PUC's tariffs is not required to resolve this matter, because the matter involves whether Plaintiff [Holly Ridge] has met the pleading standard for declaratory judgment." Opinion, p. 6. Similarly, the Court found that "[t]his matter does not involve the reasonableness, adequacy, or sufficiency of PAWC's service, facilities, or rates, but rather, whether Plaintiff has met the legal standard for a declaratory judgment." *Id.* A copy of the Court's February 3, 2025 Memorandum and Order is attached hereto as **Appendix B**.

6. Resolution of this dispute necessarily requires the Commission's assessment of the reasonableness of PAWC's services and facilities through the Commission's interpretation and enforcement of PAWC's Tariff. Excerpts from PAWC's current Commission-approved Tariff, which are relevant to this dispute, are attached hereto as **Appendix C**.

7. The matters raised in the Amended Complaint are squarely within the purview of the Commission's primary jurisdiction and should be determined initially by the Commission. Matters concerning the reasonableness of public utility services and Commission-approved tariffs are within the Commission's particular expertise and broad grant of legislative authority. Further, the Commission is expressly authorized to assess the reasonableness of PAWC's actions, vary and reform any contract between Holly Ridge and PAWC, enter a declaratory judgment, order injunctive relief, or otherwise discontinue any improper practices undertaken by PAWC.

8. This is a matter of whether PAWC is acting reasonably pursuant to its Commission-approved Tariff. The matters raised in the Amended Complaint concern the Commission's assessment of PAWC, the reasonableness of PAWC's services and facilities, and the Commission's interpretation of PAWC's Tariff, which is applicable to all PAWC customers.

Allowing individual cases concerning PAWC's Tariff to be brought in the courts risks inconsistent decisions for similarly-situated customers and disregards the Commission's expertise. This is why public policy in the Commonwealth generally favors that the Commission exercise broad authority over regulated public utilities in Pennsylvania, particularly for Commission-approved tariffs.

9. Accordingly, for the reasons set forth herein, PAWC respectfully requests that the Commission: (a) declare that the allegations in the Amended Complaint present questions of whether PAWC has complied with the Code, the Commission's regulations and orders, and PAWC's Commission-approved Tariff; (b) declare that the Commission has primary and initial jurisdiction over the matters raised in the Amended Complaint; (c) declare that PAWC complied with the Code, the Commission's regulations and orders, and PAWC's Commission-approved Tariff as it relates to the matters raised in the Amended Complaint; and (d) grant such other and further relief as the Commission deems just and reasonable under the circumstances.

II. THE PARTIES

10. PAWC is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 417 communities in 37 counties across the Commonwealth. PAWC serves a combined population of over 2,300,000.

11. PAWC's business address is 852 Wesley Drive, Mechanicsburg, PA 17055.

12. PAWC's counsel in this matter are:

David P. Zambito, Esq. (PA ID #80017)
Jonathan P. Nase, Esq. (PA ID #44003)

William A. Lesser, Esq. (PA ID #332951)
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13. PAWC's attorneys are authorized to receive all notices and communications regarding the Petition.

14. Holly Ridge is a Pennsylvania corporation that is in the business of constructing residential housing units at the Holly Ridge Estates Development, located off of Forge Street and Howard Street in Old Forge, Lackawanna County, Pennsylvania.

15. Holly Ridge's business address is 211 Amity Avenue, Old Forge, Pennsylvania.

III. FACTUAL BACKGROUND

A. PAWC's Tariff Requirements for the Supply of Water Services to New Construction

16. A developer that builds new construction homes may obtain water services for its properties from PAWC by entering into a New Water Facility Line Extension Agreement. However, PAWC will not enter into such an agreement until it has received and approved the developer's application for new water services. Additionally, PAWC may deny an application where "identifying documentation cannot be verified . . . or for other good and sufficient reasons." Tariff § 3.5 (Supplement No. 50 to Tariff Water-PA P.U.C. No. 5, Third Revised Page 45).

17. As part of the application process, the developer must identify a suitable location for the installation of PAWC's water meters, which allow PAWC to bill its customers accurately based on their water consumption. *See id.* § 5.2 (Supplement No. 2 to Tariff Water-PA P.U.C. No. 5, First Revised page 48). PAWC's Tariff governs the placement and installation of the water meters. Section 5.2(a) of PAWC's Tariff provides as follows:

The Customer shall provide a safe, readily-accessible, and protected location for the installation of a meter at such point as will control the entire supply to the premise. The location must be acceptable to the Company as most convenient for its service so that the meter may be easily examined, read, or removed. ***For new construction, the meter shall be required to be installed outside the building in a meter box/vault unless otherwise approved or specified by the Company. The location of the meter box/vault shall be subject to the express approval of the Company;*** in most cases, the meter box/vault shall be located inside the property line by the Customer.

(Supplement No. 2 to Tariff Water-PA P.U.C. No. 5 First Revised Page 48) (emphasis added).

Water meters are routinely installed outside, as required by Section 5.2(a) of the Tariff, in designated vaults or pits, otherwise known as "meter pits."

18. The Tarriff requires the installation of water meters outside the building in new construction for good reason. As Section 5.1 of the Tarriff states, PAWC must have access to meters. (Supplement No. 2 to Tariff Water-PA P.U.C. No. 5 First Revised Page 48). Placing meters in homes or behind locked doors creates an undue burden for PAWC's operations staff and restricts PAWC's ability to meet its responsibilities. Indeed, there are instances in which PAWC is unable to enter the property and service its meters without requiring the additional assistance of local police. As a result, the water industry has largely standardized the practice of requiring the installation of meters outside of a building to improve operator access, improve response times, eliminate the need to go into people's homes, and limit the potential for unreceptive customer interactions which pose a safety risk to staff. While PAWC may grant an exception to this

requirement in its discretion, such waivers are limited and the default requirement is for new constructions to install meters in outdoor meter pits.

B. Holly Ridge Demands Special Treatment Despite Failing to Comply with PAWC's Tariff Requirements

19. Holly Ridge is in the business of constructing residential housing units at the Holly Ridge Estates Development, located in Old Forge, Pennsylvania. Holly Ridge intends for the development to include approximately 150 residential units in over 30 buildings. Holly Ridge is constructing the development in stages.

20. On February 15, 2024, Holly Ridge entered into a Water Facility Line Extension Agreement with PAWC for the first 18 units in the development ("Phase I"). At the repeated request of Holly Ridge's principal and as a courtesy for the first phase of development, PAWC provided Holly Ridge with a waiver of the meter pit requirement for Phase I and permitted Holly Ridge to install water meters in a designated interior utility room instead of an exterior meter pit. PAWC communicated to Holly Ridge that this waiver only applied to the first phase of development – and the waiver explicitly applied to the first 18 units in the development, only. PAWC communicated to Holly Ridge that additional Water Facility Line Extension Agreements would be required for subsequent phases of the development and PAWC did not promise or provide any assurances that a waiver would be granted for these subsequent phases. It was mutually understood at this time that future phases would require outside meter pits.

21. On May 23, 2024, Holly Ridge's engineer sought PAWC's approval for the remaining units under development ("Phase II"). This included Holly Ridge's application for water services, which requires engineer-stamped design drawings in order for PAWC's engineers to assess whether to approve such applications. However, Holly Ridge merely sent PAWC a schematic depicting the preferred route of connection for future units at Holly Ridge. PAWC

acknowledged this preliminary plan but directed Holly Ridge to PAWC's application requirements.

22. Holly Ridge did not respond for two weeks. Then, instead of updating and supplementing the application based on PAWC's requirements, Holly Ridge insisted that it would proceed based on its previously attached preliminary plan, which did not account for meter pits and did not include engineer-stamped design and construction drawings or construction estimates. The application did not conform with PAWC's requirements for approval of water services.

23. PAWC suggested that the parties meet to discuss the standards and requirements for the water service application in order to streamline a path to approval. The parties met on June 26, 2024 to discuss Holly Ridge's Phase II development plans. During this meeting, PAWC expressly informed Holly Ridge that its Phase II plan violated Section 5.2(a) of the Tariff. PAWC informed Holly Ridge unequivocally that it would not waive the meter pit requirement and reminded Holly Ridge that the prior waiver with respect to Phase I of the application did not extend to Phase II of the development. PAWC demanded that Holly Ridge submit all application materials to PAWC.

24. On September 5, 2024, PAWC communicated with Holly Ridge to explain again that PAWC could not provide water services to Holly Ridge beyond Phase I without entering into a New Water Facility Line Agreement. PAWC reiterated that it needed sufficient application materials from Holly Ridge in order to enter into this agreement. These application materials would need to include all information reflected on PAWC's new water facility line extension checklist, including, but not limited to, design plans, construction plans, right of way plans, and contractor cost estimates – PAWC attached the checklist and all required documents in its correspondence with Holly Ridge.

25. Apparently disregarding this reminder, Holly Ridge then reached out to PAWC on October 7, 2024 to inquire as to the status of its application for the remaining phases of the development. PAWC promptly responded that it had not received the requisite plans, materials, or construction estimates that were previously referenced in the September 2024 correspondence. PAWC reminded Holly Ridge again that PAWC could not enter into a New Water Facility Line Extension Agreement until Holly Ridge submitted a complete application for PAWC's review and approval. Holly Ridge then responded by stating that Holly Ridge would not comply with Section 5.2(a) of the Tariff because Holly Ridge had already built rooms inside its buildings for the meters.

26. Although Holly Ridge finally submitted some additional information, these supplemental materials remained deficient. PAWC explained to Holly Ridge that the supplemental materials continued to assume that an exception had been made for the entire development as to the water meter pits and not just for Phase I of the development as had been agreed by PAWC. In an email dated October 8, 2024, Jacob Rowe, P.E., Senior Project Engineer for PAWC, stated the following in writing to George Dunbar, principal for Holly Ridge, and Jude Colwell, P.E., engineer for Holly Ridge:

As for your notes below regarding the meter pits, please be advised that these will not be waived. I understand that there have been exceptions made in the past, but that does not require PAWC to accept them for any current or future projects. Those waivers are solely at our discretion on a case-by-case basis, and in this case, it is not in our best interest to accept a deviation from the standard.

The meter pit requirement is made explicitly clear in Section 5.2 of our tariff and in our application for service. This has been communicated to your team on multiple occasions; including my first meeting with your engineer, Judge Colwell, on 6/26/2024 where I advised him that the meter pits would be required.

Plans submitted without meter pits will continue to be rejected until they are shown and detailed.

27. On November 18, 2024 Holly Ridge initiated a legal action in the Court and filed a complaint against PAWC, which was then replaced by the Amended Complaint on February 18, 2025.³ PAWC filed preliminary objections to the original complaint based on the Commission’s primary jurisdiction over this matter. The Court denied PAWC’s preliminary objections finding that Holly Ridge stated a claim for declaratory relief. *See* Appendix B. The Court disregarded and disagreed with PAWC’s arguments concerning the Commission’s primary jurisdiction over this matter and the Commission’s expertise over issues concerning PAWC’s Commission-approved Tariff.

28. PAWC continues to contend that the Commission has primary and initial jurisdiction over this matter. PAWC filed a Notice of Appeal to the Commonwealth Court of Pennsylvania (“Commonwealth Court”) on February 10, 2025, and PAWC intends on filing a motion for reconsideration, or in the alternative, for certification of immediate appeal and stay of the Court action pending appeal with the Court. At no point did Holly Ridge file a complaint with the Commission. Holly Ridge’s dispute should have been brought before the Commission, and PAWC’s instant petition for a declaratory order provides the Commission with the ability to exercise its rightful authority and jurisdiction over this matter.

IV. LEGAL STANDARD

29. Section 331(f) of the Code, 66 Pa. C.S. § 331(f), and the Commission’s regulations at 52 Pa. Code § 5.42 provide that the Commission may issue a declaratory order to terminate an

³ Holly Ridge also filed a petition for preliminary injunction with the Court in response to the original complaint, requesting that the Court declare that Holly Ridge may have water meters installed in indoor water meter rooms as opposed to outdoor water meter pits and declare that PAWC is in violation of its Tariff. On January 23, 2025, the Court denied Holly Ridge’s petition for preliminary injunction. As of the filing of this Petition, PAWC has not filed responsive pleadings to the Amended Complaint.

actual controversy or to remove uncertainty. *Re Duquesne Light Co.*, 61 Pa. P.U.C. 507 (1986). Declaratory relief “is an appropriate remedy where a case presents antagonistic claims indicating imminent and inevitable litigation” and where “such a determination will help resolve a genuine and justiciable controversy.” *McCord v. Pennsylvanians for Union Reform*, 100 A.3d 755, 759 (Pa. Cmwlth. 2014) (citation omitted).

30. Considering that the Amended Complaint is currently pending in the Court, a Notice of Appeal has been filed in the Commonwealth Court, and the Amended Complaint raises issues within the primary jurisdiction of the Commission, the Commission should issue the requested declaratory orders to terminate an actual controversy or remove uncertainty before the Court addresses the outstanding issues in the Amended Complaint.

V. ARGUMENT IN SUPPORT OF DECLARATORY ORDER

A. The Amended Complaint Raises Questions of Compliance with the Commission’s Regulations and Orders, and PAWC’s Commission-Approved Water Tariff

31. Holly Ridge’s Amended Complaint asserts that PAWC “is in violation of the terms and conditions of its tariff” and requests “[a] declaration that the Defendant [PAWC] is in violation of its tariff[.]” Am. Compl. ¶¶ 39, 44. The entire complaint is premised on whether PAWC was right to reject Holly Ridge’s application for water services based on PAWC’s requirement in its Tariff that Holly Ridge install outdoor water meter pits. Am. Compl. ¶¶ 7-11, 24, 43-45. The allegations in the Amended Complaint and Holly Ridge’s request for relief require an evaluation and interpretation of PAWC’s Commission-approved Tariff to determine whether the application for water services was correctly rejected, whether PAWC is correct in requiring the installation of

outdoor water meter pits, and whether PAWC is in compliance with and not violating the terms of its own Tariff.

32. The Code provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

33. The Code defines “service” broadly:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]

66 Pa. C.S. § 102. Accordingly, under the broad grant of legislative authority that the Code provides to the Commission, matters such as the conditions under which public utilities must render service, extensions of service to public utility customers, and the furnishment or installation of meters for public utility service are within the broad definition of “service” and subject to the Commission’s authority and supervision.

34. “In Pennsylvania, ‘every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities.’” *Talbert v. Am. Water Works Co., Inc.*, 538 F. Supp. 3d 471, 480 (E.D. Pa. 2021) (citing 66 Pa. C.S. § 1501). “Such service and facilities shall be in conformity with the regulations and orders of the PUC.” *See id.* (internal quotations omitted).

35. The PUC “has long been recognized as the appropriate forum for the adjudication of issues involving the reasonableness, adequacy and sufficiency of public utility services.” *Id.* (quoting *MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1103 (3d Cir. 1995)); *see also Lansdale Borough v. Philadelphia Elec. Co.*, 170 A.2d 565, 567 (Pa. 1961) (“Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts.”).

36. The terms of public utility services are set forth in tariffs that must be approved by the Commission. “Public utilities like PAWC must file tariffs with the PUC that are binding and dispositive of the rights and liabilities between the customer and the public utility.” *Talbert*, 538 F. Supp. 3d at 480 (internal quotations omitted).

37. The Code, Commission regulations, and Commission orders require a public utility to comply with its Commission-approved tariff. *See* 66 Pa. C.S. § 1303 (Adherence to tariffs).

A tariff is a set of operating rules imposed by the State that a public utility must follow if it wishes to provide services to customers. It is a public document which sets forth the schedule of rates and services and rules, regulations and practices regarding those services. It is well settled that public utility tariffs must be applied consistently with their language. 66 Pa. C.S. § 1303. Public utility tariffs have the force and effect of law, and are binding on the customer as well as the utility. *Pa. Elec. Co. v. Pa. Pub. Util. Comm’n*, 663 A.2d 281, 284 (Pa. Cmwlth. Ct. 1995).

PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n, 912 A.2d 386, 402 (Pa. Cmwlth. 2006); *accord Stiteler v. Bell Telephone Co.*, 379 A.2d 339, 341 (Pa. Cmwlth. 1977) (“Tariffs filed with a state regulatory agency, such as the PUC, are not mere contracts but have the force of law and are binding on the consumer and the utility.”).

38. “The PUC has enforcement power over its tariffs and regulations, and matters that pertain to those tariffs are considered to be within the particular expertise of the PUC.” *Talbert*, 538 F. Supp. 3d at 480 (quoting *MCI*, 71 F.3d at 1103).

39. Tariffs do more than establish rates; they also establish the terms and conditions of service that govern PAWC's provision of water service to customers and applicants for water service, such as Holly Ridge. In pertinent part, PAWC's Tariff that is applicable to all customers of PAWC and applicants for PAWC's services explicitly authorizes the present petition for a declaratory order at Section 15.1:

In any legal action where a court does not recognize, or is being asked to interfere with or hamper, the jurisdiction of the Commission to authorize limitations of liability or to exclusively determine whether the service and facilities of the Company are in conformity with the regulation and Order of the Commission, the Company may certify to the Commission the question of the appropriateness of such court action by filing a petition for declaratory judgment with the Commission.

(Supplement No. 2 to Tariff Water-PA P.U.C. No. 5 First Revised Page 64).

40. Holly Ridge's claim is entirely based on the terms of PAWC's Tariff, specifically the requirement for outdoor meter pits in Section 5.2(a), *see* Am. Compl. ¶ 11 ("Pursuant to Section 5.2 the Defendant can approve any location for the placement of the water meters."), and the discretion afforded to PAWC in approving an application for service under Section 3.5, *see* Am. Compl. ¶ 9 ("Section 3.5 of the Tariff provides that an application for service can only be rejected for 'good and sufficient reasons'."); *id.* ¶ 24 ("The decision to reject Plaintiff's application and require the installation of water pits at great expense and effort to Plaintiff was not made for 'good and sufficient reasons'."). Holly Ridge's request for relief is based upon its assertion that PAWC is not complying with the terms of its Commission-approved Tariff and that PAWC's provision of service to new customers does not comply with the Code, the Commission's regulations and orders, or PAWC's Commission-approved Tariff. *See generally* Am. Compl. ¶¶ 43-45.

41. Based on Holly Ridge's own allegations in the Amended Complaint, this matter involves the interpretation, evaluation, and assessment of PAWC's Tariff and PAWC's provision of public utility service to new customers and applicants for water service. Accordingly, under

well-settled Pennsylvania law, this matter involves application of the Code, the Commission’s regulations and orders, and PAWC’s Commission-approved Tariff. *See, e.g., Hatchigian v. PECO/Exelon*, No. 142 EDA 2018, 2019 WL 3628744, at *6 (Pa. Super. Aug. 6, 2019) (holding PUC had initial jurisdiction over dispute alleging PECO “failed to apply the provisions of the tariff”).

42. Therefore, PAWC respectfully requests that the Commission issue a declaratory order finding that the allegations in Holly Ridge’s Amended Complaint present questions of whether PAWC has complied with the Code, the Commission’s regulations and orders, and PAWC’s Commission-approved Tariff.

B. The Commission Has Primary and Initial Jurisdiction over the Issues Raised in the Amended Complaint

43. The Code gives the Commission broad authority to regulate public utilities. *See* 66 Pa. C.S. § 102 (defining “public utility”), *id.* § 501 (general powers), *id.* §§ 1501-1511 (service and facilities). The Code also gives the Commission the power and duty to ensure compliance by a public utility with the Code and Commission regulations and orders. 66 Pa. C.S. § 501(c).

44. “The extent of the PUC’s jurisdiction has been clearly outlined by the courts of this Commonwealth in the course of a long series of opinions.” *State Farm Fire & Cas. Co. v. PECO*, 54 A.3d 921, 925 (Pa. Super. 2012). As the Superior Court of Pennsylvania (“Superior Court”) has summarized:

Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC-not in the courts. It has been so held involving ... *service, rules of service, extension and expansion ... installation of utility facilities, [and] location of utility facilities* ... The exclusive regulatory jurisdiction conferred on the PUC in these areas permits evaluation and control of utility activities as they affect public service. No other entity can interfere with the commission’s performance of its function by making additional or different requirements of a utility or by conducting an independent appraisal of a utility’s service to the public.

See id. (quoting *Lansdale Borough*, 170 A.2d at 567) (emphasis added).

45. “It is well-settled law that initial jurisdiction over matters involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates is vested in the PUC and not in the courts.” *Morrow v. Bell Telephone Co. of Pa.*, 479 A.2d 548, 550 (Pa. Super. 1984); *see also Talbert*, 538 F. Supp. 3d at 480; *PECO*, 54 A.3d at 925. Accordingly, “[m]atters relating to tariff . . . are peculiarly within the expertise of the [Commission] and, as such, are outside the original jurisdiction of the courts.” *Morrow*, 479 A.2d at 550 (citation omitted). Indeed, “[t]he PUC has enforcement power over its tariffs and regulations, and matters that pertain to those tariffs are considered to be within the particular expertise of the PUC.” *Talbert*, 538 F. Supp. 3d at 480 (citation omitted). The PUC also has primary jurisdiction over disputes concerning “rules of service, extension and expansion . . . installation of utility facilities, [and] location of utility facilities.” *PECO*, 54 A.3d at 925.

46. Courts applying Pennsylvania law thus repeatedly decline to consider cases based on the primary jurisdiction of the PUC over a matter. The doctrine of primary jurisdiction permits a trial court “faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, [to] first cede the analysis of the issue or issues to that agency.” *Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 479 (Pa. Cmwlth. 2012). As the Supreme Court of Pennsylvania has explained:

“The doctrine serves several purposes, chief of which are the benefits to be derived by making use of the agency’s special expertise in complex areas with which judges and juries have little familiarity. Another important consideration is the statutory purpose in the creation of the agency—the powers granted by the legislature and the powers withheld. And, another fundamental concern is the need to promote consistency and uniformity in certain areas of administrative policy. It has been noted that these purposes are frequently served in, and the doctrine of primary jurisdiction principally applicable to, the controversies concerning the so-called ‘regulated industries.’”

Id. (quoting *Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 376 (Pa. 1980)).

47. “The doctrine of primary jurisdiction requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme.” *Poorbaugh v. Pa. Pub. Util. Comm’n*, 666 A.2d 744, 749 (Pa. Cmwlth. 1995). The doctrine of primary jurisdiction “creates a workable relationship between the courts and administrative agencies” by allowing courts to “have the benefit of the agency’s views on issues within the agency’s competence.” *MCI*, 71 F.2d at 1105.

48. The assertion of damages, which is outside of the authority of the Commission, nonetheless, cannot divest the Commission of its primary jurisdiction. The Superior Court has dictated this conclusion:

DiSanto contends that *Feingold v. Bell of Pennsylvania* ... requires a contrary result. We cannot agree. In *Allport* we noted that “the scope of that decision is distinctly delimited. Our Supreme Court recognized that Feingold’s claims merely raised questions involving the utility’s performance of its contractual or tort law obligations owed to Feingold.” ... Nevertheless, DiSanto contends that *Feingold* ousts the PUC of jurisdiction to act because the instant case involves an action for damages. This argument has been recently refuted by our Supreme Court in *Elkin v. Bell Telephone Co. of Pennsylvania* ... where Justice Larsen stated that this “interpretation of *Feingold* is too broad and would virtually strip the PUC of all jurisdiction merely by framing the allegations in contractual and/or trespassory terminology, and demanding damages.”

DiSanto v. Dauphin Consol. Water Supply Co., 436 A.2d 197, 201-02 (Pa. Super. 1981) (citations omitted). The assertion of monetary damages does not strip the PUC of its jurisdiction. Rather the doctrine of primary jurisdiction envisions that the PUC and the Court create a workable relationship where the Court can have the benefit of the PUC’s views on issues within its expertise and legislative grant of authority, such as the provision of services by a regulated public utility, the installation and furnishment of meters by a public utility, and the interpretation and enforcement of a Commission-approved tariff. *Elkin*, 420 A.2d at 375-76; *Pettko*, 39 A.3d at 479.

Once the PUC has exercised its primary jurisdiction and provided its views on issues within its expertise, Holly Ridge may then seek monetary damages from PAWC from the Court, if applicable, or it may appeal the PUC's decision in the Commonwealth Court. But under well-settled Pennsylvania law, Holly Ridge was not entitled to bypass or ignore the PUC's primary jurisdiction over this matter and the Court should have recognized the value of the Commission's expertise over public utility tariffs and the reasonableness or adequacy of public utility services and facilities. *See DiSanto*, 436 A.2d at 449-50.

49. Holly Ridge alleges that PAWC violated its Tariff by unreasonably rejecting Holly Ridge's application for water service and by requiring Holly Ridge to construct water meter pits at Holly Ridge's development. *See generally* Am. Compl. ¶¶ 7-45. Resolution of this dispute necessarily requires the Commission's assessment of the reasonableness of PAWC's services – as that term is defined in the Code – and its interpretation and enforcement of PAWC's Commission-approved Tariff. These matters are squarely within the purview of the PUC's primary jurisdiction.

50. Further, the Commission is expressly authorized to assess the reasonableness of PAWC's actions, vary and reform any contract involving PAWC, enter a declaratory judgment or injunctive relief, and/or otherwise discontinue any illegal practices on PAWC's part. The Commission could direct PAWC to approve Holly Ridge's application for water service and permit Holly Ridge to install meters inside, which is exactly what Holly Ridge requests in the Amended Complaint. *See* Am. Compl. ¶¶ 43-45. Indeed, courts have held that the PUC has jurisdiction where, as here, a developer asserts that PAWC violated its tariff and seeks an order compelling PAWC to accept the developer's water facilities and provide water service. *See Fox Ridge Vill., LP v. Pa. Pub. Util. Comm'n*, 258 A.3d 1161 (Pa. Cmwlth. 2021).

51. Under the doctrine of primary jurisdiction, the Commission has initial jurisdiction over matters within its expertise and the broad grant of legislative authority. This necessarily includes PUC jurisdiction over declaratory judgment claims. *See Lansdale Borough*, 170 A.2d at 568 (“Initial jurisdiction over the instant controversy is vested in the PUC and the available administrative remedies must be resorted to before the courts can exercise their power of review.”); *see also Kerslake v. Sunoco Pipeline, L.P.*, 299 A.3d 190 (Pa. Cmwlth. 2023) (recognizing PUC’s jurisdiction over lawsuit seeking, *inter alia*, declaratory judgment, and ordering trial court to defer initial review to PUC); *New Garden Twp. v. Artesian Res. Corp., Inc.*, No. 261 C.D. 2018, 2019 WL 2400114, at *1 (Pa. Cmwlth. May 14, 2019) (remanding declaratory judgment action to trial court with instruction to consider primary jurisdiction of PUC; “we are concerned that the PUC possesses primary jurisdiction over a key issue in this case”). Then, depending on the Commission’s resolution over the matters within its expertise, Holly Ridge may then seek damages from the Court. *Hatchigian*, 2019 WL 3628744, at *6 (explaining plaintiff may only pursue claims in the Court of Common Pleas if and after the PUC finds in plaintiff’s favor).

52. Such a bifurcated proceeding, with the Commission exercising primary and initial jurisdiction over matters within its expertise, is how the Court and the PUC properly create a “workable relationship” that allows the Court to “have the benefit of the [PUC’s] views on issues within the agency’s competence.” *Elkin*, 420 A.2d at 376.

53. PAWC respectfully requests that the Commission issue a declaratory order finding that the Commission has primary and initial jurisdiction over the matters raised in the Amended Complaint. Consequently, the PUC should declare that it should render a decision, in the first instance, on the allegations in the Amended Complaint.

C. PAWC Complied with its Commission-Approved Tariff in Rejecting Holly Ridge’s Application for Service and Requiring Installation of Outdoor Water Meter Pits

54. Holly Ridge merely alleges that PAWC utilized its afforded discretion to decline Holly Ridge’s application for water service and its request to install water meters in indoor water rooms instead of outdoor water meter pits. Am. Compl. ¶¶ 19-24, 38-39 43-45.

55. As mentioned above, PAWC’s Tariff explicitly requires customers to “provide a safe, readily-accessible, and protected location for the installation of a meter,” which, for new constructions, must be “installed outside the building in a meter box/vault unless otherwise approved or specified by” PAWC. Tariff § 5.2 (Supplemental No. 2 to Tariff Water-PA P.U.C. No. 5, First Revised Page 48). PAWC’s Tariff also states that the Company may reject applications for service where “identifying documentation cannot be verified . . . or for other good and sufficient reasons.” Tariff § 3.5 (Supplement No. 50 to Tariff Water-PA P.U.C. No. 5, Third Revised Page 45). Accordingly, in rejecting Holly Ridge’s application for service based on Holly Ridge’s refusal to comply with the Tariff’s specifications for the location of meters and Holly Ridge’s failure to submit required and completed documentation in its application for service, PAWC is in complete compliance with the terms of the Commission-approved Tariff.

56. PAWC’s waiver of the meter pit requirement for Phase I of Holly Ridge’s development was expressly limited to the first 18 units of the development and provided as a limited courtesy after repeated requests and threats of litigation by Holly Ridge’s principal. The waiver explicitly did not extend to subsequent phases of development and at no point was it communicated to Holly Ridge from PAWC that waivers would be granted for subsequent phases of development. Rather, the understanding at the time PAWC granted this waiver for Phase I was that future phases would require outdoor, outside meter pits. The general policy and

standardization of water companies requires installation of outdoor water meter pits for compelling reasons, including the safety of company employees, faster response times from the companies, and improved operator access and convenience to companies. This policy benefits the companies, customers, and ratepayers in the Commonwealth.

57. It is axiomatic that conduct expressly permitted by the Tariff cannot constitute a violation thereof. “It is well settled that public utility tariffs must be applied consistently with their language.” *PECO*, 54 A.3d at 926 (citing 66 Pa. C.S. § 1303).

58. The Amended Complaint fails to set forth any actions on the part of PAWC that deviate from the plain language of the Tariff. The Tariff does not provide Holly Ridge with a right to install water meters in utility rooms, nor does it require PAWC to waive Section 5.2(a) at the request of a customer or based on prior exceptions.

59. As a result, PAWC was wholly justified in deciding that it was in PAWC’s best interest to enforce Section 5.2(a) of the Tariff, which requires Holly Ridge to install water meters in outdoor water meter pits. PAWC also had ample reason to deny Holly Ridge’s application, which failed to comply with this requirement and did not include the engineer-stamped drawings required by PAWC.

60. PAWC respectfully requests that the Commission issue a declaratory order finding that, with regard to the Amended Complaint, PAWC complied with the Code, the Commission’s regulations and orders, and PAWC’s Commission-approved tariff, in denying Holly Ridge’s application for service and requiring that water meters be installed in outdoor water meter pits.

VI. CONCLUSION

WHEREFORE, Pennsylvania-American Water Company requests that the Commission:

- a. Declare that the allegations in Holly Ridge's Amended Complaint present questions of whether PAWC has complied with the Pennsylvania Public Utility Code, the Commission's regulations and orders, and PAWC's Commission-approved tariff;
- b. Declare that the Commission has primary and initial jurisdiction over the matters raised in the Amended Complaint. Consequently, the PUC should declare that it should render a decision, in the first instance, on the allegations in the Amended Complaint;
- c. Declare, with regard to the Amended Complaint, that PAWC complied with the Pennsylvania Public Utility Code, the Commission's regulations and orders, and PAWC's Commission-approved tariff, in denying Holly Ridge's application for service and requiring that water meters be installed in outdoor water meter pits; and
- d. Issue an order granting such other and further relief as the Commission deems just and reasonable under the circumstances.

[Signature appears on next page.]

Respectfully submitted,

COZEN O'CONNOR



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Date: February 21, 2025

APPENDICES

**In re: Petition of Pennsylvania-American Water Company for a
Declaratory Order Regarding Holly Ridge Estates, Inc.
Docket No. P-2025-_____**

(February 21, 2025)

Appendix A

Michael G. Gallacher, Esquire, Attorney for Plaintiff
 Gallacher Law
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 110 Market Street
 Moscow, PA 18444
 Phone (570) 319-6472
 Fax (570) 319-6613

LACKAWANNA COUNTY
 23 FEB 10 A 9 57
 CLERK OF COURT
 RECORDS DIVISION

HOLLY RIDGE ESTATES, INC.	:	IN THE CT OF COMMON PLEAS
211 Amity Avenue	:	OF LACKAWANNA COUNTY
Old Forge, PA 18518	:	
	:	
	:	
Plaintiff	:	CIVIL ACTION
vs	:	
	:	DECLARATORY
	:	JUDGMENT/INJUNCTION
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY	:	
2699 Stafford Avenue	:	
Scranton, PA 18505	:	
	:	
Defendant	:	24 CV 7851

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim for relief requested by the Plaintiff(s). You may lose money or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

NORTH PA LEGAL SERVICES, INC. PA LAWYER REFERRAL SERVICE

33 North Main St.
Suite 200
Plains, PA 18640
(570) 299-4100

P. O. Box 1068
100 South State Street
Harrisburg, PA 17108
(PA residents 1-800-692-7375;
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Attorney for Plaintiff
LACKAWANNA COUNTY
21 FEB 10 A 9:57
CLERK OF COURT
RECORDS DIVISION

HOLLY RIDGE ESTATES, INC. : IN THE CT OF COMMON PLEAS
211 Amity Avenue : OF LACKAWANNA COUNTY
Old Forge, PA 18518 :
:
:
Plaintiff : CIVIL ACTION
vs :
:
: DECLARATORY
: JUDGMENT/INJUNCTION
PENNSYLVANIA-AMERICAN WATER :
COMPANY :
2699 Stafford Avenue :
Scranton, PA 18505 :
:
:
Defendant : 24 CV 7851

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Holly Ridge Estates, Inc. by and through its counsel, Michael G. Gallacher, Esq., and complains against Defendant as follows:

1. Plaintiff Holly Ridge Estates, Inc. (hereinafter "Holly Ridge") is a Pennsylvania Corporation authorized to conduct business in the Commonwealth of Pennsylvania and at all times material hereto maintained a business address of 211 Amity Avenue, Old Forge, Lackawanna County, Pennsylvania.

2. Defendant Pennsylvania-American Water Company

(hereinafter "PA American") is a Corporation authorized to conduct business in the Commonwealth of Pennsylvania and at all times material hereto maintained a business address of 2699 Stafford Avenue, Scranton, Lackawanna County, Pennsylvania.

3. At all times material hereto, the parties acted by and through their agents, servants and employees who at all times acted within the course and scope of their agency, employment and authority.

4. At all times material hereto Holly Ridge was and is in the business of constructing residential housing units at the Holly Ridge Estates Development (hereinafter "Holly Ridge Development") which is located off of Forge Street and Howard Street in Old Forge, Lackawanna County, Pennsylvania.

5. The Holly Ridge Development, when completed, will contain about 150 residential units located in over 30 buildings.

6. At all times material hereto, Defendant PA American was and is in the business of providing water services to residential customers in Lackawanna County including new residential customers at the Holly Ridge Development.

7. At all times material hereto, Defendant PA American was and is the sole public utility designated to provide water services to Old Forge, Lackawanna County, Pennsylvania including at the Holly Ridge Development.
8. In providing water services to customers in Old Forge, Pennsylvania the Defendant is required to abide by a Water Tariff which sets forth the rules and regulations governing the provision, distribution and sale of water services (hereinafter the "Tariff").
9. Section 3.5 of the Tariff provides that an application for service can only be rejected for "good and sufficient reasons".
10. Section 5.2 of the Tariff provides that when an applicant is applying for water service for new construction, the customer shall provide a safe, readily-accessible, and protected location for the installation of a water meter at such point as will control the entire supply to the premise.
11. Pursuant to Section 5.2 the Defendant can approve any location for the placement of the water meters.
12. Holly Ridge's principal, George Dunbar, has completed numerous other residential construction projects in Old

Forge, Pennsylvania.

13. Over the past eight (8) years, the Defendant has approved the installation of 260 water meters in specifically constructed and dedicated water rooms at the request of Mr. Dunbar through his companies.
14. Over the course of the past eight (8) years, the Defendant as never required the installation of water pits.
15. For at least the past eight (8) years it has been the practice and custom of the Defendant to allow for the installation of water meters in the aforementioned specifically constructed and dedicated water rooms.
16. Based upon the past practice and custom of PA American to allow for the installation of water meters in the aforementioned specifically constructed and dedicated water rooms, Holly Ridge, at cost to it, designed the Holly Ridge Development and the buildings located therein to have the water meters installed in specifically constructed and dedicated water rooms.
17. Holly Ridge has already constructed or is in the process of constructing the first 18 units at the Holly Ridge Development and Defendant PA American has allowed

and approved the installation of water meters in the
aforementioned specifically designed, constructed and
dedicated water rooms for each of those units.

18. In or around September, 2024, Holly Ridge applied for
water service to be provided to the next building upon
which construction had began within the Holly Ridge
Development - an apartment building containing multiple
residential units.

19. Application was made to have the water meters
installed in the specifically designed and dedicated
water rooms per the construction plans which Holly Ridge
paid to have completed.

20. In or around October, 2024, the Defendant advised
Holly Ridge that it was rejecting its application and is
now requiring that Holly Ridge construct water "pits" at
the Holly Ridge Development to have the water meters
installed in the pits rather than in the specifically
designed and dedicated water rooms.

21. The construction of water pits will require the
Plaintiff to redesign the plans for the Holly Ridge
Development and the buildings to be constructed therein
at great expense to Holly Ridge.

22. The construction of water pits and the installation of water meters in those pits rather than in the specifically designed and dedicated water rooms will cause additional expense, effort and time by the Plaintiff.
23. Requiring a water pit for the apartment building currently under construction has caused and will cause great delay and expense to Holly Ridge.
24. The decision to reject Plaintiff's application and require the installation of water pits at great expense and effort to Plaintiff was not made for "good and sufficient reasons".
25. Rather, the decision to reject Plaintiff's application and require it to install water pits at great expense, effort and delay to Plaintiff was retaliatory in part because Holly Ridge recently complained that PA American should bear the cost of construction and installation of the water facilities rather than Holly Ridge since PA American will benefit financially from the water services provided to the new customers.
26. The decision to reject Plaintiff's application and require it to install water pits at great expense, effort

and delay to Plaintiff was also retaliatory and a direct and proximate result of the refusal of Plaintiff's principal, George Dunbar, to submit to efforts of one of Defendant's employees to extort good and service.

27. Specifically, Tony Pachick is employed by the Defendant and was responsible for making the decision on the approval of water meter locations and the approval of applications for water services.

28. Mr. Pachick had previously approved the installation of water meters in specifically designed and dedicated water rooms for most or all of the previous 230 plus residential units constructed by Mr. Dunbar through various entities.

29. After Mr. Pachick had approved the installation of water meters in the specifically designed and designated rooms for most of the aforementioned residential units, he requested that Dunbar's Evergreen Landscaping, Inc. provide yard maintenance and yard cleaning services at his personal residence located in Mountain Top, Pennsylvania.

30. Dunbar's Evergreen Landscaping, Inc. agreed to perform the requested service and did perform the requested

services.

31. Upon completion of the services, Dunbar's Evergreen Landscaping, Inc. sent to Mr. Pachick a bill for the services rendered.

32. Upon receipt of the bill from Dunbar's Evergreen Landscaping, Inc., Mr. Pachick contacted George Dunbar and in an indignant manner questioned why he was billed for the services performed by Dunbar's Evergreen Landscaping, Inc. Mr. Pachick expressed that he expected the services to have been provided for free based upon his prior approvals for the developments of which Mr. Dunbar is the principal.

33. Upon receipt of the bill from Dunbar's Evergreen Landscaping, Inc., Mr. Pachick implied that he could and would make things difficult for Mr. Dunbar in his future developments unless the services provided by Dunbar's Evergreen Landscaping, Inc. were free.

34. Mr. Dunbar refused to provide the services for free and to date, Mr. Pachick has failed and refused to pay any of the invoice sent to him by Dunbar's Evergreen Landscaping, Inc. for services provided at his personal residence.

35. Upon information and belief, Mr. Pachick initially attempted to make things difficult for Mr. Dunbar in relation to the approval of water services to the first 18 units at the Holly Ridge Development.
36. When those efforts failed, Mr. Pachick is now attempting to make things difficult for Mr. Dunbar by rejecting or causing the rejection of the Holly Ridge application for water services unless Holly Ridge, at great effort and expense to it, installs water pits at the Holly Ridge Development.
37. Upon information and belief, the Defendant regularly approves applications for water services without requiring the applicants to install water pits for other customers of PA American.
38. There is no legitimate basis for refusing Plaintiff's application and requiring it to install water pits at great effort, expense and delay to it.
39. PA American is in violation of the terms and conditions of its tariff.
40. PA American is being vindictive and retaliatory and attempting to punish Holly Ridge and its principal because Dunbar's Evergreen Landscaping, Inc. refused to

provide free services to its employee and because Holly Ridge complained about having to bear the costs of installation of the water services.

41. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and until the water meter location is approved.

42. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and until its application for water services is approved.

43. A declaration that the Plaintiff may have water meters installed in the specifically designed and dedicated water rooms in future buildings to be constructed at Holly Ridge is warranted.

44. A declaration that the Defendant is in violation of its tariff is warranted.

45. A declaration that the Defendant is required to approve Plaintiff's application for water services is warranted.

46. Plaintiff is entitled to compensation for any and all effort, delay and expenses caused to the Plaintiff by Defendant's failure and refusal to approve Plaintiff's past or future applications for water services at Holly

Ridge.

47. Plaintiff is entitled to compensation for any and all effort, delay and expenses caused to Plaintiff by Defendant's unreasonable requirement that Plaintiff install water pits for the meters instead of water rooms.

48. Plaintiff is entitled to compensation for any and all effort, delay and expenses caused to Plaintiff by Defendant's violation of its tariff.

49. Immediate action is necessary to avoid immediate and irreparable harm to Plaintiff.

50. An injunction is necessary to abate the harm being caused and to be caused by the Defendant.

51. Greater injury will result in refusing the injunction than granting it.

WHEREFORE, Plaintiffs respectfully requests that this

Honorable Court grant the following relief:

- (a) Declare that the Plaintiff may have water meters installed in the specifically designed and dedicated water rooms in future buildings to be constructed at the Holly Ridge Development;
- (b) Declare that the Defendant is in violation of its tariff;
- (c) Direct the Defendant to approve Plaintiff's future applications for water services with water rooms instead of water pits;

- (d) Award Plaintiff monetary compensation/damages as a result of any and all effort, delay and expenses caused to Plaintiff by Defendant's insistence that Plaintiff install water meters in water pits instead of water rooms;
- (e) Direct Defendant to reimburse Plaintiff all costs and attorney's fees related to this action;
- (f) Grant such other and further relief as this court deems just and appropriate.

Respectfully submitted,



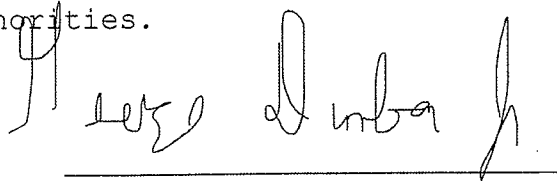
Michael G. Gallacher
Gallacher Law
Counsel for Plaintiff
110 Market Street
Moscow, PA 18444
ID.# 82523

VERIFICATION

I, GEORGE A. DUNBAR, JR., on behalf of Holly Ridge Estates, Inc. verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa.C.S. Sec. 4904 relating to unsworn falsification to authorities.

DATE:

2/10/25



GEORGE A. DUNBAR, JR.
Holly Ridge Estates, Inc.

Appendix B

HOLLY RIDGE ESTATES, INC. <i>Plaintiff</i>	:	In the Court of Common Pleas of Lackawanna County
v.	:	Civil Action - Law
PENNSYLVANIA-AMERICAN WATER COMPANY, <i>Defendant</i>	:	No. 2024-CV-7851

MAURI B. KELLY
 CLERK OF COURT
 LACKAWANNA COUNTY
 RECORDS CIVIL DIVISION
 2025 FEB -3 P 3:41

GIBBONS, J.

MEMORANDUM

I. INTRODUCTION

This matter arises from a Complaint and Petition for Preliminary Injunction (the “Petition”) filed by Holly Ridge Estates, Inc. (“Plaintiff”) pursuant to a dispute over the placement of water meters at the Holly Ridge Development (the “Premises”). Plaintiff sought a preliminary injunction¹ directing that it may install water meters in “water meter rooms” at the Premises, as opposed to “water meter pits.” PAWC measures water consumption by meters. Generally, meters are encased in a metal pit below the surface of the ground. Sometimes, as here, meters are enclosed aboveground in dedicated rooms. The Complaint charges that Plaintiff has a right to install water meters in “water meter rooms;” that Defendant Pennsylvania American Water Company (“PAWC” or “Defendant”) is in violation of its Water Tariff (the “Tariff”); and that PAWC must reimburse Plaintiff for all costs and attorney’s fees. PAWC filed preliminary objections to Plaintiff’s Complaint, and Plaintiff filed its response to PAWC’s preliminary objections. We heard argument and this matter is ripe for disposition.

¹ We denied the request for preliminary injunction in our Memorandum and Order of January 23, 2025.

II. FACTUAL BACKGROUND

Plaintiff's Complaint makes the following allegations. At all relevant times, Plaintiff was and is in the process of constructing residential housing units at the Premises, which are located in Old Forge, Lackawanna County, PA. See Compl. at ¶4. PAWC was and is the sole public utility designated to provide water services to Old Forge, Lackawanna County, PA. Id. at ¶7. In providing water services to the Premises, PAWC was and is required to abide by a Water Tariff (the "Tariff"). Id. at ¶8. Pursuant to Section 3.5 of the Tariff, PAWC may limit or reject service for the following reasons:

requested service is not available under a standard rate; requested service may affect service to other customers; for a Non-Residential Applicant's or Non-Residential Customer's failure to establish Creditworthiness; for failure to address prior Company debts; for the Applicant's failure to provide identifying documentation of the Applicant and each adult occupant residing at the location; when identifying documentation cannot be verified; for the reasons set forth in Section 4.1, **or for other good and sufficient reasons.**

Penn. Am. Water Co. Rates, Rules and Regul., Nov. 21, 2024, §3.5 (emphasis added).

Furthermore, PAWC can approve any location for the placement of water meters so long as it is "safe, readily-accessible, and protected[.]" Id. at §5.2(a). The same section also states that the meter "shall be required to be installed outside the building in a meter box/vault **unless otherwise approved or specified by the Company.**" Id. (emphasis added).² Over the past eight (8) years, PAWC had approved the installation of water meters in "water meter rooms" at the request of George Dunbar, Holly Ridge's principal, in prior developments of Mr. Dunbar. See Compl. at ¶¶12-16.

^{2 2} There is no mention of a "waiver", or the term "waive" or any of its variations, in any of the relevant sections of the Tariff, nor any other section of the Tariff. Water meters are to be approved for installation outside the building pursuant to Section 5.2(a), approved "otherwise" pursuant to Section 5.2(a), or denied. Despite the absence of any waiver-type language in the Tariff itself, PAWC's attempts to insert it during the injunction hearing were incessant.

PAWC had allowed and approved the installation of water meters in specifically designed “water meter rooms” at the Premises for the first 18 units. *Id.* at ¶17. However, upon Plaintiff’s application to place water meters in “water meter rooms” at the Premises during the next phase of construction, PAWC informed Plaintiff that the application was rejected and PAWC was now requiring that Plaintiff construct water “meter pits” at the Premises. *Id.* at ¶¶18-20.

The construction of water “meter pits” at the Premises would require a redesign of the plans for the Holly Ridge Development and allegedly cause “great delay and expense” to Plaintiff. *Id.* at ¶¶21-22.

III. STANDARD OF REVIEW

Preliminary objections may be filed by any party to any pleading. Pa. R. Civ. P. 1028(a). “Preliminary objections are a device used to test the legal sufficiency of a pleading, its compliance with the Pennsylvania Rules of Civil Procedure, or the court’s authority to adjudicate a controversy, prior to having to respond to the pleading on the merits.” Sparks v. Fidelity Deposit, 2014 WL 5789742 at *2, Gibbons, J. (Lacka. Co. Nov. 6, 2014) (quoting Pilosi v. Cummings, 2014 WL 4426119 at *3, O’Brien, V.J. (Lacka. Co. Sep. 4, 2014)).

“Pennsylvania is a fact pleading rather than a notice pleading jurisdiction[,] [a]s a result, courts are presumed to know the law and plaintiffs need only plead facts constituting the cause of action.” Griffin v. Rent-A-Center, Inc., 843 A.2d 393, 395 (Pa. Super. 2004) (citation omitted).

In evaluating preliminary objections, all well-pleaded material facts set forth and all reasonable inferences that may be drawn from those facts, must be taken as true. Milton S. Hershey Med. Ctr. of Pennsylvania State Univ. v. Com. of Pennsylvania CAT Fund, 763 A.2d 945, 948 n.5 (Pa. Cmwlth. 2000)) (citing Meier v. Maleski, 648 A.2d 600 (1994)). Further,

preliminary objections may *only* be granted when a matter is clear and free from doubt. Wheeler v. Nationwide Mut. Fire Ins. Co., 905 A.2d 504, 505 (Pa. Super. 2006) (emphasis added). Any doubts regarding preliminary objections should be resolved against the objecting party. Goodheart v. Thornburgh, 522 A.2d 125, 127 (Pa. Cmwlth. 1987). “Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief.” Feingold v. Hendrzak, 15 A.3d 937, 941 (Pa. Super. 2011).

“The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Pa. R. Civ. P. 1019(a). To comply with Rule 1019, the pleading must apprise the defendant of the claim being asserted and summarize the material facts needed to support the claim. Cardenas v. Schober, 783 A.2d 317, 325 (Pa. Super. 2001); Alpha Tau Omega Fraternity v. Univ. of Pennsylvania, 464 A.2d 1349, 1352 (Pa. Super. 1983). Pursuant to Pa. R. Civ. P. 1028, a party may bring a preliminary objection for insufficient specificity of a pleading for an alleged violation of the pleading standard articulated in Rule 1019(a). American Exp. Centurion v. Decker, 9 Pa. D. & C.5th 299 (Centre Co. 2009). To be sufficiently specific, a pleading must set forth enough material facts to allow the defendant the opportunity to prepare a defense to the allegations contained within the pleading. Weiss v. Equibank, 460 A.2d 271, 274-75 (Pa. Super. 1983); Com., Dep’t of Transp. v. Shipley Humble Oil Co., 370 A.2d 438, 439 (Pa. Cmwlth. 1977). The amount of detail or level of specificity required is “incapable of precise measurement.” Pike County Hotels Corp. v. Kiefer, 396 A.2d 677, 681 (Pa. Super. 1978).

A preliminary objection based on a pleading’s legal insufficiency is known as a demurrer. Pa. R. Civ. P. 1028(a)(4). When ruling upon preliminary objections under the lens of a demurrer, the court must accept as true all well-pleaded allegations of material facts that are set forth in the

complaint, as well as all inferences reasonably deducible therefrom. McMahon v. Shea, 688 A.2d 1179, 1180 (Pa. 1997).

It is not necessary to plead evidence which can be developed through discovery. Local No. 163, International Union of United Brewery, etc. v. Watkins, 207 A.2d 776 (Pa. 1965).

While the Pennsylvania Rules of Civil Procedure direct that the objecting party be capable of preparing a defense based upon the allegations, the plaintiff need not list all evidence that demonstrates the objecting party's improper acts. Boyd v. Somerset Hospital, 24 D. & C.4th 564, 567 (1993); Albright v. Gadiparthi, 50 Somerset L.J. 355, 361 (1991). Importantly, "[i]n determining whether a particular paragraph in a complaint is stated with the necessary specificity, such paragraph must be read in context with all allegations in the complaint." Unified Sportsmen of Pa. v. Pa. Game Comm'n, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

IV. DISCUSSION

A. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(1) for Lack of Jurisdiction

"Preliminary objections may be filed by any party to any pleading and are limited to the following grounds...lack of jurisdiction[.]" Pa. R. Civ. P. 1028(a)(1). PAWC argues Plaintiff "raises issues that are within the primary and exclusive jurisdiction of the PUC." See POs at ¶77. PAWC first relies on State Farm Fire & Cas. Co. v. PECO, 54 A.3d 921, 925 (Pa. Super. Ct. 2012), particularly a portion that holds: "involving...installation of utility facilities [and] location of utility facilities...The exclusive regulatory jurisdiction conferred on the PUC in these areas permits evaluation and control of utility activities as they affect public service." Id. (quoting Lansdale Borough v. Philadelphia Electric Co., 170 A.2d 565, 567 (Pa. 1961)). However, we

need not evaluate, control, or regulate the installation of the “meter pits” or “meter rooms.” We need only determine whether Plaintiff has met the legal standard for a declaratory judgment. This case is not instructive on the issue of our jurisdiction.

PAWC also relies on Morrow v. Bell Tel. Co. of Pa., 479 A.2d 548 (Pa. Super. Ct. 1984): “It is well-settled law that initial jurisdiction over matters involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates is vested in the PUC and not in the courts.” Morrow, 479 A.2d at 550 (citations omitted). This matter does not involve the reasonableness, adequacy, or sufficiency of PAWC’s service, facilities, or rates, but rather, whether Plaintiff has met the legal standard for a declaratory judgment. This case is also not dispositive of this court’s jurisdiction over Plaintiff’s Complaint.

PAWC offers Talbert v. Am. Water Works Co., Inc., 538 F. Supp. 3d 471 (E.D. Pa. 2021): “The PUC has enforcement power over its tariffs and regulations, and matters that pertain to those tariffs are considered to be within the particular expertise of the PUC.” Id. at 480 (quoting MCI Telecomm. Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1103 (1995)) (citation omitted). Expertise in the area of the PUC’s tariffs is not required to resolve this matter, because the matter involves whether Plaintiff has met the pleading standard for declaratory judgment.

PAWC compares the instant matter with Fox Ridge Vill., LP v. Pub. Util. Comm’n, 258 A.3d 1161 (Pa. Commw. Ct. 2021), claiming in both cases “a developer asserts that PAWC violated its tariff and seeks an order compelling PAWC to accept the developer’s water facilities and provide water service.” See Memo in Supp. of POs at p. 12. However, in Fox Ridge, the developer had insufficient water pressure and water flow to support homes above a certain elevation. Fox Ridge, 2021 WL 2351106 at *4. PAWC’s refusal to provide water services in Fox Ridge was based on an applicable statute requiring sufficient water pressure and flow for a utility

company to provide water to a developer, rather than the instant case, wherein PAWC's refusal is based on apparent discretion granted by the Tariff. Id. at *4-5, 8. The PUC does not have exclusive jurisdiction because the instant matter differs from the issue in Fox Ridge and does not require expertise or involve any of the statutes referenced in Fox Ridge.

Cases which PAWC relies on such as DiSanto v. Dauphin Consol. Water Supply Co., 436 A.2d 197 (Pa. Super. Ct. 1981), which prevent the courts from intruding on areas of the PUC's exclusive jurisdiction, are inapplicable because we do not find that the PUC has exclusive jurisdiction over this matter.

In conclusion, PAWC's preliminary objection for lack of jurisdiction will be **OVERRULED.**

B. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(1) for Improper Service

"Preliminary objections may be filed by any party to any pleading and are limited to the following grounds...improper form or service of a writ of summons or a complaint[.]" Pa. R. Civ. P. 1028(a)(1). "Except as provided in [subdivisions not here applicable], original process shall be served within the Commonwealth only by the sheriff." Pa. R. Civ. P. 400(a). "Original process shall be served within the Commonwealth within 30 days after the issuance of the writ or the filing of the complaint." Pa. R. Civ. P. 401(a).

PAWC alleges Plaintiff has yet to serve PAWC in a manner that complies with the Pennsylvania Rules of Civil Procedure. See POs at ¶108, Memo of Law in Support of POs at p. 12. According to the Rules of Civil Procedure, "[o]riginal process may be served...at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof." Pa. R. Civ. P. 402(a)(iii). PAWC was served at its Scranton office less than a

month after Plaintiff's Complaint was filed, with a "Lisa Abdo, Supervisor, Operations Support" accepting service. See Sheriff's Return of Compl. Dated 12/6/24 Upon PAWC. PAWC has not made any specific allegations that this service was improper somehow, other than the generic assertion of noncompliance previously mentioned.

Therefore, PAWC's preliminary objection pursuant to 1028(a)(1) will be

OVERRULED.

C. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(3) For Insufficient Specificity

"Preliminary objections may be filed by any party to any pleadings and are limited to the following grounds . . .insufficient specificity in a pleading." Pa. R. Civ. P. 1028(a)(3). The pertinent question under Rule 1028(a)(3) is "whether the complaint is sufficiently clear to enable the defendant to prepare his defense," or "whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." Ammlung v. City of Chester, 224 Pa. Super. 47, 302 A.2d 491, 498 n. 36 (1973) (quoting Pa. R. Civ. P. No. 1017(b)(3); 1 Goodrich-Amram § 1017(b)-9). The specificity requirement has been broken into two conditions that "must always be met: [t]he pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge." Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care LLC, 648 Pa. 604, 636, 194 A.3d 1010, 1030 (2018) (citing Bata v. Cent.-Penn Nat. Bank of Philadelphia, 423 Pa. 373, 224 A.2d 174, 179 (1966); see also Martin, 606 A.2d at 448.). Importantly, "[i]n determining whether a particular paragraph in a

complaint is stated with the necessary specificity, such paragraph must be read in context with all allegations in the complaint.” Unified Sportsmen of Pa. v. Pa. Game Comm’n, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

PAWC first claims the Complaint “fails to set forth any cognizable legal theory” for which relief is required, and that the Complaint lacks “a single count that asserts an affirmative claim against PAWC for its alleged misconduct.” See POs at ¶¶116-117. Plaintiff alleges there was “no legitimate basis” for requiring Plaintiff to install water pits and that PAWC is in violation of the terms and conditions of the Tariff. Id. at ¶¶37-38. Plaintiff has adequately explained the nature of the claim so as to allow PAWC to prepare a defense; the averments are not merely subterfuge.

“Averments of time, place, and items of special damage shall be specifically stated.” Pa. R. Civ. P. 1019(f). “When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written[,]” and, if written, “the pleader shall attach a copy of the writing, or the material part thereof[.]” Pa. R. Civ. P. 1019(h)-(i). PAWC next claims the Complaint violates Rule 1019 of the Pennsylvania Rules of Civil Procedure by failing to specifically allege the times when: “(1) PAWC allegedly waived Section 5.2(a) of the Tariff, (2) Plaintiff “complained that [PAWC] should bear the cost of construction and installation of the water facilities rather than Holly Ridge;” (3) Mr. Pachick allegedly requested free services from Dunbar’s Evergreen Landscaping, Inc.; or (4) Mr. Pachick allegedly “implied that he could and would make things difficult for Mr. Dunbar in his future developments unless the services provided by Dunbar’s Evergreen Landscaping, Inc., were free.”” See POs at ¶¶119-128, Brief in Support of POs at pp. 13-14 (citation omitted). Plaintiff’s Complaint contains the following allegations: (1) PAWC had allowed the construction of water meter rooms “over the past eight

(8) years” at Mr. Dunbar’s prior construction projects and in the prior phase of the Holly Ridge Development, and (2) Plaintiff’s complaint that PAWC should bear the cost and installation of water facilities had occurred “recently” as of October 2024. See Compl. at ¶¶13-15, 24. The Complaint does lack information on dates and times during which the alleged actions of Mr. Pachick took place. However, Mr. Pachick is an employee of PAWC, and furthermore, as of the December 3, 2024 injunction hearing, both parties are on notice that: the services Dunbar’s Evergreen Landscaping, Inc. performed for Mr. Pachick were approximately July or August of 2023; and the alleged actions of Mr. Pachick requesting free services and threatening retribution occurred around when he received the invoice dated August 24, 2023. See Transcript of Hearing on Preliminary Injunction on Dec. 3, 2024, pp. 34-36. The Complaint, and information PAWC already possesses, places PAWC on notice of Plaintiff’s claims sufficiently so that PAWC may formulate a defense.

“When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is written or oral...When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof[.]” Pa. R. Civ. P. 1019(h)-(i). PAWC also argues Plaintiff has violated Rule 1019(h) and Rule 1019(i) by failing to identify the nature of prior agreements for prior developments to include water meter rooms and failing to attach any agreements which may have been in writing. See POs at ¶¶126-129. However, Plaintiff’s claim is not based upon these agreements. Plaintiff is seeking a declaratory judgment that PAWC is in violation of the Tariff and Plaintiff has a right to install its water meters in water meter rooms.

Therefore, PAWC’s preliminary objection for insufficient specificity will be **OVERRULED.**

D. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(A)(4) For Legal

Insufficiency

“Preliminary objections may be filed by any party to any pleadings and are limited to the following grounds . . . legal insufficiency of a pleading (demurrer).” Pa. R. Civ. P. 1028(a)(4). A complaint must not only give the defendant notice of what the plaintiff’s claim is, “but the complaint must also formulate the issues by summarizing those facts essential to support the claim.” Feingold v. Hendrzak, 2011 PA Super 34, 15 A.3d 937, 942 (2011). Preliminary objections should be sustained only if “the Plaintiff has failed to assert a legally cognizable cause of action.” Lerner v. Lerner, 954 A.2d 1229, 1234 (Pa. Super. 2008).

“In considering preliminary objections in the nature of a demurrer to a petition for a declaratory judgment, the truth of all well-pleaded averments of fact made in the petition must be accepted as true.” Moraine Valley Farms, Inc. v. Connoquenessing Woodlands Club, Inc., 442 A.2d 767, 279 (Pa. Super. 1982). A declaratory judgment declares the rights, status, and other legal relations “whether or not further relief is or could be claimed.” 42 Pa. C.S. § 7532.5. It has been observed that “[d]eclaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation.” Doe v. Johns–Manville Corporation, 471 A.2d 1252, 1254 (Pa. Super. 1984). Stated otherwise, “[t]he purpose of awarding declaratory relief is to finally settle and make certain the rights or legal status of parties.” Geisinger Clinic v. Di Cuccio, 606 A.2d 509, 519 (Pa. Super. 1992) (citations omitted). A declaratory judgment, unlike an injunction, does not order a party to act. Eagleview Corp. Ctr. Ass'n v. Citadel Fed. Credit Union, 150 A.3d 1024, 1029–30 (Pa.Cmwlt. 2016). This is so because “the distinctive characteristic of the declaratory judgment

is that the declaration stands by itself; that is to say, no executory process follows as of course.” Petition of Kariher, 131 A. 265, 268 (Pa. 1925). To obtain declaratory judgments, it is not required that an actual wrong should have been done and no wrong need be immediately threatened, but a real controversy must exist and declaration sought must be practical help in ending controversy. Reese v. Adamson, 146 A. 262, 297 Pa. 13, Sup. 1929.

PAWC claims “Plaintiff has not identified a single claim or advanced facts setting forth the elements thereof[.]” See POs at ¶131. PAWC claims “Plaintiff fabricates an improper motive out of whole cloth, alleging—without any supporting exhibits—that PAWC denied Plaintiff’s request for some retaliatory reason.” Id. at ¶140. PAWC also argues it complied with the Tariff, and because it did not violate the Tariff, and Plaintiff did not allege as such, Plaintiff has not identified a cause of action. Id. at ¶¶142-152. We disagree with PAWC. Plaintiff seeks a declaratory judgment that it may install water meters in rooms and that PAWC is in violation of the Tariff. See Compl. at ¶47. In support of these claims, Plaintiff alleges that PAWC previously approved applications of Plaintiff and Mr. Dunbar for water meter rooms, that PAWC regularly approves applications without requiring the installation of water meter pits, that PAWC is in violation of the Tariff, and that no legitimate basis pursuant to the Tariff exists for denying Plaintiff’s application Id. at ¶¶12-17, 23, 36-38. Plaintiff has alleged that an actual controversy exists and that it has legal rights it wishes the court to declare, and has summarized facts essential to those claims.

Therefore, PAWC’s preliminary objection for legal insufficiency will be **OVERRULED**.

E. Preliminary Objection to Plaintiff’s Request for Attorney’s Fees

“The “American Rule” states that a litigant cannot recover counsel fees from an adverse

party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.” Mosaica Acad. Charter Sch. V. Com. Dept. of Educ., 813 A.2d 813, 822 (Pa. 2002) (citing 42 Pa.C.S. §1726(a)(1)). Plaintiff has failed to cite any statute, agreement, or recognized exception to the default rule which would authorize an award of attorneys’ fees. However, because Plaintiff has alleged claims for declaratory relief, attorney fees are available under the Declaratory Judgment Act when necessary. See 42 Pa.C.S.A. §§ 7538, 7541.

Therefore, PAWC’s preliminary objection to attorney’s fees will be **OVERRULED**.

V. CONCLUSION

For the above reasons, PAWC’s preliminary objections will be **OVERRULED**. An appropriate Order follows.

HOLLY RIDGE ESTATES, INC. <i>Plaintiff</i>	:	In the Court of Common Pleas of Lackawanna County
v.	:	Civil Action - Law
PENNSYLVANIA-AMERICAN WATER COMPANY, <i>Defendant</i>	:	No. 2024-CV-7851

MAURI B. KELLY
 CLERK OF COURT
 LACKAWANNA COUNTY
 2025 FEB -3 P 3:41
 RECORDS CIVIL DIVISION

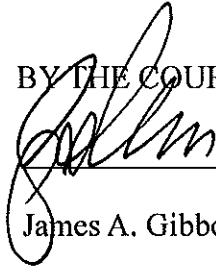
ORDER

NOW, this 3^d day of February, 2025, upon consideration of Defendants'

preliminary objections, it is hereby **ORDERED** that:

1. Defendant's Preliminary Objections are **OVERRULED**;
2. Defendant shall file its Answer to the Complaint within twenty (20) days of the date of this Order.

BY THE COURT:



James A. Gibbons

cc: *Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. Civ. P. 236(a)(2) by mailing time-stamped copies to:*

Michael G. Gallacher, Esq.
mgallacherlaw@gmail.com
Attorney for Plaintiff

Matthew Glazer, Esq.
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 Arianna K. McLaughlin, Esq.
amclaughlin@cozen.com
Attorneys for Defendant

Appendix C

PENNSYLVANIA-AMERICAN WATER COMPANY
(hereinafter referred to as the "Company")

D/B/A

Pennsylvania American Water

RATES, RULES AND REGULATIONS

GOVERNING THE DISTRIBUTION AND SALE OF

WATER SERVICE

IN CERTAIN MUNICIPALITIES AND TERRITORIES LOCATED ADJACENT THERETO IN:

ADAMS, ALLEGHENY, ARMSTRONG, BEAVER, BERKS, BUCKS,
BUTLER, CENTRE, CHESTER, CLARION, CLEARFIELD, CLINTON, COLUMBIA,
CUMBERLAND, DAUPHIN, FAYETTE, INDIANA, JEFFERSON, LACKAWANNA,
LANCASTER, LAWRENCE, LEBANON, LUZERNE, MCKEAN, MONROE, MONTGOMERY,
NORTHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL, SUSQUEHANNA,
UNION, WARREN, WASHINGTON, WAYNE, WYOMING, AND YORK COUNTIES.

Issued: November 21, 2024

Effective: November 21, 2024

Issued by:
Justin Ladner, President
Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055

<https://www.amwater.com/paaw/>

NOTICE

This Tariff authorizes Pennsylvania American Water Company to furnish water services to the public in an additional portion of Farmington Township, Clarion County, Pennsylvania.
(Refer to pages 2, 3, 4, 5, 16.6, 35 and 42.)

PENNSYLVANIA-AMERICAN WATER COMPANY

RULES AND REGULATIONS

1. The Water Tariff

1.1 Filing and Availability

A copy of this Tariff, which is the rates, rules and regulations under which water service will be supplied by the Company to its Applicants and Customers in Pennsylvania, is on file with the Pennsylvania Public Utility Commission, and is available and open for inspection at the offices of the Company.

1.2 Revisions

This Tariff may be revised, amended, supplemented and otherwise changed from time to time in accordance with the Pennsylvania "Public Utility Code," and such changes, when effective, shall have the same force and effect as the present Tariff.

1.3 Applications of Tariff

The Tariff provisions apply to any party or parties applying for or receiving service from the Company, including Unauthorized Use of Service.

1.4 Amendment of Commission Regulations

Whenever Commission regulations in Title 52 of the Pennsylvania Code are duly amended in such a way as would produce a difference between Commission regulations and this tariff, the tariff is deemed to be amended to be consistent with the amendments to the regulations, except that if application of the amendment to Title 52 is discretionary, this tariff will remain unchanged.

(C)

(C) means Change

RULES AND REGULATIONS

2. Definitions

- 2.1 Activation of Service Connection:** Activation of service connection is the initiation of service in an Applicant's or a Customer's name. It may include, but is not limited to, physically turning water service on at the property, processing the Applicant's or Customer's application or request to transfer service, and an initial service call to the property, if necessary.
- 2.2 Applicant:** An Applicant shall mean any Residential Applicant or Non-Residential Applicant.
- 2.3 Customer:** A Customer shall mean any Residential Customer or Non-Residential Customer.
- 2.4 Creditworthiness:** An assessment of an Applicant's or Customer's ability to meet bill payment obligations for utility services.
- 2.5 Cross-Connection:** A cross-connection is any pipe, valve or other physical connection, or other arrangement or device connecting the pipelines of the Company, or facilities directly or indirectly connected therewith, to and with pipes or fixtures by which any contamination might be admitted or drawn from lines other than the Company's into the distribution system of the Company, or into lines connected therewith.
- 2.5.1 Equivalent Dwelling Units or EDU: For customers in the service area previously served by Farmington Township, the number of equivalent dwelling units is available at the following link: www.amwater.com/paaw. (C)**
- 2.6 Flat Rate Service:** Any unmetered customer service connection except public fire service.
- 2.7 Multiple Premise:** A multiple premise is adaptable to subdivision and is used by more than one family or occupant. It shall then be construed to be a double premise, triple premise, etc., depending upon the number of families, occupants, or subdivision.
- 2.8 Non-Residential Applicant:** Any person other than a Residential Applicant who applies for water service. This term shall not include a person, who within sixty (60) days after termination or discontinuance of service, seeks to transfer service within the Company's service territory or to reinstate service at the same address.
- 2.9 Non-Residential Customer:** Any person other than a Residential Customer who is contracting for and/or receiving water service through a meter connection, and who is primarily responsible for the payment of all bills rendered for said service. This term includes a transfer of service from a previous account within the Company's service territory or a reinstatement of service at the same location within sixty (60) days following termination or discontinuance of the previous service.
- 2.10 Point of Sale:** The point of sale of water service or fire protection service contracted for by the customer is the Street Service Connection.
- 2.11 Qualified Private Fire Hydrant:** Any privately-owned fire hydrant located on a Service Line serving said hydrant exclusively. Said hydrant must be located in the open, be visible, and shall not be more than fifty (50) feet from the Company main servicing the hydrant.

(C) means Change

RULES AND REGULATIONS

2. Definitions (cont'd)

2.12 Remote Meter Reading Device: A device which by electrical impulse or otherwise transmits readings from a meter, usually located within a residence, to a more accessible location outside of a residence.

2.13 Residential Applicant: A natural person at least 18 years of age not currently receiving service who applies for residential service provided by the Company or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. A Residential Applicant does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have another service reconnected at the same location or transferred to another location within the Company's service territory.

2.14 Residential Customer: A natural person at least 18 years of age in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. A Residential Customer includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the Company's service territory.

2.15 Service Line: The Company-owned piping and appurtenances which run between and are connected to the Company's main and its street service connection.

2.16 Service Pipe: That portion of a water line not owned by the Company which transmits water from the Company-owned water main to the Customer's premise. The water service pipe begins at the Company-owned street service connection and continues into the structure on the premise to be supplied.

2.16a Lead Service Pipe: Any Service Pipe constructed with lead or galvanized pipe located downstream from a Service Pipe constructed with lead. (C)

2.17 Single Premise: A single premise is herein construed to cover a structure used by one family or occupant or where used by more than one family or occupant not adaptable to subdivision.

2.18 Street Service Connection: A street service connection is hereby understood to include a connection to the main pipe to and including the control valve and control valve box, used to carry water from the main to the curb line. The control valve and box terminates the Company's responsibility for expense of the street service connection.

2.19 Temporary Service: A water service connection which, at the time of application, is anticipated to be in service for less than a 12-month period.

2.20 Unauthorized Use of Service: Unreasonable interference or diversion of service, including meter tampering (any act which affects the proper registration of service through a meter), by-passing unmetered service that flows through a device connected between a main or service line and customer-owned facilities, unauthorized service restoration, or the otherwise taking or receiving of water service without the knowledge or approval of the Company.

(C) means Change

PENNSYLVANIA-AMERICAN WATER COMPANY

RULES AND REGULATIONS

2. Definitions (cont'd)

2.21 Water Use Standards: The maximum water use for certain plumbing fixtures installed in all new construction or renovation to achieve the maximum efficiency of water use which is technologically feasible and economically justified:

<u>Plumbing Fixture</u>	<u>Maximum Water Use</u>	
showerheads	2.5 gallons/minute	(C)
lavatory faucets	2.2 gallons/minute	(C)
kitchen faucets	2.2 gallons/minute	(C)
water closets	1.6 gallons/flush	
urinals	1.0 gallons/flush	(C)

The Company may, at any appropriate time, amend any of the water use standards listed above relevant to technological developments relating to the water use or water efficiency of any of the specified plumbing fixtures. Amendments will also apply only to new construction and renovation.

(C) means Change

RULES AND REGULATIONS

3. Application for Service and Street Service Connection

3.1 Application for Service

Any Applicant who wishes to receive water service from the Company under this Tariff must contact the Company and complete an application for service. Applications for service may be made by completing a written application, by telephoning the Company, or through application via the Company's website on the Internet.

Prior to providing utility service, the Company may require the Applicant to provide: (1) information that positively identifies him/her self; (2) the name of any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested; (3) the names of each adult occupant residing at the location, and proof of their identity; or (4) a cash deposit, as may be required in accordance with Section 7 of this Tariff.

In the case of Residential Applicants, the Company may ask for the combined gross income of all adult occupants at the time the application for service is made; however, the Residential Applicant is not required to provide the information as a condition of receiving water service, unless such applicant is seeking to enroll in the Company's *Help to Others Program*.

3.2 Application for Street Service Connection

Any applicant who wishes to receive street service connection from the company must complete, in writing, an application for service on a form provided by the company. Upon receipt of the proper application, the Company will install a street service connection and will maintain the same at its expense, provided that the property to be served abuts a public highway in which a main pipe of the distribution system of the Company is located at a point at least halfway across the portion of the property abutting said highway. Each applicant shall be entitled to receive one street service connection free of charge. Application for street service connection at a property shall be made in writing. **After the initial street service connection is installed, (C) costs for the installation of additional connections, including if one property is converted into multiple premises, and costs for replacement connections and for the removal of existing facilities will be the responsibility of the applicant or customer.**

3.3 Application for Temporary Service

A Temporary Service will be made after the applicant has paid the entire estimated cost of the installation and abandonment of said Temporary Service. If the actual cost, when determined, differs from the estimate, the Applicant will pay to the Company any excess amount due, or the Company will refund to the Applicant any excess amount paid.

3.4 Activation of Service Connection Whenever an Applicant requests activation of a service connection, the Applicant shall pay a charge as shown on the Miscellaneous Fees rate schedule. The Company may require that the Applicant, or a responsible designee, be present at the time service is activated. For non-regularly-scheduled working hours, the fee is equivalent to the cost incurred by the Company.

3.5 Right to Reject

The Company may limit the amount or character of service it will supply, or may reject applications for service for the following reasons: requested service is not available under a standard rate; requested service may affect service to other customers; for a Non-Residential Applicant's or Non-Residential Customer's failure to establish Creditworthiness; for failure to address prior Company debts; for the Applicant's failure to provide identifying documentation of the Applicant and each adult occupant residing at the location; when identifying documentation cannot be verified; for the reasons set forth in Section 4.1, or for other good and sufficient reasons.

(C) means Change

RULES AND REGULATIONS

3. Application for Service and Street Service Connection

3.1 Application for Service

Any Applicant who wishes to receive water service from the Company under this Tariff must contact the Company and complete an application for service. Applications for service may be made by completing a written application, by telephoning the Company, or through application via the Company's website on the Internet.

Prior to providing utility service, the Company may require the Applicant to provide: (1) information that positively identifies him/her self; (2) the name of any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested; (3) the names of each adult occupant residing at the location, and proof of their identity; or (4) a cash deposit, as may be required in accordance with Section 7 of this Tariff.

In the case of Residential Applicants, the Company may ask for the combined gross income of all adult occupants at the time the application for service is made; however, the Residential Applicant is not required to provide the information as a condition of receiving water service, unless such applicant is seeking to enroll in the Company's *Help to Others Program*.

3.2 Application for Street Service Connection

Any applicant who wishes to receive street service connection from the company must complete, in writing, an application for service on a form provided by the company. Upon receipt of the proper application, the Company will install a street service connection and will maintain the same at its expense, provided that the property to be served abuts a public highway in which a main pipe of the distribution system of the Company is located at a point at least halfway across the portion of the property abutting said highway. Each applicant shall be entitled to receive one street service connection free of charge. Application for street service connection at a property shall be made in writing. Costs for the installation of additional or replacement connections and for the removal of existing facilities will be the responsibility of the applicant or customer.

3.3 Application for Temporary Service

A Temporary Service will be made after the applicant has paid the entire estimated cost of the installation and abandonment of said Temporary Service. If the actual cost, when determined, differs from the estimate, the Applicant will pay to the Company any excess amount due, or the Company will refund to the Applicant any excess amount paid.

3.4 Activation of Service Connection

Whenever an Applicant requests activation of a service connection, the Applicant shall pay a charge as shown on the Miscellaneous Fees rate schedule. The Company may require that the Applicant, or a responsible designee, be present at the time service is activated. For non-regularly-scheduled working hours, the fee is equivalent to the cost incurred by the Company.

3.5 Right to Reject

The Company may limit the amount or character of service it will supply, or may reject applications for service for the following reasons: requested service is not available under a standard rate; requested service may affect service to other customers; for a Non-Residential Applicant's or Non-Residential Customer's failure to establish Creditworthiness; for failure to address prior Company debts; for the Applicant's failure to provide identifying documentation of the Applicant and each adult occupant residing at the location; when identifying documentation cannot be verified; for the reasons set forth in Section 4.1, or for other good and sufficient reasons.

PENNSYLVANIA-AMERICAN WATER COMPANY

RULES AND REGULATIONS

5. Meters and Meter Installations

5.1 Meter Installations

The Company will furnish and install for each Customer, without charge, a suitable meter and will keep the same in repair. All Company meters will be owned by the Company and remain the property of the Company and shall be accessible to the Company and subject to its control. The Customer, however, shall properly protect the meter from damage by frost or other causes and shall be held responsible for repairs or replacement of the meter made necessary by the negligence or intentional act of the Customer.

5.2 Meter Space and Location

(a) The Customer shall provide a safe, readily-accessible, and protected location for the installation of a meter at such point as will control the entire supply to the premise. The location must be acceptable to the Company as most convenient for its service so that the meter may be easily examined, read, or removed. For new construction, the meter shall be required to be installed outside the building in a meter box/vault unless otherwise approved or specified by the Company. The location of the meter box/vault shall be subject to the express approval of the Company; in most cases, the meter box/vault shall be located inside the property line by the Customer. For existing premises and circumstances, subject to the Company's approval, a meter may be set within the structure to be served, at a location approved by the Company, after the Customer has had the plumbing arranged (including the installation of special devices if required by the Company) to receive the meter at a convenient point inspected and approved by the Company so as to control the entire supply of water to the property.

(b) In addition, at the Company's option, the Customer shall also provide a safe and readily accessible location outside of his residence for the installation of a remote meter reading device. If the Customer does not maintain ready access to the meter and the remote meter reading device, the Company may install an outside meter setting at the Customer's expense.

5.3 Automatic Meter Reading

The Company, without charge to the Customer, may install meters capable of being read automatically from a central location using telephone lines. To install this automatic meter reading equipment, the Company will require access to a telephone line of the premise receiving water service. If installation is denied, the Company may impose a meter reading fee equal to the cost of manually reading the meter or terminate service. If the automatic meter reading equipment can be installed, the Customer must provide the Company with the telephone number of the line to which the equipment will be connected and immediately advise the Company of any changes in the number.

RULES AND REGULATIONS

5. Meters and Meter Installations (cont'd)

5.4 Outside Meter Installations (Meter Box/Vaults)

Meter boxes/vaults shall be owned, furnished, installed and maintained by the Customer which meets the Company's specifications, at Customer's expense, unless otherwise agreed to by the Company. At the Company's discretion, the Company has the right to install **or relocate** a meter box/vault for a Customer's property. The meter box or vault shall be placed immediately inside the Customer's property line or at such other location as may be ordered by the Company. The size and dimensions of the meter box or vault shall be as approved by the Company, give adequate access to the meter, and permit its installation or removal. When a concrete vault is used, a 10 foot wide (minimum) paved surface from the road to the vault, including curb depression, must be provided and maintained for vehicle access. (C)

The Company has the authority to require a Customer or property owner, at their expense, to install a meter box/vault prior to restoration of service where there has been a termination of service by Company due to Unauthorized Use of Service.

5.5 Meter Service

All service provided by the Company except public fire and qualified private hydrant protection shall be metered.

5.6 Meter Installations for Flat-Rate Accounts and Unmetered Private Fire Services

Within 45 calendar days of notification by the Company, a flat-rate or unmetered private fire service Customer will provide a suitable meter setting at his own expense. The Company will provide the Customer with standard specifications for the meter setting. Any Customer who does not provide a suitable meter setting within the 45-day period will be subject to termination of service; or, at the option of the Company in the case of an unmetered fire service Customer, the installation will be made by the Company and a surcharge applied to the Customer's bill. The surcharge will be an annual fee equal to 17% of the total actual cost of installation.

5.7 Tampering with Meters or other Utility Equipment

When a meter or other utility equipment on a Customer's premises has been tampered with and the customer enjoys the use of or receives benefit from the water service intended to be metered, it may be reasonably inferred that the Customer tampered with the meter or other utility equipment. The penalties for tampering include but, are not limited to, termination of service, recovery by the Company of all costs related to the tampering, including payment for such water service as the Company may estimate from available information has been used but not registered by the Company's meter, and criminal sanctions pursuant to the laws of the Commonwealth. In addition, the Company has the authority to require a Customer or property owner, at their expense, to install a meter box/vault prior to restoration of service where there has been a termination of service by Company due to tampering with a meter or other utility equipment.

(C) means Change

RULES AND REGULATIONS

15. Liability of Company

15.1 Liability for Damages

The liability of the Company for any loss or damages due to any negligent act of omission or commission, by the Company, shall be limited to and in no event exceed an amount equivalent to 1/4 the average charge of 4 billing periods to the Customer for the period of service during which such deficiency has occurred. Such average shall be determined by reference to the billed charges to the Customer for the four billing periods immediately prior to the billing period during which the loss or damage occurred.

The Company has limited liability for a service termination performed at the request of a municipality or municipal authority conducted pursuant to 53 P.S. § 3102.501 et seq. or any agreement executed thereunder; all such requests shall be deemed reasonable and proper by the Company without further inquiry. If the Company is found liable for any damages caused by terminating service pursuant to an agreement executed under the law, liability shall be limited to the customer charge for the period in question.

In any legal action where a court does not recognize, or is being asked to interfere with or hamper, the jurisdiction of the Commission to authorize limitations of liability or to exclusively determine whether the service and facilities of the Company are in conformity with the regulation and Order of the Commission, the Company may certify to the Commission the question of the appropriateness of such court action by filing a petition for declaratory judgment with the Commission.

The Company shall not be liable in any action where the loss or damage involves an act of God or does not involve a duty of the Company, including breaks or leaks on facilities that are not owned by the Company, such as breaks, leaks, defects or condition in the Customer's own service line, meter vault, pressure reducing valve, back flow prevention device, check valve, pressure relief valve, or any other control valve, internal plumbing or fixture, or due to the materials out of which those facilities are made. Further, the Company shall not be liable in any action where the loss or damage does not involve a breach of a duty of the Company, including where the Company does not receive actual notice, either written or oral, that a Company facility (located within the public right-of-way, in a sidewalk or on a Customer's property) is in need of repair, such as the condition or elevation of a curb box or valve box that is not proven to have been in that condition at the time of installation or that is caused by a plumber, developer, or other person or event.

15.2 Defect in Customer's Service or Customer-Owned Meter

The Company shall in no event be liable for any loss or damage caused by reasons of any break, leak or defect in the Customer's own service pipe, line or fixtures or Customer-owned meter not caused by any negligent act of omission or commission of the Company.

15.3 Responsibility for Repair and Replacement of Private Water Service Pipe

The maintenance, repair or replacement of a private water service pipe is the responsibility of the Customer served by the pipe. The Company reserves the right to require the Customer served by a private water service pipe to repair or replace the pipe, or enter into a main extension deposit agreement, at the Customer's option, if the pipe is leaking, can no longer be used for whatever reason, or is otherwise endangering the public's safety. The Customer must perform such repair or replacement, at the Customer's own expense. The Customer must perform such repair or enter into said main extension deposit agreement immediately after receiving notice from the Company that the private water service pipe is endangering the public safety or within ten days after receiving notice from the Company that the pipe is leaking or can no longer be used. The Company reserves the right to terminate water service to the Customer after legal notice if such required action is not taken within the time indicated above.