

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Petition of Pennsylvania :
American Water Company for :
Declaratory Order Regarding Holly : Docket No. P-2025-3053538
Ridge Estates, Inc. :

NOTICE TO PLEAD

TO: Pennsylvania American Water Company
C/O David P. Zambito, Esq.
Jonathan P. Nase, Esq.
William Lesser, Esq.
Cozen O'Connor
17 North Second Street, Ste 1410
Harrisburg, PA 17101

And

Elizabeth Rose Triscari, Esq.
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

You are hereby notified to file an Answer to these Preliminary Objections within the next ten (10) days or judgment may be entered against you.

PRELIMINARY OBJECTIONS TO PETITION OF PENNSYLVANIA-AMERICAN WATER COMPANY FOR A DECLARATORY ORDER

AND NOW, come the Respondent, Holly Ridge Estates, Inc. (hereinafter "Holly Ridge"), by and through its counsel, Michael G. Gallacher, Esquire and Objects to the Petition of Pennsylvania-American Water Company (hereinafter "PAWC") for a Declaratory Order as follows:

I. PRELIMINARY OBJECTION PURSUANT TO 52 Pa. Code
5.101(a) (6) - PENDENCY OF A PRIOR PROCEEDING

1. PAWC filed its Petition with the PUC alleging that a lawsuit filed by Holly Ridge in the Court of Common Pleas of Lackawanna County, and all claims set forth therein, should proceed before the PUC because the PUC has exclusive jurisdiction over those claims.
2. It asks the PUC to unilaterally assume jurisdiction over that matter in which a full day hearing has already been held and which has already been the subject of 2 orders by the trial court denying PAWC's same request for relief.
3. It is asking for the PUC to unilaterally assume jurisdiction despite an appeal taken by PAWC to the Commonwealth Court of Pennsylvania which is pending on the issue of the PUC jurisdiction.
4. The Petition filed with PUC should be dismissed due to the pendency of the prior action.
5. In order to establish *lis pendens*, or the pendency of a prior action, it must be shown that the prior case is the same, the parties are the same, and the relief requested is the same. Crutchfield v. Eaton Corp., 806 A.2d 1259 (Pa.Super. 2022).

6. On November 18, 2024, Holly Ridge filed a Civil Complaint against PAWC in the Court of Common Pleas of Lackawanna County. See Exhibit "A" attached hereto.
7. The Complaint sought declaratory and injunctive relief and alleged generally that PAWC engaged in retaliatory conduct against Holly Ridge by requiring the Plaintiff to install water pits at the Holly Ridge development in Old Forge, Pennsylvania rather than allowing the installation of water meters in water rooms as it had on hundreds of occasions in the recent past for other customers and for Holly Ridge on a previous occasion. The Complaint sought a declaration that, among other things, "the Defendant is in violation of its tariff". See Exhibit "A".
8. On November 19, 2024, undersigned counsel presented a Petition for Preliminary Injunction in that case and received a Rule Returnable Date setting the matter for hearing/argument on November 26, 2024. See Exhibit "B" attached hereto.¹
9. Before that hearing/argument, the Defendant filed Preliminary Objections to the Complaint claiming that the trial court lacked jurisdiction as the PUC had exclusive

¹ The hearing/argument was moved to December 3, 2014 due to a conflict of defense counsel.

jurisdiction over the matter. See Exhibit "C" attached hereto.

10. Following oral argument on those Preliminary Objections, the trial court Overruled same. See Memorandum and Order attached hereto as Exhibit "D"

11. In that ruling the trial court recognized that the Defendant argued that the Plaintiff "raises issues that are within the primary and exclusive jurisdiction of the PUC". See Exhibit "D", pg 5.

12. The trial court rejected the Defendant's argument and held that "we do not find that the PUC has exclusive jurisdiction over this matter." See Exhibit "D", pg. 7.

13. On February 26, 2025, AFTER the instant Petition was filed with the PUC, PAWC filed a Motion for Reconsideration of the denied of its Preliminary Objections with the trial court. See Motion attached hereto as Exhibit "E".²

14. In that Motion, PAWC argues that the matter raised in the Complaint remains within the "primary and exclusive jurisdiction of the PUC" that the "PUC has initial jurisdiction over this matter". See Exhibit "E", pg. 2, 9.

² All of the Exhibits attached to Motion for Reconsideration are not attached to Exhibit "E" hereto as PAWC has been attaching each proceeding document to each new document filed with trial court - the result being that the Exhibits to the Motion for Reconsideration are several inches thick. While PAWC attaches essentially every prior document to each new document that it files at the trial level, its Petition before the PUC neglects to attach several critical documents relevant to the PUC Petition. Those documents have been attached hereto.

15. The Motion asks the court to "transfer this matter to the PUC". Exhibit "E", pg. 11.
16. This is a clear admission by PAWC that the matter pending before the trial court is the same matter on which PAWC wants the PUC to assume jurisdiction.
17. The trial court has scheduled argument on that Motion to occur on March 21, 2025. See Exhibit "F" attached hereto.
18. Before the Preliminary Objections were even argued or decided by the trial court, and at the hearing/argument on the Holly Ridge Petition for Emergency Injunction, PAWC argued that the PUC had exclusive jurisdiction over Plaintiff's claims. See Transcript Excerpt attached hereto as Exhibit "G".
19. PAWC argued that "THIS CASE belongs with the PUC". See Exhibit "G", pg 5 (emphasis added).
20. This argument also clearly demonstrates that the matter pending before the trial court involves the same issues raised in its Petition before the PUC.
21. Following a full day of testimony on the Holly Ridge Petition, the trial court denied same finding that Holly Ridge has an adequate remedy at law - ie. to seek money damages. See Exhibit "H" attached hereto.

22. In its Memorandum the trial court ruled that
"Plaintiff has demonstrated a likelihood of success on the merits of a claim for declaratory relief declaring it may install water meters in rooms and that PAWC violated the Tariff." See Exhibit "H" pg. 5.
23. PAWC has filed a Notice of Appeal from that decision. See Exhibit "I" attached hereto.³
24. The Concise Statement of Matters Errors Complained of on Appeal states state that the sole basis for taking the appeal in the position of the PAWC that the PUC has exclusive jurisdiction over the claims brought by Holly Ridge. See Exhibit "J" attached hereto.
25. That appeal is pending with the Commonwealth Court of Pennsylvania.
26. Furthermore, on February 11, 2025, Holly Ridge filed a Motion to Amend the Complaint to allege monetary damages based upon the decision of the trial court stating that Holly Ridge had an adequate remedy at law.
27. Although PAWC opposed the Motion, the trial court allowed amendment. See Exhibit "K" attached hereto.
28. An Amended Complaint was filed on February 18, 2025 seeking monetary damages. See Exhibit "L" attached hereto.

³ Again, all exhibits are not attached as there are several inches thick.

29. PAWC filed its Petition with the PUC asking for a declaration that:

- a. the Amended Complaint only sets forth matters of whether the PAWC has complied with the Pennsylvania Public Utility Code, the Commissioner's regulations and orders and PAWC's Tariff,
- b. that the PUC has initial jurisdiction over the matters raised in the Amended Complaint, and
- c. that the Petitioner has complied with Pennsylvania Public Utility Code, the Commissioner's regulation and orders, and the PAWC Tariff.

See Petition, Section VI.

30. The case pending in the Court of Common Pleas of Lackawanna County is very clearly the same. In fact, the PAWC asks the PUC to assume jurisdiction of the matter filed in the Court of Common Pleas of Lackawanna County and to make a decision regarding the matters raised in the Amended Complaint.

31. The parties are obviously the same - PAWC and Holly Ridge.

32. The relief requested from the PUC is the same relief which PAWC requested and was denied in the court below -

ie. that the PUC has exclusive jurisdiction over the Holly Ridge claim and that PAWC did not violate the tariff.

33. As there is a pending prior action which addresses the same issues raised in the Petition before the PUC, the Petition must be denied and dismissed.

II. PRELIMINARY OBJECTION PURSUANT TO 52 Pa. Code 5.101(a)(1) - LACK OF COMMISSION JURISDICTION

34. As noted above, PAWC has already raised the issue of jurisdiction before the trial court and has been ruled against. See Exhibit "D".

35. Undersigned counsel relies upon the decision of the trial court in relation to its jurisdiction. See also Drafco Corp. v. National Fuel Gas Distribution, Corp., 806 A.2d 9 (Pa.Super. 2021); SBC Management Services, Inc. v. Philadelphia Gas Works, 2024 Phila. Ct. Com, Pl. LEXIS 14

36. Furthermore, the Amended Complaint filed in this matter seeks monetary damages. See Exhibit "L".

37. The Pennsylvania Declaratory Judgments Act authorizes the award of damages based upon a request for same in a declaratory judgment action. 42 Pa.C.S.A. 7532-7541; Juban v. Schermer, 751 A.2d 790 (Pa.Super, 2000); Kline v. Travelers, 223 A.3d 677 (Pa. Super. 2019).

38. The law is clear that the PUC cannot award monetary damages and has no jurisdiction over such claims. See Sunrise Energy, LLC v. Firstenergy Corp., 148 A.3d 894 (Pa. Commw. Ct. 2016) (holding that the trial court and not the PUC had jurisdiction over a claim seeking declaratory judgment and monetary relief); Feingold v. Bell of Pennsylvania, 383 A.2d 791, 793 (Pa. 1977) (holding that the trial court had original jurisdiction over a claim seeking monetary damages since "the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant").

39. As the PUC lacks jurisdiction over this matter, the Petition filed by PAWC must be denied and dismissed.

III. PRELIMINARY OBJECTION PURSUANT TO 52 Pa. Code 5.101(a)(4) - INSUFFICIENT SPECIFICITY

40. The PAWC Petition fails to adequately explain how or why the PUC would have exclusive jurisdiction over the matters raised in the Holly Ridge Amended Complaint.

41. The PAWC Petition fails to adequately explain how or why it is not culpable for the activities alleged in the Amended Complaint.

42. The PAWC Petition fails to adequately explain how of why it is not liable to Holly Ridge for monetary damages as a result of its improper conduct.

43. As such, the PAWC Petition lacks sufficient specificity and must be denied and dismissed.

For the above reasons, the Preliminary Objections of Holly Ridge should be sustained and the Petition of PAWC should be denied and dismissed.


MICHAEL G. GALLACHER, ESQUIRE

110 Market Street
Moscow, PA 18444
570-319-6472
ID# 82523

Counsel for Holly Ridge
Estates, Inc.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Petition of Pennsylvania :
American Water Company for :
Declaratory Order Regarding Holly : Docket No. P-2025-3053538
Ridge Estates, Inc. :

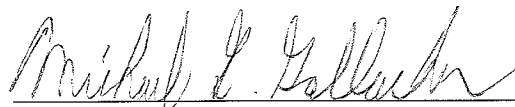
PROOF OF SERVICE

I hereby certify that on the 6th day of March, 2025, a true and correct copy of the Preliminary Objections to Petition of Pennsylvania American Water Company for a Declaratory Order was filed electronically on the PUC document filing system and was served upon the following via email in accordance with the requirements of 52 Pa. Code. 1.54:

David P. Zambito, Esq. (dzambito@cozen.com)
Jonathan P. Nase, Esq. (jnase@cozen.com)
William Lesser, Esq. (wlesser@cozen.com)
Cozen O'Connor
17 North Second Street, Ste 1410
Harrisburg, PA 17101

Elizabeth Rose Triscari, Esq.
(elizabether.triscari@amwater.com)
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

Gallacher Law



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110 Market Street
Moscow, PA 18444
570-319-6472
ID. 82523
Counsel for Respondent
Holly Ridge Estates, Inc.

Michael G. Gallacher, Esquire
Gallacher Law
PA ID. # 82523
110 Market Street
Moscow, PA 18444
Phone (570) 319-6472
Fax (570) 319-6613

Attorney for Plaintiff

MAILED
LACKAWANNA COUNTY
25.11.18
RECORDED

HOLLY RIDGE ESTATES, INC.
211 Amity Avenue
Old Forge, PA 18518

: IN THE CT OF COMMON PLEAS
: OF LACKAWANNA COUNTY

vs

Plaintiff

: CIVIL ACTION

:
: 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

Exhibit "A"

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;
Out of State: 717-238-6715)

Michael G. Gallacher, Esquire Attorney for Plaintiff
 Gallacher Law
 PA ID. # 82523
 110 Market Street
 Moscow, PA 18444
 Phone (570) 319-6472
 Fax (570) 319-6613

RECEIVED
 2016 OCT 16 10 58 16
 CLERK OF COURT
 LACKAWANNA COUNTY

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

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. Requiring a water pit for the apartment building currently under construction will cause great delay and expense to Holly Ridge.
23. 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".
24. 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.
25. 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.
26. 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.

27. Mr. Pachick had previously approved the installation of water meters in specifically designed and dedicated water rooms for most or all of the previous 210 plus residential units constructed by Mr. Dunbar through various entities.

28. 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.

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

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

31. 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.

32. 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.
33. 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.
34. 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.
35. 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.

36. 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.
37. 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.
38. PA American is in violation of the terms and conditions of its tariff.
39. 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.
40. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and

until the water meter location is approved.

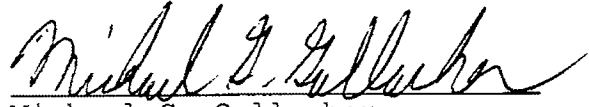
41. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and until its application for water services is approved.
42. A declaration that the Plaintiff may have water meters installed in the specifically designed and dedicated water rooms is warranted.
43. A declaration that the Defendant is in violation of its tariff is warranted.
44. A declaration that the Defendant is required to approve Plaintiff's application for water services is warranted.
45. Immediate action is necessary to avoid immediate and irreparable harm to Plaintiff.
46. An injunction is necessary to abate the harm being caused and to be caused by the Defendant.
47. 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 at the Holly Ridge Development;

- (b) Declare that the Defendant is in violation of its tariff;
- (c) Direct the Defendant to approve Plaintiff's application for water services;
- (d) Direct Defendant to reimburse Plaintiff all costs and attorney's fees related to this action;
- (e) Grant such other and further relief as this court deems just and appropriate.

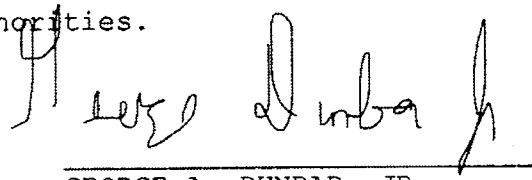
Respectfully submitted,



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: _____

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

RECORDS DIVISION

HOLLY RIDGE ESTATES, INC. 19 A 9:12 IN THE CT OF COMMON PLEAS
211 Amity Avenue : OF LACKAWANNA COUNTY
Old Forge, PA 18518

RECORDS DIVISION

Plaintiff : CIVIL ACTION
vs :
: DECLARATORY
: JUDGMENT/INJUNCTION

PENNSYLVANIA-AMERICAN WATER
COMPANY
2699 Stafford Avenue
Scranton, PA 18505

Defendant : 24 CV 7951

RULE RETURNABLE

AND NOW, this 19th day of November, 2024,
upon consideration of Plaintiff's Petition for Emergency
Injunctive Relief, a Rule is hereby issued upon the Defendant to
show cause, if any it may have, why the Petition should not be
granted.

Rule Returnable the 22nd day of November, 2024 with
hearing/argument to be held on the 26th day of November @ 10:00
2024 in Courtroom number 4. a.m.

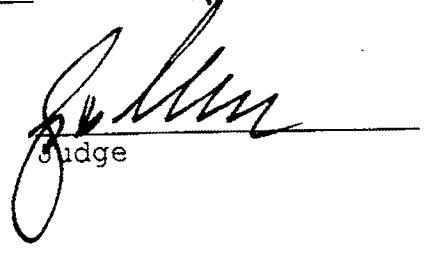

Judge

Exhibit "B"

2. Defendant Pennsylvania-American Water Company
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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.
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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").
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11. Pursuant to Section 5.2 the Defendant can approve any location for the placement of the water meters.
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31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. PA American is in violation of the terms and conditions of its tariff.

39. 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.

40. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and

until the water meter location is approved.

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

42. On November 18, 2024, Plaintiff filed an injunction/declaratory judgment action.

43. Although the Complaint has not been served on the Defendant as required by the Pennsylvania Rules of Civil Procedure, a copy of same has been served upon counsel for the Defendant.

44. The Petitioner herein seeks the entry of a preliminary injunction against the Defendant so as to allow the construction of the current building at the Holly Ridge Development with the specifically designed and dedicated water room as Defendant has allowed on 260 occasions over the past eight (8) years.

45. A preliminary injunction is necessary to prevent immediate and irreparable harm to the Plaintiff.

46. Greater injury will result from refusing an injunction than from granting it.

47. An injunction will restore the parties to the status quo that existed immediately prior to the wrongful

conduct of Defendant - ie. it will allow for the continued construction of the current building which has already begun with the installation of a specifically designed and dedicated water room as Defendant has allowed on 260 occasions over the past eight (8) years and

48. The Petitioner's right to relief is clear.

49. The injunction is reasonably suited to abate the offending activity.

50. Granting a preliminary injunction will not adversely affect the public interest.

51. The Petitioner has no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully requests that this

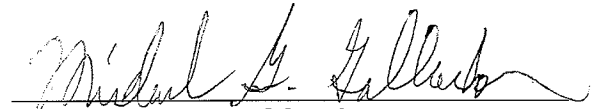
Honorable Court grant the following relief:

- (a) Declare that the Plaintiff may have water meters installed in the specifically designed and dedicated water rooms at the apartment building current under construction at the Holly Ridge Development;
- (b) Direct the Defendant to approve Plaintiff's application for water services at the apartment building currently under construction at the Holly Ridge Development;
- (c) Preliminarily enjoin the Defendant from rejecting Plaintiff's application for water service at the apartment building currently under construction.
- (d) Direct Defendant to reimburse Plaintiff all costs

and attorney's fees related to this action;

- (e) Grant such other and further relief as this court deems just and appropriate.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael G. Gallacher", is written over a horizontal line.

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

MAILED KELLY
LACKAWANNA COUNTY

FEB 17 10 32 27

CLERK OF SUPERIOR
RECORDS & DEEDS

NOTICE TO PLEAD

TO: Plaintiff, Holly Ridge Estates, Inc., you are hereby notified to file a written response to the attached Preliminary Objections within twenty (20) days after service hereof or default judgment may be entered against you.

COZEN O'CONNOR

BY: Matthew A. Glazer
Matthew A. Glazer
Attorney for Pennsylvania-American Water Company

*Attorneys for Defendant,
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IN THE COURT OF COMMON PLEAS
COUNTY OF LACKAWANNA

Holly Ridge Estates, Inc.,

Plaintiff,

v.

Pennsylvania-American Water Company,

Defendant.

NO. 24-CV-7851

CIVIL ACTION – LAW

PRELIMINARY OBJECTIONS OF DEFENDANT, PENNSYLVANIA-AMERICAN WATER COMPANY, TO PLAINTIFF'S COMPLAINT

Defendant, Pennsylvania-American Water Company ("PAWC"), by and through its undersigned counsel, Cozen O'Connor, hereby submits its Preliminary Objections to the

²
Exhibit "C"

Complaint of Plaintiff Holly Ridge Estates, Inc. (“Plaintiff”), in accordance with Pennsylvania Rule of Civil Procedure 1028(a).

I. PRELIMINARY STATEMENT

1. This action arises out of PAWC’s enforcement of its Water Tariff (“Tariff”), which has been submitted to and approved by the Pennsylvania Public Utility Commission (“PUC”), and is binding upon PAWC and its customers. *See* Tariff, relevant excerpts attached hereto as **Exhibit A**.

2. Section 5.2(a) of the Tariff requires Plaintiff—the developer of a new construction, the Holly Ridge Estates Development (“Holly Ridge” or “Development”)—to install PAWC’s water meters in an outdoor meter pit instead of inside a building. *See id.* at § 5.2.

3. This requirement exists for good reason—installing water meters outdoors where PAWC can easily access them increases operational efficiency and reduces costs that are otherwise passed on to PAWC’s customers, thereby benefitting both PAWC and the public it serves.

4. Conversely, the installation of water meters indoors permits private landowners to present obstacles to PAWC’s ability to service its meters, which, in turn, hinders PAWC’s ability to safeguard the timeliness, reliability, and quality of its services to the public.

5. Plaintiff’s Complaint seeks declaratory judgment and injunctive relief permitting it to install water meters in utility rooms in violation of Section 5.2(a) of the Tariff. *See* Plaintiff’s Complaint (“**Compl.**”), attached hereto as **Exhibit B**.

6. However, matters concerning PAWC’s Tariff are within the primary jurisdiction of the PUC.

7. This matter is also within the exclusive jurisdiction of the PUC because Plaintiff does not seek relief that PUC does not have the authority to award itself.

8. As a result, this Court should dismiss Plaintiff's Complaint in its entirety for lack of jurisdiction.

9. While it need not address the issue, this Court may also dismiss Plaintiff's Complaint because it is predicated on nothing more than Plaintiff's *ipse dixit* assertions of entitlement.

10. To be sure, Plaintiff fails to set forth a single substantive cause of action against PAWC.

11. Nor could it do so if it tried—it is axiomatic that PAWC's compliance with its Tariff does not give rise to any cognizable claim under Pennsylvania law.

12. Plaintiff's request for attorneys' fees is similarly unfounded, as demonstrated by Plaintiff's failure to cite to any applicable jurisprudence, statutory authority, or contractual agreement in support of its alleged entitlement.

13. PAWC thus respectfully requests that the Court grant its Preliminary Objections and dismiss Plaintiff's Complaint in its entirety.

II. PROCEDURAL BACKGROUND

14. Plaintiff filed its Complaint and Petition for Preliminary Injunction on November 18, 2024.

15. This Court required Defendant to respond on November 27, 2024.

16. On this date, PAWC is contemporaneously filing these Preliminary Objections to Plaintiff's Complaint and a Response and Memorandum of Law in Opposition to Plaintiff's Petition for Preliminary Injunction.

III. FACTUAL BACKGROUND

A. The Regulatory Scheme Governing Public Utilities

17. “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. CONST. STAT. § 1501).

18. “Such service and facilities shall be in conformity with the regulations and orders of the PUC.” *See id.* (internal quotations omitted).

19. 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)).

20. PAWC is a regulated public utility corporation that is engaged in the business of, *inter alia*, supplying, distributing and selling water to the public.

21. “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. at 480 (internal quotations omitted).

22. The Commonwealth Court of Pennsylvania has explained the meaning of a “tariff” in the public utilities context as follows:

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.

PPL Elec. Utilities Corp. v. Pa. Pub. Util. Comm'n, 912 A.2d 386, 402 (Pa. Commw. Ct. 2006).

23. “‘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. at 480 (quoting *MCI*, 71 F.3d at 1103).

B. PAWC's Process and Requirements for the Supply of Water Services to New Construction

24. 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.

25. However, PAWC will not enter into such an agreement until it has received and approved the developer's application for new water services.

26. Additionally, PAWC may deny an application where "identifying documentation cannot be verified . . . or for other good and sufficient reasons." *See* Ex. A, Tariff, at § 3.5.

27. 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 accurately bill its customers based on their water consumption. *See id.* at § 5.2.

28. PAWC's Tariff, governs the placement and installation of the water meters. *See*

29. Section 5.2(a) provides as follows:

(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.

See § 5.2(a) (emphasis added). The meters are routinely installed outside—as required by Section 5.2(a) of the Tarriff—in designated pits, referred to as "meter pits."

30. The Tarriff requires the installation of water meters outside the building in new construction for good reason.

31. As Section 5.1 of the Tarriff states, PAWC must have access to meters. *See id.* at § 5.1.

32. 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.

33. 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.

34. 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.

C. **Plaintiff Demands Special Treatment Despite Failing to Comply with PAWC's Baseline Requirements**

35. Plaintiff is in the business of constructing residential housing units at the Holly Ridge Estates Development ("Holly Ridge" or "Development"), located in Old Forge, Pennsylvania. *See* Ex. B, Compl., at ¶ 4.

36. Plaintiff's principal is an individual by the name of *George A. Dunbar Jr.* *Id.* at ¶ 12.

37. Plaintiff also retained a consultant, *Jude Colwell, P.E.*, of Colwell-Naegele Associates, Inc., to provide Plaintiff with engineering and design services related to Holly Ridge.

38. Plaintiff intends for Holly Ridge to include approximately 150 residential units located in over 30 buildings. *Id.* at ¶ 5.

39. However, Plaintiff is constructing the Development in stages. *See id.* at ¶¶ 17-18.

40. On February 15, 2024, Plaintiff entered into a Water Facility Line Extension Agreement with PAWC for the first 18-units in Holly Ridge ("Phase I").

41. At Mr. Dunbar's repeated insistence and escalation, PAWC provided Plaintiff with a waiver of the meter pit requirement for Phase I and permitted Plaintiff to install the water meters

for those first 18-units of Holly Ridge in a designated interior utility room instead of an exterior meter pit.

42. That waiver, however, did not extend to any subsequent phases of the Development.

43. In May of 2024, PAWC transitioned management of the remaining development of Holly Ridge (“Phase II”), which included apartment buildings, to *Jacob Rowe, P.E.* See 6/21/24 Email Thread, attached hereto as **Exhibit C**.

44. Mr. Rowe is a Senior Project Engineer at PAWC and a licensed engineer in the Commonwealth of Pennsylvania and the State of California.

45. It is Mr. Rowe’s responsibility to ensure that PAWC’s standards are met.

46. Mr. Rowe enforces Section 5.2(a) of the Tariff with respect to new constructions and requires developers to install water meters outside in meter pits.

47. Additionally, Mr. Rowe will not approve an application for water services that is not submitted with engineer-stamped design drawings, without which, Mr. Rowe cannot exercise the necessary engineering judgment in deciding whether to approve the application.

48. On May 23, 2024, Plaintiff’s engineer, Mr. Colwell, sought Mr. Rowe’s approval for Phase II of Holly Ridge based only on a “schematic depicting the preferred route of connection for future units at Holly Ridge.” See *id.*

49. Mr. Rowe acknowledged the “preliminary plan” that Mr. Colwell provided him, but directed Plaintiff to PAWC’s application requirements. See *id.*

50. Mr. Colwell did not respond for over two weeks. See *id.*

51. Rather than supplement the application accordingly, Mr. Colwell insisted on June 10, 2024, that Plaintiff would proceed under “the previously attached plan,” which did not account

for meter pits or include, *inter alia*, engineer-stamped design and construction drawings or construction estimates. *See id.*

52. As a result, Mr. Rowe suggested that the parties meet, explaining “[t]here are a few conflicts with our standards that I’d like to discuss with you to help streamline a path to approval.” *See id.*

53. Mr. Rowe and Mr. Colwell met on June 26, 2024, to discuss Plaintiff’s plan for Phase II of Holly Ridge. *See id.*

54. Mr. Dunbar did not attend.

55. At the meeting, Mr. Rowe expressly informed Mr. Colwell that the plan violated Section 5.2(a) of the Tariff.

56. Mr. Rowe was unequivocal that he would not waive this requirement for Plaintiff, regardless of the prior waiver for Phase I.

57. He also advised Mr. Colwell that Plaintiff would need to submit all application materials to PAWC.

58. Plaintiff failed to remedy these defects. *See* 10/7/24 Email Thread, attached hereto as **Exhibit D**.

59. On September 5, 2024, Mr. Rowe emailed Mr. Colwell to remind him that PAWC could not provide water services to Holly Ridge beyond Phase I without entering into a New Water Facility Line Agreement. *See id.*

60. Mr. Rowe reiterated, moreover, that PAWC could not enter into such an agreement until it received, reviewed, and approved a sufficient application from Plaintiff to PAWC. *See id.*

61. Such an application, Mr. Rowe explained, 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. *See id.*; *see also* Developer WFLEA Checklist, attached hereto as **Exhibit E**.

62. Mr. Rowe attached the checklist and all required documents to his email to Mr. Colwell. *See* Ex. D.

63. On October 7, 2024, Plaintiff emailed Mr. Rowe concerning the status of its application for the remaining phases of the Development. *See* 10/8/24 Email Thread, attached hereto as **Exhibit F**.

64. Mr. Rowe advised Plaintiff that he had not received the requisite plans, materials, or construction estimates referenced and required in his September 2024, email. *See id.*

65. He reminded Plaintiff *again* that PAWC could not enter into a New Water Facility Line Extension Agreement until Plaintiff submitted a complete application for PAWC's review and approval. *See id.*

66. Mr. Dunbar responded referencing his "legal team" and ability to "do it the easy way or the hard way." *See id.*

67. He followed up by "advis[ing]" Mr. Rowe that Plaintiff would not comply with Section 5.2(a) of the Tariff, stating that he built "rooms inside the buildings for the water meters hence water pits [are] not required." *See id.*

68. While Plaintiff submitted additional materials thereafter, Mr. Rowe explained that they remained deficient and PAWC could not proceed with the application, writing as follows:

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, Jude 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.

Id.

69. On November 18, 2024, Plaintiff filed its Complaint and Petition.

70. In its filings, Plaintiff asserts that PAWC rejected Plaintiff's application and request for a waiver of Section 5.2(a) because of an alleged dispute between Plaintiff and a PAWC-employee named Anthony Pachick. *See, e.g., Ex. B, Compl., at ¶¶ 25-35.*

71. However, Mr. Pachick was not involved in Mr. Rowe's decision to enforce Section 5.2(a) of the Tariff.

72. Nor did Mr. Rowe speak to Mr. Pachick concerning Mr. Rowe's decision to deny Plaintiff's application pending the submission of all materials required by Mr. Rowe.

73. Plaintiff's recent actions, moreover, only serve to justify PAWC's insistence on Plaintiff's compliance with Section 5.2(a) of the Tariff.

74. On November 21, 2024, Mr. Dunbar wrote to Mr. Rowe demanding 48-hours-notice for PAWC to enter Holly Ridge or any of Mr. Dunbar's other developments. *See 11/21/24 Email Thread, attached hereto as Exhibit G.*

75. Mr. Dunbar's email proves PAWC's point—the requirement of installing water meters outside is to provide PAWC with reasonable access to its meters so that it may properly service its customers.

76. It is particularly this type of retaliatory interference by a property owner that Section 5.2(a) aims to guard against.

IV. PRELIMINARY OBJECTIONS

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

77. The Court should dismiss Plaintiff's Complaint because it raises issues that are within the primary and exclusive jurisdiction of the PUC.

78. "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. Ct. 2012).

79. As the 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 v. Philadelphia Electric Co.*, 170 A.2d 565, 567 (Pa. 1961)).

80. Courts applying Pennsylvania law thus repeatedly decline to consider cases based on the primary and/or exclusive jurisdiction of the PUC over a matter. *See generally id.*

81. 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. Pennsylvania Am. Water Co.*, 39 A.3d 473, 479 (Pa. Commw. Ct. 2012).

82. 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 Tel. Co. of Pennsylvania*, 420 A.2d 371, 376 (Pa. 1980)).

83. However, where the "PUC has exclusive jurisdiction over the controversy," the trial court lacks jurisdiction entirely and "there is no recourse to the courts outside of the normal channels of appeal to the Commonwealth Court." *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 202 (Pa. Super. Ct. 1981).

84. Plaintiff cannot contest the PUC's primary jurisdiction over this dispute.

85. "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 (cleaned up).

86. The Code defines "service" in "its broadest and most inclusive sense," which includes:

[A]ny 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. CONST. STAT. § 102.

87. As a result, "[m]atters relating to tariff . . . are peculiarly within the expertise of the [PUC] and, as such, are outside the original jurisdiction of the courts." *Morrow*, 479 A.2d at 550 (quoting *Bell Telephone Co. v. Uni-Lite, Inc.*, 439 A.2d 763, 765 (Pa. Super. Ct. 1982)).

88. 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 (quoting *MCI Telecomm. Corp.*, 71 F.3d at 1103)).

89. 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.

90. This case does not concern anything beyond that.

91. Plaintiff alleges PAWC violated sections 3.5 and 5.2 of the Tariff by unreasonably rejecting Plaintiff’s application for water services and requiring Plaintiff to construct water meter pits at Plaintiff’s development. *See* Ex. B, Compl, at ¶¶ 9-47.

92. Resolution of this dispute necessarily requires the PUC’s assessment of the reasonableness of PAWC’s services—as that term is defined in the Code—and its interpretation and enforcement of the Tariff.

93. Those matters are squarely within the purview of the PUC’s primary jurisdiction. *See, e.g., Morrow*, 479 A.2d at 550; *Talbert*, 538 F.Supp.3d at 480; *PECO*, 54 A.3d at 925.

94. While the doctrine of primary jurisdiction allows a trial court to cede its analysis of the merits to the PUC, that outcome is *required* here because the PUC also has exclusive jurisdiction over this dispute.

95. Where “administrative remedies are adequate to remedy any wrong which [a plaintiff] may have sustained, ‘the case is exclusively within the PUC’s jurisdiction and no recourse to the courts, outside of the normal appellate process, is warranted.’” *Morrow*, 479 A.2d at 551 (quoting *DiSanto*, 436 A.2d at 202).

96. Such is precisely the case here.

97. Plaintiff seeks review of PAWC’s actions and the entry of a declaratory judgment or preliminary injunction.

98. However, it requests nothing of this Court that the PUC may not itself award.

99. The PUC is expressly authorized to assess the reasonableness of PAWC's actions, vary and reform any contract between Plaintiff and PAWC, enter a declaratory judgment or injunctive relief, and/or otherwise discontinue any illegal practices on PAWC's part. *See DiSanto*, 436 A.2d at 202; *Morrow*, 479 A.2d at 551; 66 PA. CONST. STAT. §§ 331, 501, 502, 508.

100. Indeed, courts have held that the PUC has primary and exclusive 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. Pub. Util. Comm'n*, 258 A.3d 1161 (Pa. Commw. Ct. 2021), attached hereto as **Exhibit H**.

101. As a result, the PUC has both primary and exclusive jurisdiction of this matter, and this Court should dismiss Plaintiff's Complaint for lack of jurisdiction.

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

102. This Court should also grant PAWC's preliminary objections based on insufficient service of process.

103. Pennsylvania Rule of Civil Procedure 1028(a)(1) permits preliminary objections to a pleading for "improper form or service of writ of summons or a complaint." Pa. R. Civ. P. 1028(a)(1).

104. "The rules relating to service of process must be strictly followed, and jurisdiction of the court over the person of the defendant is dependent upon proper service having been made[.]" *Sharp v. Valley Forge Med. Ctr. & Heart Hosp., Inc.*, 221 A.2d 185, 187 (Pa. 1966).

105. Critically, "[t]here is no presumption as to the validity of the service and the return itself is required to set forth service in conformance with the rules." *Id.*

106. “Improper service . . . is not merely a procedural defect which can be ignored when the defendant, by whatever means, becomes aware that an action has been commenced against him or her.” *Frycklund v. Way*, 599 A.2d 1332, 1334 (Pa. Super. Ct. 1991).

107. “Where a court lacks jurisdiction to determine the outcome of a cause of action, a court cannot ignore such a defect[.]” *Id.*

108. In this case, Plaintiff has yet to serve PAWC in a manner that complies with the Pennsylvania Rules of Civil Procedure.

109. Plaintiff’s failure to do so is a critical “defect” to this Court’s ability to adjudicate this dispute. *See id.*

110. As a result, this Court should grant PAWC’s preliminary objection for insufficient service under Pennsylvania Rule of Civil Procedure 1028(a)(1).

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

111. This Court should also dismiss Plaintiff’s Complaint for insufficient specificity.

112. The purpose of a pleading is to “place the defendants on notice of the *claims* upon which they will have to defend” by providing notice of the claims and a summary of the facts that support each one. *See Carlson v. Cmty. Ambulance Servs., Inc.*, 824 A.2d 1228, 1232 (Pa. Super. Ct. 2003) (emphasis added).

113. It must also “formulate the issues by summarizing those facts essential to support the claim.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. Ct. 2008).

114. A court should sustain a preliminary objection for insufficient specificity under Pennsylvania Rule of Civil Procedure 1028(a)(3) where the complaint falls short of providing the defendant with enough information to ascertain “without question upon what grounds to make his

defense.” *Wilson v. Snyder Brothers, Inc.*, 232 A.3d 872, 876 n.3 (Pa. Super. Ct. 2020) (internal quotations omitted); *see also* Pa. R. Civ. P. 1028(a)(3).

115. Plaintiff’s Complaint fails to comply with these requirements.

116. While Plaintiff pursues declaratory judgment and a preliminary injunction, the Complaint fails to set forth any cognizable legal theory as a predicate to the entry of such relief.

117. Indeed, it does not contain a single count that asserts an affirmative claim against PAWC for its alleged misconduct.

118. As a result, it is utterly impossible for PAWC to discern the basis of this action, let alone assess the grounds upon which to assert, or assess the viability of, any defenses.

119. The deficiency of Plaintiff’s Complaint is also compounded by its failure to comply with the requirements of Pennsylvania Rule of Civil Procedure 1019.

120. Rule 1019 requires that “[a]verments of time, place, and items of special damage shall be specifically stated” in a pleading. *See* Pa. R. Civ. P. 1019(f).

121. Where a claim in a complaint “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[.]” *See* Pa. R. Civ. P. 1019(h)-(i).

122. Plaintiff’s Complaint violates Rule 1019 in several regards.

123. To start, its recitation of allegedly material facts are wholly unmoored from sufficiently specific temporal allegations.

124. To be sure, it does not allege when, specifically: (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 Ex. B, Compl., at ¶¶ 13, 24, 28, 32.

125. PAWC cannot properly mount a defense absent such information.

126. Plaintiff also failed to set forth sufficient information concerning PAWC’s alleged waivers of Section 5.2(a) of the Tariff.

127. Plaintiff alleges that an unnamed employee at PAWC agreed to waive this requirement on 260 undated and unspecified occasions, but the Complaint fails to identify whether such agreements were oral or in writing. *Compare id.* at ¶¶ 13, 17; *with* Pa. R. Civ. P. 1019(h).

128. It violates Rule 1019(h) as a result.

129. Additionally, and to the extent any agreements to waive Section 5.2(a) were in writing, Plaintiff further defied the Rules of this Court by failing to annex those alleged writings to the Complaint. *Compare generally* Ex. B, Compl.; *with* Pa. R. Civ. P. 1019(i).

130. For these reasons, this Court should sustain PAWC’s preliminary objection on the basis of insufficient specificity and dismiss Plaintiff’s Complaint in its entirety.

D. Preliminary Objection Pursuant to Pa. R. Civ. P. 1028(a)(4) for Legal Insufficiency (Demurrer)

131. As discussed above, Plaintiff has not identified a single claim or advanced facts setting forth the elements thereof, which alone renders Plaintiff’s Complaint legally insufficient for failure to state a viable cause of action.

132. Even if it were possible for PAWC to identify Plaintiff’s asserted basis for liability—which it is not—the facts asserted do not support any claim.

133. Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), a party may file preliminary objections as to any pleading for legal insufficiency (demurrer). *See* Pa. R. Civ. P. 1028(a)(4).

134. The court must “accept as true all well-pleaded allegations of material fact and all inferences reasonably deduced therefrom” when considering a preliminary objection in the nature of a demurrer, but need not accept conclusions of law or expressions of opinion. *See Chester Upland Sch. Dist. v. 103 Com. Drive ILP, LLC*, 309 A.3d 246, 250 (Pa. Commw. Ct. 2024).

135. Further, the court is not bound by unwarranted inferences from facts or argumentative allegations. *See Young v. Wetzel*, 260 A.3d 281, 287 (Pa. Commw. Ct. 2021).

136. When deciding a preliminary objection in the nature of a demurrer, the court’s review is confined to the pleadings. *See Donaldson v. Davidson Bros., Inc.*, 144 A.3d 93, 100 (Pa. Super. Ct. 2016).

137. A court should sustain a preliminary objection for legal insufficiency where it is clear that the facts alleged in the complaint do not allow for the plaintiff to recover under applicable law. *See id.*

138. In other words, where the Complaint fails to establish a valid cause of action, the court should sustain a preliminary objection in the nature of a demurrer. *See Lerner*, 954 A.2d at 1235.

139. In its Complaint, Plaintiff merely alleges that PAWC utilized its afforded discretion to decline Plaintiff’s request to install water meters in “designed and dedicated water rooms,” per Plaintiff’s construction plans, instead of outdoor water meter pits. *See* Ex. B, Compl. at ¶¶ 19–20.

140. In recognition of the lack of misconduct on PAWC's part, Plaintiff fabricates an improper motive out of whole cloth, alleging—without any supporting exhibits—that PAWC denied Plaintiff's request for some retaliatory reason. *See id.* at ¶¶ 25–32.

141. But, even still, Plaintiff's allegations simply do not support any cause of action against PAWC.

142. It is axiomatic that conduct expressly permitted by the Tariff cannot constitute a violation thereof.

143. “It is well settled that public utility tariffs must be applied consistently with their language.” *PECO*, 54 A.3d at 926.

144. Section 3.5 of the Tariff permits PAWC to reject a request for services where “identifying documentation cannot be verified . . . or for other good and sufficient reasons.” *See* Ex. A, Tariff, at § 3.5.

145. Section 5.2(a) of the Tariff requires all new constructions 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. *See id.* at § 5.2.

146. The Complaint fails to set forth any actions on the part of PAWC that deviate from the plain language of these provisions.

147. The Tariff does not provide Plaintiff 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 Plaintiff or based on alleged prior exceptions provided to legally distinct entities or projects.

148. 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 Plaintiff to install water meters in outdoor water meter pits.

149. PAWC also had ample reason to deny Plaintiff's application, which failed to comply with this requirement and did not include the engineer-stamped drawings required by Mr. Rowe.

150. Plaintiff's side-show allegations of malintent do not alter this conclusion.

151. The fact remains that the Tariff did not permit Plaintiff to install water meters in utility rooms, and Plaintiff cannot state entitlement to a right that it does not, and has never, legally possessed.

152. Nor can it be said that PAWC violated the Tariff when its actions were specifically contemplated therein.

153. In any event, Plaintiff's allegations of a retaliatory motive are without basis or consequence.

154. Indeed, Mr. Rowe did not speak to Mr. Pachick concerning Mr. Rowe's decision to enforce Section 5.2(a) of the Tariff or to reject Plaintiff's deficient application.

155. Those decisions were his alone, and they were predicated on sound engineering judgment, the policies underlying the Tariff, and PAWC's internal policies and procedures.

156. As a result, this Court should sustain PAWC's preliminary objection for legal insufficiency and dismiss Plaintiff's Complaint in its entirety.

**E. Plaintiff's Request for Attorneys' Fees Must Be Stricken **

157. This Court should preclude Plaintiff's baseless attempt to recover an award of attorneys' fees.

158. The American Rule governs awards of attorneys' fees in Pennsylvania. *See Hosler v. Tweedlie*, 306 A.3d 361, 379 (Pa. Super. Ct. 2023) (quoting *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 482 (Pa. 2009)).

159. It provides 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." *Id.*

160. Plaintiff fails to allege any statute, agreement, or recognized exception to the default rule which would authorize an award of attorneys' fees in this action.

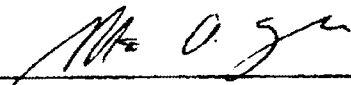
161. Accordingly, this Court should sustain PAWC's Preliminary Objection and strike all Plaintiff's demands for attorneys' fees contained in the Complaint.

WHEREFORE, PAWC requests that this Honorable Court sustain its Preliminary Objections and dismiss Plaintiff's Complaint in its entirety.

Dated: November 27, 2024

Respectfully submitted,

COZEN O'CONNOR

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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 SUPERIOR COURT
 LACKAWANNA COUNTY
 2025 FEB -3 P 3:41
 RECORDS CIVIL DIVISION

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.

Exhibit "D"

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.Cmwlth. 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.
Plaintiff

In the Court of Common Pleas
of Lackawanna County

v.

Civil Action - Law

PENNSYLVANIA-AMERICAN WATER
COMPANY,
Defendant

No. 2024-CV-7851

MAURI B. KELLY
LACKAWANNA COUNTY
2025 FEB -3 P 3:41
CLERK'S OFFICE
RECORDS CIVIL DIVISION

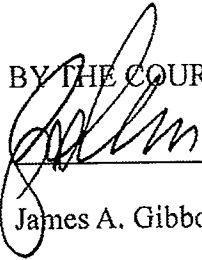
ORDER

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

3. It is within the primary and exclusive jurisdiction of the Pennsylvania Public Utility Commission (“PUC”) as a result.

4. This dispute, moreover, is also now before the PUC by way of PAWC’s Petition for Declaratory Order.

5. While this Court found otherwise in its February 3, 2025, Preliminary Objections Order because of Plaintiff’s pursuit of declaratory judgment, such a ruling would swallow the primary and exclusive jurisdiction doctrine whole, as every plaintiff could evade review by the PUC and select a forum that it perceived as more favorable solely by shrouding their challenge in a declaratory judgment claim.

6. It also runs afoul of longstanding precedent advising that courts should not exercise jurisdiction over actions for declaratory relief where the matter is within the jurisdiction of an administrative agency. *See Com., Dep’t of Gen. Servs. v. Frank Briscoe Co.*, 466 A.2d 1336, 1341 (Pa. 1983); *Lansdale Borough v. Philadelphia Electric Co.*, 170 A.2d 565, 567 (Pa. 1961); *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 199 (Pa. Super. Ct. 1981); *Colbert v. Frank*, No. 526 M.D. 2023, 2024 WL 4763568 (Pa. Commw. Ct. Nov. 13, 2024).

7. To the extent the Court maintains otherwise, PAWC respectfully requests that the Court certify its Order for immediate appeal on the issue of the PUC’s jurisdiction and stay this action.

8. The matter of the PUC’s jurisdiction “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.” 42 Pa.C.S. §702(b).

9. Indeed, substantial authority supports the PUC's initial jurisdiction in this dispute and a determination by the Commonwealth Court in PAWC's favor will result in the termination of this action.

10. Thus, rather than expend potentially needless judicial and party time and resources, this Court should certify the subject matter jurisdiction issue for immediate appeal and stay this action pending the disposition thereof.

11. Such relief is also proper due to PAWC's appeal of right on this Court's January 23, 2025, Order on Plaintiff's Petition for Preliminary Injunction.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

12. Plaintiff's November 18, 2024, Complaint against PAWC asserts that PAWC acted unreasonably and violated Sections 3.5 and 5.2 of the Water Tariff in requiring Plaintiff to install water meter pits instead of permitting Plaintiff to utilize water meter rooms. *See* Complaint ("Compl."), attached hereto as **Exhibit A**, at ¶¶ 9-10, 20, 23.

13. Plaintiff also filed a Petition for Preliminary Injunction on this same basis. *See* Petition for Preliminary Injunction ("PI."), attached hereto as **Exhibit B**.

14. PAWC opposed both the Complaint and the Petition on, among other grounds, the PUC's initial jurisdiction over this dispute. *See* PAWC's Preliminary Objections ("POs"), attached hereto as **Exhibit C**, § IV(A); PAWC's Memo. Of Law in Opp. to PI, attached hereto as **Exhibit D** (exhibits omitted); PAWC's Supp. Br. in Opp. to PI, attached hereto as **Exhibit E**.

15. On January 23, 2025, following a hearing, the Court entered an Order denying the Petition, which was docketed on January 24, 2025. *See* Jan. 23, 2025, Order ("PI Order"), attached hereto as **Exhibit F**.

16. The Court found that Plaintiff was likely to succeed on the merits of its claim, but could not establish irreparable harm. *See id.* at pp. 4-6.

17. While the Court's determination necessarily meant that it rejected PAWC's argument concerning the PUC's jurisdiction, the Order did not address the argument. *See generally id.*

18. However, on February 3, 2025, the Court entered an Order denying PAWC's preliminary objections. *See* Feb. 3, 2025, Order ("PO Order"), attached hereto as **Exhibit G**.

19. With respect to PAWC's jurisdictional argument, the Court reasoned that the PUC was "not required to resolve this matter[] because this matter involves whether Plaintiff has met the pleading standard for declaratory judgment." *Id.* at p. 6.

20. On February 11, 2025, the Court of Common Pleas of Lackawanna County docketed PAWC's Notice of Appeal of the PI Order. *See* PAWC's Time-Stamped Notice of Appeal ("NOA"), attached hereto as **Exhibit H** (exhibits omitted). The basis of PAWC's appeal is the PUC's jurisdiction over this dispute.

21. On February 14, 2024, this Court permitted Plaintiff to file an Amended Complaint. *See* Feb. 14, 2024, Mot. to Amend Order, attached hereto as **Exhibit I**. Plaintiff filed its Amended Complaint on February 18, 2025. *See* Am. Compl., attached hereto as **Exhibit J**.

22. Plaintiff's Amended Complaint seeks monetary damages. *See id.* at Wherefore Clause.

23. Consistent with its position that this matter belongs before the PUC, PAWC has filed a Petition for Declaratory Order with the PUC. *See* PAWC PUC Pet., attached hereto as **Exhibit K** (exhibits omitted).

III. ARGUMENT

A. The Court Should Exercise its Discretion to Reconsider its Ruling on the Primary and Exclusive Jurisdiction of the PUC

24. PAWC respectfully requests that the Court reconsider its ruling on PAWC's Preliminary Objection for Lack of Jurisdiction. A court may reconsider or rescind any order within 30 days of its entry. *See* 42 Pa.C.S. § 5505.

25. "A motion for reconsideration is addressed to the sound discretion of the trial court, and generally requires an intervening change in the law, the existence of newly discovered evidence, or a clear error of law." *Brogan v. Rosenn*, No. 08 CV 6048, 2013 WL 5768195, at *2 (Pa.C.C.P. Lackawanna Cty. Oct. 23, 2013) (internal quotations omitted).

26. This Honorable Court should reconsider its PO Order because it committed an error of law by finding that it had subject matter jurisdiction over this dispute at this time.

27. "Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts." *Lansdale Borough*, 170 A.2d at 567. Such jurisdiction includes matters that "pertain to" tariffs or involve "the reasonableness, adequacy and sufficiency of public utility services." *Talbert v. Am. Water Works Co., Inc.*, 538 F. Supp. 3d 471, 480 (E.D. Pa. 2021) (cleaned up).

28. It also includes disputes relating to public utility "service, rules of service," "installation of utility facilities, [and] location of utility facilities[.]" *State Farm Fire & Cas. Co. v. PECO*, 54 A.3d 921, 925 (Pa. Super. Ct. 2012) (quoting *Lansdale Borough*, 170 A.2d at 567).

29. These matters are at the heart of this lawsuit. Plaintiff's Complaint does not just "pertain to" the Tariff, which is enough to confer jurisdiction on the PUC, but rests *directly* upon it because Plaintiff seeks relief based on PAWC's alleged violations thereof. *See Talbert*, 538 F. Supp. 3d at 480; *see also, e.g., Hatchigian v. PECO/Exelon*, No. 142 EDA 2018, 2019 WL

3628744, at *6 (Pa. Super. Ct. Aug. 6, 2019) (holding PUC had initial jurisdiction over dispute alleging PECO “failed to apply the provisions of the tariff”).

30. Additionally, the Tariff itself permitted PAWC to require installation of water meters in outdoor pits instead of indoor meter rooms, such that this Court could *only* afford Plaintiff relief by assessing “the reasonableness” of PAWC’s “services, rules of service” and discretion with respect to the “installation of utility facilities” and “location of utility facilities,” all of which rely on interpretation of sections of the Tariff. *See State Farm Fire & Cas. Co.*, 54 A.3d at 925

31. The Opinion determined otherwise because “the matter involves whether Plaintiff has met the pleading standard for declaratory judgment.” Ex. G, PO Order at p. 6.

32. But the fact that this lawsuit is a declaratory judgment action is consistent with the PUC’s jurisdiction over this matter.

33. “The PUC may issue declaratory orders[.]” *See Borough of Olyphant v. Pennsylvania Pub. Util. Comm’n*, 861 A.2d 377, 382 (Pa. Commw. Ct. 2004). It also has the power to order PAWC to cease the allegedly improper practices under 66 Pa.C.S. § 501. *See Morrow*, 479 A.2d at 551.

34. And Plaintiff’s request that PAWC “accept the water facilities in the Development and provide water services thereto” is *exactly* the same type of order that the PUC had primary and exclusive jurisdiction over. *See, e.g., Fox Ridge Vill., LP v. Pub. Util. Comm’n*, 258 A.3d 1161 (Pa. Commw. Ct. 2021) (PUC had jurisdiction over complaint filed by developer against PAWC).¹

¹ This Court distinguished *Fox Ridge Village* because it concerned a statute rather than a Tariff or PAWC’s internal rules of service. However, the involvement of a statute is not a prerequisite to the PUC’s initial jurisdiction. *See, e.g., Talbert*, 538 F. Supp. 3d at 480; *State Farm Fire & Cas. Co. v. PECO*, 54 A.3d at 925. Additionally, the Tariff has “the force and effect of law.” *See DiSanto*, 436 A.2d at 201.

35. In any event, this Court erred in determining that this matter did not implicate the PUC's jurisdiction because the matter before the Court was only whether Plaintiff met the standard for declaratory relief. *See, e.g., DiSanto*, 436 A.2d at 199.

36. “When a utility’s failure to maintain reasonable and adequate service is alleged, **regardless of the form of the pleading in which the allegations are couched**, it is for the PUC initially to determine whether the service provided by the utility has fallen short of the statutory standard required of it.” *See DiSanto*, 436 A.2d at 199 (quoting *Bell Telephone Co., of Pennsylvania v. Sanner*, 375 A.2d 93, 95 (Pa. Super. Ct. 1977) (emphasis added); *accord Morrow v. Bell Tel. Co. of Pennsylvania*, 479 A.2d 548, 551 (Pa. Super. Ct. 1984); *see also Cnty. of Erie v. Verizon N., Inc.*, 879 A.2d 357, 364 (Pa. Commw. Ct. 2005) (“In determining whether the doctrine of primary jurisdiction applies, courts must look beyond the form of action to the *essence* of the underlying claims.”) (emphasis in original).

37. Courts, including the Pennsylvania Supreme Court, have thus routinely recognized the initial jurisdiction of the PUC over declaratory judgment actions. *See, e.g., Lansdale Borough*, 170 A.2d at 568 (holding court lacked jurisdiction over declaratory judgment action because “[i]nitial 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. Commw. Ct. 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. Commw. Ct. May 14, 2019) (remanding declaratory judgment action to trial court with instruction to consider primary jurisdiction of PUC, advising “we are concerned that the PUC possesses primary jurisdiction over a key issue in this case”).

38. As they must: “[f]o hold otherwise would mean that . . . a declaratory judgement could be used to short-circuit the administrative process and have the law determined without the benefit of the administrative agency first reviewing the matter.” *Faldowski v. Eighty Four Min. Co.*, 725 A.2d 843, 846 (Pa. Commw. Ct. 1998) (emphasis added).

39. Such is the case “[e]ven where there is no action pending before [an agency],” as “the declaratory judgment procedure may not be used to prejudge issues that are committed for initial resolution to an administrative forum[.]” *Com., Dep’t of Gen. Servs.*, 466 A.2d at 1341.

40. Courts accordingly grant preliminary objections dismissing lawsuits for lack of jurisdiction where a plaintiff has not first obtained adjudication of the dispute from the relevant agency. *See Germantown Cab Co. v. Philadelphia Parking Auth.*, No. 586 M.D. 2014, 2015 WL 8605838, at *4-6 (Pa. Commw. Ct. Dec. 14, 2015), *aff’d*, 150 A.3d 16 (Pa. 2016).

41. The Commonwealth Court’s recent holding in *Colbert v. Frank* is illustrative. *See* 2024 WL 4763568. In that case, the plaintiff sought equitable relief from the court challenging “PECO’s authority to install a smart meter on her property[.]” *Id.* at *3. The court granted preliminary objections dismissing the action, finding that it lacked jurisdiction over a dispute that should have been before the PUC. *See id.* As it explained,

[A] party must first exhaust all adequate and available administrative remedies before the right of judicial review arises. The courts must refrain from exercising equity jurisdiction when there exists an adequate statutory remedy.

The doctrine of exhaustion of administrative remedies is intended to prevent the premature interruption of the administrative process, which would restrict the agency’s opportunity to develop an adequate factual record, limit the agency in the exercise of its expertise, and impede the development of a cohesive body of law in that area. The doctrine operates as a restraint on the exercise of a court’s equitable powers and a recognition of the legislature’s direction to comply with statutorily prescribed remedies. ***Ordinarily, the failure to exhaust an administrative remedy bars this Court from hearing claims for declaratory or injunctive relief with respect to that agency action.***

Id. at *3 (cleaned up) (emphasis added). With respect to the issue before it, the court observed that “[w]here a customer believes a public utility is conducting an activity contrary to law, Section 701 of the Code, 66 Pa.C.S. § 701, expressly provides aggrieved customers with an avenue to file a formal complaint before the PUC in order to challenge the actions of the public utility.” Thus, because the PUC provided the plaintiff “with the means to challenge” PECO’s actions, the Court held that “it would be improper for this Court to exercise jurisdiction at this time.” *Id.* at *4.

42. This authority, both individually and in the aggregate, demonstrates that the PUC has initial jurisdiction over this matter.

43. Although Plaintiff seeks declaratory relief, the lawsuit necessarily implicates the expertise of the PUC for the reasons described in full above. *See DiSanto*, 436 A.2d at 200-02 (reversing trial court for denying preliminary objection on PUC’s jurisdiction, reasoning matter did not hinge on “the specific allegations and prayers for relief contained in [the] complaint.”).²

44. And, like in *Colbert*, this Court lacks jurisdiction because Plaintiff was obligated, but failed, to first pursue and complete a complaint process pursuant to 66 Pa.C.S. § 701. *See* 2024 WL 4763568 at *4.

45. As a result, this Court should reject Plaintiff’s attempt to “short-circuit the administrative process and have the law determined without the benefit of the [PUC] first reviewing the matter.” *See Faldowski*, 725 A.2d at 846 (Pa. Commw. Ct. 1998).

46. The Amended Complaint does not change this conclusion.

² This Court distinguished *DiSanto* on the basis that it is “inapplicable because we do not find that the PUC has exclusive jurisdiction over this matter.” Order at p. 7. However, *DiSanto* itself demonstrates otherwise and further reflects that the Court’s decision—which was premised on Plaintiff’s stylization of its challenge as a declaratory judgment action—was in error.

47. As a threshold matter, Plaintiff's mere request for monetary damages does not demonstrate Plaintiff's entitlement thereto.

48. As this Court observed in denying PAWC's preliminary objections, Plaintiff's lawsuit seeks declaratory relief. *See* Ex. G, PO Order at p. 6. But the Declaratory Judgment Act provides the following with respect to its "[g]eneral scope:" "Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations[.]" 42 Pa.C.S. § 7532. That does not necessarily include an award of monetary damages.

49. Even if Plaintiff's entitlement to damages were concrete, this Court *still* would not have jurisdiction at this time as a clear matter of Pennsylvania law.

50. "[W]hen the original jurisdiction of the trial court is invoked to decide a controversy, but an agency has primary jurisdiction, the proper recourse for the trial court is to *transfer* the matter to the appropriate administrative agency." *Cnty. of Erie*, 879 A.2d at 364 (Pa. Commw. Ct. 2005) (emphasis in original); *see also, e.g., Pettko*, 39 A.3d at 479 (affirming transfer of matter from Court of Common Pleas to PUC "due to the trial court's lack of jurisdiction at this stage of the proceedings) (cleaned up); *Hatchigian*, 2019 WL 3628744, at *6 (affirming transfer to PUC and explaining plaintiff may only pursue "claims in the Court of Common Pleas" if and after PUC finds in plaintiff's favor).

51. It is only *if* the PUC resolves the dispute in Plaintiff's favor that "the trial court may proceed[.]" *See Pettko*, 39 A.3d at 479.

52. Regardless of whether Plaintiff seeks an additional remedy that the PUC cannot afford, the PUC has initial jurisdiction over this matter for the reasons described herein.

53. This matter is now currently pending before the PUC.

54. This Court should accordingly reconsider its PO Order, grant PAWC's preliminary objection based on lack of jurisdiction, and transfer this matter to the PUC pursuant to Section 5103 of the Judicial Code.

55. If Plaintiff prevails in the PUC, Plaintiff may then attempt to seek monetary relief from this Court to the extent Plaintiff is able to state a cognizable claim under which the Court may award such relief.

B. In the Alternative, this Court Should Amend its Order to Allow PAWC to Appeal the Denial of its Preliminary Objection

56. In the event that the Court declines to reconsider its PO Order, PAWC respectfully requests that the Court amend the PO Order to certify the question of the PUC's jurisdiction for immediate appeal.

57. An otherwise interlocutory order may be appealed by permission if it is accompanied by the trial court's statement that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter." 42 Pa.C.S. §702(b).

58. Rule 1311(b) of the Pennsylvania Rules of Appellate Procedure permits this Court to add the statement prescribed by 42 Pa.C.S. § 702(b). *See* Pa. R.A.P. 1311(b).

59. Such relief is proper here because the question of PUC's initial jurisdiction meets these requirements.

60. The PUC's jurisdiction over this dispute at this time is a controlling question of law.

61. Under the analogous federal statute, a controlling question of law "is one in which either: (1) if decided erroneously, would lead to reversal on appeal; or (2) is "serious to the conduct

of the litigation either practically or legally.” *Knipe v. SmithKline Beecham*, 583 F. Supp. 2d 553, 599 (E.D. Pa. 2008) (cleaned up).

62. “[T]he fundamental issue of subject matter jurisdiction is one of the clearest examples of a “controlling question of law” *Beazer E., Inc. v. The Mead Corp.*, No. CIV.A.91-408, 2006 WL 2927627, at *2 (W.D. Pa. Oct. 12, 2006) (applying federal statute) (emphasis added).

63. The same outcome is warranted under Pennsylvania law.

64. As a general matter, “jurisdictional issues are deeply rooted in public policy and they merit immediate review.” *S. Hills Cath. Acad. v. Dep’t of Hum. Servs.*, 308 A.3d 915, 923 (Pa. Commw. Ct. 2024).

65. And, indeed, a trial court’s retention of jurisdiction over a matter that is within the PUC’s jurisdiction is subject to reversal on appeal. *See, e.g., DiSanto*, 436 A.2d at 200-02.

66. Courts have thus expectedly held that a trial court’s potentially erroneous finding of subject matter jurisdiction of is a controlling question of law that warrants immediate permissive appeal. *See, e.g., Clean Air Council v. Sunoco Pipeline L.P.*, 185 A.3d 478, 481, 489 (Pa. Commw. Ct. 2018) (trial court issued an amended order certifying question of whether the plaintiff’s claims were “outside the subject matter jurisdiction of the trial court,” and appellate court held trial court lack lacked jurisdiction).

67. There is also “substantial ground for difference of opinion” on whether this Court may exercise jurisdiction over Plaintiff’s action before an initial review by the PUC. *See* 42 Pa.C.S. §702(b).

68. While this Court may disagree with PAWC on the issue of PUC’s jurisdiction, PAWC’s position is supported by considerable appellate precedent.

69. It is also in alignment with the strong policy considerations underlying the doctrine of primary jurisdiction, as the Pennsylvania Supreme Court has explained:

The doctrine serves several purposes, chief of which are the benefits to be derived by making use of the agency's special experience and 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.

Elkin v. Bell Tel. Co. of Pennsylvania, 420 A.2d 371, 376 (Pa. 1980) (cleaned up). Indeed, if courts did not honor the primary jurisdiction doctrine, PAWC could be subject to differing interpretations of its Tariff and/or its obligations thereunder in all 37 counties in which it provides water service. PAWC thus satisfies this element of 42 Pa.C.S. §702(b).

70. Lastly, an immediate appeal will materially advance the ultimate termination of this matter.

71. If the Commonwealth Court determines that the PUC has initial jurisdiction, there is no instant matter and, in fact, a justiciable issue may *never* arise if the PUC finds in PAWC's favor.

72. Conversely, if the Commonwealth Court does not consider the threshold question of jurisdiction, it is possible that this Court and the parties will be forced to expend substantial time and resources on, *inter alia*, written discovery, depositions, potential expert discovery, motion practice, dispositive briefing, trial, and even post-trial briefing *for nothing*.

73. Permissive appeals exist to prevent such untenable situations, as courts recognize that “there is urgency in determining at the earliest possible point in [] litigation” issues concerning a “trial court’s jurisdiction or competency to act.” *In re Sheriff’s Excess Proceeds Litig.*, 98 A.3d 706, 723 (Pa. Commw. Ct. 2014).

74. PAWC thus easily meets the requirements of 42 Pa.C.S. §702(b) for certification for immediate appeal.

75. Therefore, pursuant to Pennsylvania Rule of Appellate Procedure 1311, PAWC requests that the Court amend its PO Order to certify the question of PUC's jurisdiction as "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter." See 42 Pa.C.S. §702(b); Pa. R.A.P. 1311(b).

C. In Certifying the Order for Interlocutory Appeal, the Court Should Also Grant a Stay of Further Proceedings Pending Disposition of Appeal³

76. PAWC further requests that the Court grant a stay of these proceedings pending disposition of appeal.

77. A party may seek a stay of litigation under Pennsylvania Rule of Appellate Procedure 1702 where it pursues an appeal as of right *or* intends to pursue discretionary appellate review. See Pa.R.A.P. 1702(a)-(b).

78. A stay is warranted where the movant establishes: (1) a likelihood of success on the merits; (2) "irreparable harm" absent entry of a stay; (3) that "the issuance of a stay will not substantially harm other interested parties in the proceedings;" and (4) the stay "will not adversely affect the public interest." See *Reading Anthracite Co. v. Rich*, 577 A.2d 881, 884 (Pa. 1990); see also *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (Pa. 1990); *Pennsylvania Pub. Util. Comm'n v. Process Gas Consumers Grp.*, 467 A.2d 805, 808-09 (Pa. 1983); *Insilco Corp. v. Rayburn*, 543 A.2d 120, 126 (Pa. Super. 1988).

³ Even if this Court declines to certify the PO Order, PAWC still requests a stay in light of its Notice of Appeal as to the PI Order.

79. “A court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits.” *Process Gas*, 467 A.2d at 808-09 (quoting *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977)).

80. Stated otherwise, “[t]he court is not required to find that ultimate success by the movant is a mathematical probability, and indeed ... may grant a stay even though its own approach may be contrary to movant’s view of the merits.” *Washington Metro. Area Transit Comm’n*, 559 F.2d at 843.

81. “The necessary ‘level’ or ‘degree’ of possibility of success will vary according to the court’s assessment of the other factors.” *Id.*

82. All factors here warrant a stay of this litigation based on either PAWC’s appeal of right as to the PI Order or request for discretionary review of the PO Order.

83. With respect to the first element, “[t]he requirement that the applicant for a stay show that it is likely [it] will prevail on the merits should not be an inflexible rule,” but rather, the test is whether the trial court finds that an “applicant has presented a substantial case on the merits even though it disagrees.” 467 A.2d at 809 n.8.

84. For the same reasons that PAWC has demonstrated a substantial ground for difference of opinions, it has also established a substantial case on the merits with respect to the appeal of the PI Order and PO Order, both of which are premised on the PUC’s jurisdiction over this dispute.

85. The consideration of the parties’ respective interests also weighs decisively in favor of a stay.

86. “[C]ontinued proceedings . . . before a court that lacks jurisdiction would impose an irreparable harm.” *Bethke v. City of Philadelphia*, 282 A.3d 884, 890–91 (Pa. Commw. Ct. 2022).

87. Such is the case because, “absent a stay,” both parties “will be forced to incur the time and expenses of litigation, which may be avoided in the event that” PAWC’s “challenge” to this Court’s jurisdiction “is upheld.” *Philipp v. Fed. Republic of Germany*, 436 F. Supp. 3d 61, 68 (D.D.C. 2020).

88. “This burden of defending against a lawsuit is irreversible and constitutes harm” to PAWC. *Id.* (granting stay pending outcome of appeal).

89. Conversely, Plaintiff has *no* interest in adjudicating this dispute in the wrong forum and will not be adversely impacted by a stay “because it will change nothing about the status quo[.]” *Bethke*, 282 A.3d at 891.

90. Lastly, a stay will not adversely affect the public interest.

91. Staying these proceedings to allow immediate appellate review will facilitate the expedient disposition of the case and save judicial resources by providing guidance on the predicate question of the appropriate forum for litigation of Plaintiff’s claims—the PUC or this Court.

92. Additionally, the courts and the PUC have an interest in receiving clear direction from the appellate court regarding the scope and existence of their jurisdiction over disputes such as this one, where it appears that there are substantial grounds for a difference of opinion. *See, e.g., Pennsylvania Pub. Util. Comm’n v. Process Gas Consumers Grp.*, 467 A.2d 805, 810 (Pa. 1983) (finding public interest supported stay, explaining “both the PUC and the public have an

interest in having the substantial legal issues raised by [the] appeal decided correctly on the merits.”).

93. It is not staying, but proceeding, in this action that would harm the public interest.

94. Allowing this case to continue risks conflicting decisions, regulatory uncertainty, and unnecessary litigation costs, all while undermining the PUC’s authority over water utility disputes.

95. It may also serve as a playbook for plaintiffs that wish to rush to the courts to gain a perceived strategic advantage rather than exhaust the necessary, prerequisite administrative remedies.

96. As a result, all relevant factors conclusively support a staying pending the resolution of PAWC’s intended appeal.

WHEREFORE PAWC respectfully submits that the Court erred as a matter of law, warranting reconsideration or, in the alternative, certification of the Order or interlocutory appeal and a stay pending the result thereof.

Respectfully submitted,

COZEN O’CONNOR

/s/ Matthew A. Glazer

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AMcLaughlin@cozen.com

1650 Market Street, Suite 2800

Philadelphia, PA 19103-3508

Telephone: 215-665-2000

Attorneys for Defendant PAWC

Dated: February 25, 2025

JAMES A. GIBBONS
JUDGE



(570) 963-6575
FAX (570) 963-6576

Commonwealth of Pennsylvania
45th Judicial District

February 28, 2025

Michael Gallacher, Esquire
mgallacherlaw@gmail.com
Matthew A. Glazer, Esquire
mglazer@cozen.com
Arianna K. McLaughlin, Esquire
amclaughlin@cozen.com

RE: Holly Ridge Estates v. PAWC; Civil No. 24-CV-7851

Dear Counsel:

We are in receipt of the Motion for Reconsideration or, in the Alternative, for Certification and Stay filed on behalf of the Defendant, together with a supporting brief, filed on February 26, 2025.

Plaintiff shall file its response with the Clerk of Judicial Records and serve a copy on opposing counsel and the undersigned on or before **March 17, 2025**.

Argument will take place via advanced communication technology on **Friday, March 21, 2025 @ 2:00 p.m.** A ZOOM invitation will accompany transmission of this correspondence.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gibbons".

James A. Gibbons

JAG::mb

Exhibit "F"

C O U R T O F C O M M O N P L E A S
LACKAWANNA COUNTY

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PENNSYLVANIA AMERICAN WATER		X	
COMPANY,		X	
		X	
	Defendant.	X	
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TRANSCRIPT OF PROCEEDINGS
OF PRELIMINARY INJUNCTION

BEFORE: HONORABLE JAMES A. GIBBONS

DATE: DECEMBER 3, 2024

PLACE: COURTROOM 4
Lackawanna County Courthouse
Scranton, Pennsylvania 18503

A P P E A R A N C E S

For the Plaintiff: MICHAEL GALLACHER, ESQUIRE

For the Defendant: MATTHEW GLAZER, ESQUIRE
ADRIANNA MCLUAGHIN, ESQUIRE

Mark Wozniak
Official Court Reporter

Exhibit "6"

I N D E X

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25PLAINTIFF'S WITNESSESDIRECTCROSSRDRC

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PLAINTIFF'S EXHIBITSMARKEDADMITTED

1 - Photo

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2 - Photo

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3 - Rules and regulations

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4 - Invoice

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5 - Letter

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6 - Letter

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7 - E-mail

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8 - Letter

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152

9 - Approval

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152

10 - E-mail

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152

11 - Agreement

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152

12 - E-mail

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13 - E-mail

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DEFENDANT'S WITNESSESDIRECTCROSSRDRC

JACOB ROWE

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FRANK SERIS

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ANTHONY PACHICK

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TRACI CROSS

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DEFENDANT'S EXHIBITSMARKEDADMITTED

1 - E-mails

131

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2 - Extension agreement

160

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3 - E-mail

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4 - E-mail

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5 - E-mail

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6 - E-mail

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7 - E-mail

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1 THE COURT: We are here pursuant to
2 a petition and rule for emergency injunctive
3 relief that had been filed November 19th by
4 the plaintiff, Holly Ridge Estates,
5 Incorporated against Pennsylvania American
6 Water Company. At the request of defense
7 counsel -- the initial hearing date was
8 November 26th, so we moved it until today
9 and everybody is here and we are ready to
10 go. There is a threshold legal issue which
11 I'll entertain argument on right now.

12 I will also say that I've reviewed
13 the petition and the defendant's response to
14 the petition, but defendants have also filed
15 preliminary objections and I've received
16 those. But plaintiff's counsel has
17 acknowledged that he's been provided with
18 those as well. Mr. Glazer?

19 MR. GLAZER: Thank you, your Honor.
20 As a threshold issue this case belongs in
21 the PUC. The case law from the Superior
22 Court, which has been cited extensively in
23 our brief, proves that point. Why does it
24 belong in the PUC? Besides the fact that
25 the Superior Court has indicated just that,

1 it's the type of claim that is being
2 presented in this case which surrounds the
3 enforcement of the tariff. As the Court may
4 or may not be aware, the tariff is a
5 document that obligates the water company to
6 operate in a particular way.

7 THE COURT: You attached it to your
8 submissions.

9 MR. GLAZER: We attached -- the
10 whole tariff is hundreds of pages long, so
11 we just attached a small piece of that, the
12 relevant sections that are referenced, some
13 of which are referenced in --

14 THE COURT: I appreciate that
15 because you've also attached a lot of other
16 things. You didn't break a hundred but you
17 were pretty close.

18 MR. GLAZER: So the bottom line is
19 that the PUC is a specialized agency that is
20 tasked with handling the interpretation of
21 the tariff and whether my client adhered to
22 the tariff or did not adhere to the tariff.
23 The PUC has exclusive jurisdiction over
24 aspects of interpretation of the tariff such
25 as whether we conducted ourselves reasonably

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in this circumstance.

The PUC also has jurisdiction to determine the issue of declaratory judgment actions, which is precisely the type of action that plaintiff in this case has filed.

So there's a reason why the legislature determined that the PUC is the entity responsible for governing disputes such as these. It's because they're specialized. They are specialized and they have judges who are specialized in handling matters that involve the interpretation of the tariff.

So respectfully, it's our client's position that this Court does not have jurisdiction for those reasons and that this case belongs with the PUC, where it has exclusive jurisdiction.

THE COURT: Mr. Gallacher, response?

MR. GALLACHER: Good morning, your Honor. This is not a case where the PUC has exclusive jurisdiction. There are situations where they do. There's a number of cases out there, which I have a couple I

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FILED
LACKAWANNA COUNTY
2025 FEB 26 10 31
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CIVIL DIVISION

**IN THE COURT OF COMMON PLEAS
COUNTY OF LACKAWANNA**

Holly Ridge Estates, Inc.,

Plaintiff,

v.

Pennsylvania-American Water Company,

Defendant.

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: NO. 24-CV-7851
:
: CIVIL ACTION – LAW
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CONCISE STATEMENT OF ERRORS COMPLAINED OF ON APPEAL

In accordance with Pennsylvania Rule of Appellate Procedure 1925(b) and this Court's Order dated February 11, 2025, Defendant/Appellant Pennsylvania-American Water Company ("PAWC") hereby files and serves this Concise Statement of Errors Complained of on Appeal. PAWC has appealed to the Commonwealth Court from the January 23, 2025, Order on the Petition for Preliminary Injunction ("Petition") filed by Plaintiff, Holly Ridge Estates, Inc. PAWC intends to raise the following errors on appeal:

1. The Court erred in ruling on the Petition because this dispute is within the primary jurisdiction of the Pennsylvania Public Utility Commission as it pertains to the Water Tariff, the relationship between PAWC and the public, and the reasonableness, adequacy, and sufficiency of PAWC's services.

Exhibit "J"

2. This Court erred in ruling on the Petition because the Pennsylvania Public Utility Commission has exclusive jurisdiction over claims that PAWC violated its Tariff by not complying with the Water Tariff.

Respectfully submitted,

COZEN O'CONNOR

/s/ Matthew A. Glazer

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Dated: February 28, 2025

**CERTIFICATION OF COMPLIANCE WITH
CASE RECORDS PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Matthew A. Glazer
Matthew A. Glazer

Dated: February 28, 2025