



March 17, 2025

VIA E-FILE

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

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

Answer of Pennsylvania-American Water Company to the Preliminary Objections of Holly Ridge Estates, Inc.

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Answer of Pennsylvania-American Water Company to the Preliminary Objections of Holly Ridge Estates, Inc. Copies of this filing have been served as shown on the attached Certificate of Service.

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

Sincerely,

Cozen O'Connor

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

DPZ:kmg
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of March, 2025 served a true copy of the foregoing **Answer of Pennsylvania-American Water Company to the Preliminary Objections of Holly Ridge Estates, Inc.**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF PENNSYLVANIA-AMERICAN WATER COMPANY
TO THE PRELIMINARY OBJECTIONS
OF HOLLY RIDGE ESTATES, INC.**

AND NOW COMES Pennsylvania-American Water Company (“PAWC” or the “Company”), pursuant to 52 Pa. Code § 5.101(f), to submit this Answer (“Answer”) to the Preliminary Objections (“Preliminary Objections”) filed by Holly Ridge Estates, Inc. (“Holly Ridge”), on March 6, 2025 in response to the Petition for Declaratory Order filed by PAWC on February 21, 2025 (“Petition”). For the reasons that follow, PAWC respectfully requests that the Preliminary Objections be denied.

I. OVERVIEW

Holly Ridge initiated an action in the Court of Common Pleas of Lackawanna County (the “Court”), to request that the Court interpret and enforce PAWC’s Commission-approved Tariff so that Holly Ridge be permitted to install indoor water meters and to direct that PAWC accept Holly Ridge’s application for public utility service. PAWC filed the Petition with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) requesting that the Commission declare that the matters raised before the Court concern whether PAWC has complied with the Pennsylvania Public Utility Code (“Code”), the Commission’s regulations and orders, and PAWC’s Commission-approved Tariff. The Commission has primary and initial jurisdiction over this

dispute and this matter belongs before the Commission in the first instance as a matter of well-settled Pennsylvania law. See *Talbert v. Am. Water Works Co., Inc.*, 538 F. Supp. 3d 471, 480 (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.”); *Lansdale Borough v. Philadelphia Elec. Co.*, 170 A.2d 565, 567 (Pa. 1961) (“Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts.”); *State Farm Fire & Cas. Co. v. PECO*, 54 A.3d 921, 925 (Pa. Super. 2012) (“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 rates, service, rules of service, extension and expansion ... installation of utility facilities, [and] location of utility facilities[.] ... 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.”); *Morrow v. Bell Tel. Co. of Pa.*, 479 A.2d 548, 550 (Pa. Super. 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.”); *Poorbaugh v. Pa. Pub. Util. Comm’n*, 666 A.2d 744, 749 (Pa. Cmwlth. 1995) (“The doctrine of primary jurisdiction requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme.”).

Holly Ridge’s Preliminary Objections to PAWC’s Petition represent another attempt to circumvent the PUC’s authority and jurisdiction. Holly Ridge cannot satisfy its burden to establish that the Court action warrants dismissal of PAWC’s Petition. Holly Ridge does not present any persuasive authority in which an administrative agency dismissed a petition concerning matters within the primary jurisdiction of the agency in favor of a prior court proceeding. This authority

does not exist because under Pennsylvania law, an administrative agency should have initial jurisdiction over issues within the scope of the agency's expertise and grant of legislative authority. *See, e.g., Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 479 (Pa. Cmwlth. 2012) ("a trial court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, [should] first cede the analysis of the issue or issues to that agency"). Further, the Court has only delved into the question of the Commission's jurisdiction, which remains in dispute—meaning that there is no risk of prejudice or inconsistent decisions on substantive matters. Holly Ridge only filed its Amended Complaint, the operative pleading pending before the Court, less than one month ago. Moreover, the requests for relief are not the same. Holly Ridge also cannot satisfy its burden to establish that the Commission lacks jurisdiction or that PAWC's Petition is insufficiently specific. Holly Ridge's Preliminary Objections are unsupported, and the Commission should deny them.

The Commission has broad authority and jurisdiction over matters that concern public utility service, public utility facilities, and public utility tariffs. *See* 66 Pa. C.S. §§ 102, 501, 1501-1511; *see also* 66 Pa. C.S. § 501(c) (Commission power and duty to ensure compliance with the Code and Commission regulations and orders). As stated in PAWC's Petition, this matter requires the Commission's expertise to interpret the Code, the Commission's regulations and orders, and the Commission-approved Tariff for PAWC. Holly Ridge is not entitled to forum shop and bypass the Commission's jurisdiction and authority. Holly Ridge would have a fair and sufficient opportunity to present its case before an impartial adjudicator through the Commission with all applicable due process rights available. Further, the Commission could direct PAWC to approve Holly Ridge's application for water service and permit Holly Ridge to install meters inside, which is what Holly Ridge requests before the Court. However, granting Holly Ridge's Preliminary

Objections would endorse a limited view of the Commission’s jurisdiction. The Commission must ensure a uniform and consistent approach for all customers of public utility service, including through the Commission’s interpretation and enforcement of the Code, regulations and orders, and tariffs. *See Pettko*, 39 A.3d at 479 (explaining that the doctrine of primary jurisdiction “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.”). Therefore, the Commission should deny Holly Ridge’s Preliminary Objections and maintain its jurisdiction over this proceeding.

II. LEGAL STANDARD

Section 5.101 of the Commission’s rules of administrative practice and procedure provide for the filing of preliminary objections. 52 Pa. Code § 5.101. The Commission’s consideration of preliminary objections is comparable to Pennsylvania civil practice and subject to the same standard. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

When considering preliminary objections, all material facts set forth in the challenged pleading are admitted as true, as well as all inferences reasonably deducible therefrom. *See Cooper v. Church of St. Benedict*, 954 A.2d 1216, 1218-19 (Pa. Super. 2008). Accordingly, the Commission must make all determinations of material facts and inferences in PAWC’s favor. *Id.*; *see also Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 805 (Pa. Super. 2007) (“Preliminary

objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.”). Preliminary objections which seek the dismissal of an entire pleading should be sustained only in cases in which it is “free and clear of doubt” that the pleader will be unable to prove facts legally sufficient to establish the right to relief. *Hess*, 925 A.2d at 806. As a result, if any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of denying the preliminary objections. *See Cooper*, 954 A.2d at 1219; *Hess*, 925 A.2d at 805-06. The Commission should dismiss PAWC’s Petition only if it appears that PAWC would not be entitled to relief under any circumstances as a matter of law. *See Interstate Traveler Servs., Inc. v. Commonwealth Dep’t of Environ. Resources*, 486 Pa. 536, 539-40 (1979).

III. RESPONSE TO PRELIMINARY OBJECTIONS

A. Response to Preliminary Objection Pursuant to 52 Pa. Code 5.101(a)(6) – Pendency of a Prior Proceeding

1. PAWC’s Petition before the Commission speaks for itself.
2. PAWC’s Petition before the Commission speaks for itself.
3. PAWC’s Petition before the Commission speaks for itself.
4. Denied.

By way of further response, Holly Ridge has not satisfied its burden for the Commission to grant its preliminary objection based on the purported pendency of a prior proceeding. As stated, *supra*, Holly Ridge has presented no legal authority in which an administrative agency of the Commonwealth sustained a preliminary objection and dismissed a petition based on a prior proceeding that had been filed in the courts when the matters raised before the court were within

the particular expertise, jurisdiction, and authority of the administrative agency. The lack of legal authority is not by accident, but rather, this is because the Commission properly exercises its primary jurisdiction over matters within the scope of the Commission's expertise and grant of legislative authority. See PAWC Petition, ¶¶ 32-39, 41, 43-48. In *Pennsylvania Pharmacists Association v. Commonwealth, Department of Public Welfare*, the Commonwealth Court considered a declaratory action filed by a pharmacist association and individual pharmacies that participated in a state medical assistance program. 733 A.2d 666, 668 (Pa. Cmwlth. 1999). The Commonwealth Court dismissed the court action on the basis that the pharmacies "must first exhaust administrative remedies before seeking judicial review." *Id.* at 672. The pharmacies could not bypass the authority of the Department of Public Welfare and were instructed to file a petition for a declaratory order to the Secretary of the Department. *Id.* The Commonwealth Court determined that it need not decide the question of whether a proceeding pending before the Department constituted a prior pending action in light of its determination that the petition should have been raised in the first instance before the administrative agency. *Id.* at 673 n.6. In other words, the Commonwealth Court found that the jurisdiction and authority of the agency outweighed any consideration of the timing of multiple proceedings. The Commonwealth Court also noted the argument that "*lis pendens* applies only when two or more court proceedings are involved, not when a separate proceeding is before an administrative agency," although, again, the Court determined it need not reach this issue. *Id.*

The purpose of the rule concerning prior pending actions, or *lis pendens*, "is to protect a defendant from harassment by having to defend several suits on the same cause of action at the same time." *Penox Technologies, Inc. v. Foster Medical Corp.*, 546 A.2d 114, 115 (Pa. Super. 1988). Here, this purpose is not implicated where Holly Ridge, the plaintiff in the Court action,

filed in the Court to circumvent the Commission’s authority over this matter. The Court action has only dealt with the question of the Commission’s jurisdiction—a question PAWC contends should have been brought to the Commission in the first instance, but there is no risk of “harassment” or even prejudice to Holly Ridge where the Court has not delved into the substance or merits of this dispute concerning PAWC’s Tariff and Holly Ridge’s application for public utility service. Under the doctrine of primary jurisdiction, the Court and Commission should create a “workable relationship” that allows the Court to “have the benefit of the [Commission’s] view on issues within the agency’s competence.” *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371, 376 (Pa. 1980). Just as in *Pennsylvania Pharmacists Association*, the Commission’s jurisdiction and authority over matters implicating the Code, the Commission’s regulations and orders, and Commission-approved tariffs outweigh any concern with the timing of the Court action. Where the Commission was denied the opportunity to exercise its primary jurisdiction over matters within its expertise and legislative grant of authority, the doctrine of *lis pendens* is inapplicable and does not warrant dismissing PAWC’s Petition.

This Commission has previously entertained similar Petitions for Declaratory Order after a plaintiff filed an action in a civil court seeking to circumvent the Commission’s jurisdiction. In *Petition of Pennsylvania American Water Company For a Declaratory Order Regarding the Provision of Water Service to Eric H. Talbert*, Docket No. P-2020-3018499, a customer of PAWC filed a federal class action lawsuit in the U.S. District Court for the Eastern District of Pennsylvania (the “Federal Court”) on October 25, 2019. PAWC filed its Petition for Declaratory Order with the Commission on February 14, 2020. The Federal Court subsequently stayed a portion of the federal class action lawsuit, based on the primary jurisdiction doctrine, pending entry of a final Commission order on whether PAWC had complied with the Code, the Commission’s regulations

and orders, and PAWC's Commission-approved Tariff. This case illustrates how the filing of the Petition does not ask the Commission to "unilaterally assume jurisdiction" of the case as alleged by Holly Ridge. Rather, it facilitates a cooperative working relationship between the Commission and the civil courts.

Additionally, Holly Ridge cannot establish that the Court action is the same or that the relief requested is the same as in PAWC's Petition. *See Pa. Pharmacists Ass'n*, 733 A.2d at 673 n.6 (describing a three-prong test to warrant dismissal on the grounds of a prior pending action). First, the Court action is a civil complaint which is different than a petition filed before the Commission. *See Hillgartner v. Port Authority of Allegheny Cty.*, 936 A.2d 131, 137-38 (Pa. Cmwlth. 2007) (stating that the "test must be strictly applied when a party seeks to dismiss a claim under *lis pendens*"). Second, the Court action seeks a declaration for PAWC to permit Holly Ridge to install indoor meters while the Petition before the Commission seeks a declaration as to the Commission's jurisdiction and the Commission's enforcement of PAWC's Tariff. *See Baron v. Commonwealth, Dept' of Human Servs.*, 169 A.3d 1268, 1276 n.6 (Pa. Cmwlth. 2017) (denying preliminary objection on the basis of *lis pendens* where request to relief in purported prior action was different even where "there is some overlap as to enforcement, and Petitioner briefs many of the same issues in both actions, the requested relief is not the same"). This case is not a matter of two identical state court cases or one state court case that is identical to one federal court case; the Court action is fundamentally different than PAWC's Petition before the Commission because the two matters have been submitted to separate branches of government. Importantly, the *lis pendens* argument attempts to obscure the fact that the Commission has primary and initial jurisdiction over this matter. This dispute should have been brought to the Commission in the first instance, and the timing of Holly Ridge's complaint does not change well-settled Pennsylvania law. As a matter

of public policy, a utility customer should not be permitted to circumvent Commission jurisdiction by rushing first to the courthouse steps and then making a *lis pendens* argument. Indeed, one of the fundamental purposes of Commission primary jurisdiction is to avoid forum shopping on matters within the expertise of the Commission.

5. This paragraph states a legal conclusion to which no response is necessary.

6. Holly Ridge's Exhibit A, the original Complaint Holly Ridge filed against PAWC in the Court of Common Pleas, speaks for itself.

7. Holly Ridge's Exhibit A, the original Complaint Holly Ridge filed against PAWC in the Court of Common Pleas, speaks for itself.

8. Holly Ridge's Exhibit B, Holly Ridge's Petition for a Preliminary Injunction and Rule Returnable Order, speaks for itself.

9. Holly Ridge's Exhibit C, PAWC's Preliminary Objections to the Complaint, speaks for itself.

10. Holly Ridge's Exhibit D, the Court's February 3, 2025 Memorandum and Order, speaks for itself.

11. Holly Ridge's Exhibit D, the Court's February 3, 2025 Memorandum and Order, speaks for itself.

12. Holly Ridge's Exhibit D, the Court's February 3, 2025 Memorandum and Order, speaks for itself.

13. Holly Ridge's Exhibit E, PAWC's Motion for Reconsideration or, in the Alternative, for Certification and Stay, speaks for itself.

14. Holly Ridge's Exhibit E, PAWC's Motion for Reconsideration or, in the Alternative, for Certification and Stay, speaks for itself.

15. Holly Ridge's Exhibit E, PAWC's Motion for Reconsideration or, in the Alternative, for Certification and Stay, speaks for itself. A Commission decision finding that this matter should be resolved by the Commission in the first instance may be useful and instructive to the Court's consideration. This is consistent with how the Supreme Court of Pennsylvania applies the doctrine of primary jurisdiction, in which "the court can have the benefit of the agency's views on issues within the agency's competence." *Elkin*, 420 A.2d at 376. The scope of the Commission's jurisdiction is within the Commission's competence.

16. Denied, including for the reasons explained in Paragraph 4, *supra*. PAWC asserts that the matters Holly Ridge raised to the Court concern the Code, the Commission's regulations and orders, and the Commission-approved Tariff for PAWC. However, the matter pending before the Court is not the same as the Petition PAWC filed with the Commission.

17. Holly Ridge's Exhibit F, the Court scheduling argument on PAWC's Motion for Reconsideration or, in the Alternative, for Certification and Stay, speaks for itself.

18. Holly Ridge's Exhibit G, Transcript of Proceedings of Preliminary Injunction, speaks for itself.

19. Holly Ridge's Exhibit G, Transcript of Proceedings of Preliminary Injunction, speaks for itself. By way of further response, the Court denied Holly Ridge's petition for a preliminary injunction on January 23, 2025.

20. Denied for the reasons explained in Paragraphs 4 and 16, *supra*.

21. Denied. Holly Ridge failed to attach Exhibit H to its Preliminary Objections. To the extent this Paragraph refers to Court's January 23, 2025 Memorandum and Order Denying Holly Ridge's Petition for Preliminary Injunction, which speaks for itself, the Memorandum and Order is attached hereto as **PAWC Appendix A**.

22. Denied. Holly Ridge failed to attach Exhibit H to its Preliminary Objections. To the extent this Paragraph refers to the Court's January 23, 2025 Memorandum and Order Denying Holly Ridge's Petition for Preliminary Injunction, this speaks for itself. *See* **PAWC Appendix A.**

23. Holly Ridge failed to attach Exhibit I to its Preliminary Objections. PAWC admits it filed a Notice of Appeal, which speaks for itself. PAWC's Notice of Appeal dated February 10, 2025 is attached hereto as **PAWC Appendix B.**

24. Holly Ridge's Exhibit J, PAWC's Concise Statements of Errors Complained of on Appeals, speaks for itself.

25. Admitted. By way of further response, PAWC intends to argue on appeal that the Court erred in denying PAWC's preliminary objections because this dispute is within the primary jurisdiction of the Commission as it pertains to the Water Tariff, the relationship between PAWC and the public, and the reasonableness, adequacy, and sufficiency of PAWC's service.

26. PAWC admits that Holly Ridge filed a Motion to Amend the Complaint with the Court. PAWC denies the remaining allegations set forth by Holly Ridge in this Paragraph as written.

27. PAWC admits that the Court allowed Holly Ridge to file an amended complaint. Holly Ridge failed to attach Exhibit K to its Preliminary Objections. The Court's February 14, 2025 Order allowing Holly Ridge to file an amended complaint is attached hereto as **PAWC Appendix C.**

28. Holly Ridge's Amended Complaint, which was attached as Appendix A to PAWC's Petition, speaks for itself. Holly Ridge failed to attach Exhibit L to its Preliminary Objections. For the Commission's ease of reference, Holly Ridge's February 18, 2025 Amended Complaint is attached hereto as **PAWC Appendix D.**

29. PAWC's Petition before the Commission speaks for itself.

30. Denied for the reasons explained in Paragraph 4, *supra*.

31. Admitted.

32. PAWC's Petition before the Commission speaks for itself. Holly Ridge repeatedly states that PAWC's Petition asserts that the Commission has "exclusive" jurisdiction over this matter. However, PAWC consistently asserts that the Commission has "primary" jurisdiction over the matters alleged in the Amended Complaint. *See* PAWC Petition, ¶¶ 43-53. This is an important distinction that Holly Ridge missed. The doctrine of primary jurisdiction recognizes that certain matters are within an administrative agency's particular expertise but also that further proceedings may be required in civil courts depending on the administrative agency's findings. *See Kerslake v. Sunoco Pipeline, L.P.*, 299 A.3d 190 (Pa. Cmwlth. 2023) (recognizing the Commission's primary jurisdiction over lawsuit and ordering trial court to defer initial review to the Commission; "[i]n the event Appellant's action before the PUC is successful, they make seek further relief before the trial court under the [Unfair Trade Practices and Consumer Protection Law], because the PUC lacks jurisdiction over claims under the UTPCPL for unfair trade practices."); *Hatchigian v. PECO/Exelon*, No. 142 EDA 2018, 2019 WL 3628744, at *6 (Pa. Super. Aug. 6, 2019) (holding that the PUC has "primary jurisdiction" over the plaintiff's complaint and explaining that plaintiff may seek relief in the courts "[t]o the extent the PUC finds in favor" of the plaintiff and provides "relief on the claims over which it has jurisdiction"). As explained in response to Paragraph 4, *supra*, this is how the Commission and civil courts create a "workable relationship" that allows the Court to "have the benefit of the agency's views on issues within the agency's competence." *See Elkin*, 420 A.2d at 376. The doctrine of primary jurisdiction, if applied here, would enable the Commission to consider matters within its particular

expertise in the first instance, including matters that concern public utility service, public utility facilities, and public utility tariffs. *See also Optimum Image, Inc. v. Philadelphia Elec. Co.*, 600 A.2d 553, 557 (Pa. Super. 1991) (“[W]e conclude that the expertise of the PUC is required to decide the present dispute. Matters relating to tariff, necessity of equipment, deposits and use of various types of services are within the particular expertise of the PUC.”).

33. Denied for the reasons explained in Paragraph 4, *supra*. The action pending before the Court of Common Pleas is different than the matter pending before the Commission. As explained in PAWC’s Petition, the Commission has initial and primary jurisdiction over this matter because the matters raised in the Amended Complaint concern whether PAWC complied with the Code, the Commission’s regulations and orders, and PAWC’s Commission-approved Tariff. *See generally* PAWC Petition, ¶¶ 16-53. Holly Ridge cannot satisfy its burden to establish that the doctrine of *lis pendens* applies or that a purported prior pending action warrants dismissal of the Petition filed with the Commission, and accordingly, Holly Ridge’s preliminary objection should be denied.

B. Response to Preliminary Objection Pursuant to 52 Pa. Code 5.101(a)(1) – Lack of Commission Jurisdiction

34. Holly Ridge’s Exhibit D, the Court’s February 3, 2025 Memorandum and Order, speaks for itself.

35. This paragraph states a legal conclusion to which no response is necessary.

36. Holly Ridge’s Amended Complaint, which was attached as Appendix A to PAWC’s Petition, speaks for itself. Holly Ridge failed to attach Exhibit L to its Preliminary Objections. *See PAWC Appendix D*.

37. This paragraph states a legal conclusion to which no response is necessary.

38. This paragraph states a legal conclusion to which no response is necessary.

By way of further response, it is undisputed that the Commission has jurisdiction over matters involving the provision and expansion of public utility service, the installation of public utility meters, and the interpretation and enforcement of public utility tariffs. *See* 66 Pa. C.S. §§ 102, 501, 1501-1511; *see also Talbert*, 538 F. Supp. 3d at 480; *PECO*, 54 A.3d at 925; *Morrow*, 479 A.2d at 550. PAWC’s Petition explains in detail that the Commission has primary and initial jurisdiction over the matters raised in the Amended Complaint because these matters necessarily require the Commission’s assessment of the reasonableness of PAWC’s services and PAWC’s actions as a regulated public utility in the Commonwealth. *See generally* PAWC Petition, ¶¶ 31-53. Holly Ridge’s assertion of a declaratory claim in the Amended Complaint does not change the nature of the Commission’s jurisdiction over the matters raised in the Amended Complaint. *See* PAWC Petition, ¶ 51 (compiling cases for the proposition that the PUC has initial jurisdiction over declaratory judgment claims based upon matters within the Commission’s expertise and broad grant of legislative authority). Similarly, Holly Ridge’s request for damages does not divest the Commission of its primary jurisdiction. *See* PAWC Petition, ¶ 48 (explaining that primary jurisdiction operates by allowing the agency the initial opportunity to review matters within its expertise and scope of authority before enabling a court to assess the applicability of damages based upon the agency’s decision); *see also Hatchigian*, 2019 WL 3628744, at *6 (explaining that plaintiff may only pursue claims in the courts if and after the PUC finds in plaintiff’s favor).

Under well-settled Pennsylvania law, Holly Ridge was not entitled to bypass the Commission’s primary jurisdiction over this matter and the Commonwealth Court may recognize the value of the Commission’s expertise over public utility tariffs and the reasonableness or adequacy of public utility services and facilities. Holly Ridge’s Preliminary Objections present another example of ignoring the applicable law concerning the Commission’s jurisdiction and

plainly represents forum shopping in action. In disregarding PAWC’s argument concerning primary jurisdiction, Holly Ridge attempts to use the Court to restrict and limit the Commission’s jurisdiction over public utilities. *See DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 201-02 (Pa. Super. 1981) (stating that the argument that an action for damages necessarily “ousts the PUC of jurisdiction . . . is too broad and would virtually strip the PUC of all jurisdiction merely by framing the allegations in contractual and/or trespassory terminology, and demanding damages”). It bears emphasis that PAWC’s Tariff at Section 15.1, which applies to all customers and applicants for service from PAWC, specifically authorizes the Company to “certify to the Commission the question of the appropriateness of such court action by filing a petition for declaratory judgment with the Commission.” PAWC Petition, ¶ 39; *see also Stiteler v. Bell Tel. Co.*, 379 A.2d 339, 341 (Pa. Cmwlth. 1977) (“Tariffs filed with a state regulatory agency, such as the PUC, are not mere contracts but have the force of law and are binding on the consumer and the utility.”). Holly Ridge ignores the operative tariff in addition to considerable case law and statutory authority in asserting that this matter belongs in the courts. Granting the Preliminary Objections would enable similarly situated customers and applicants for service to avoid or bypass the Commission’s jurisdiction over matters that are plainly within its expertise and scope of authority.

39. Denied. Holly Ridge cannot satisfy its burden to establish that the Commission lacks jurisdiction, and accordingly, Holly Ridge’s preliminary objection should be denied.

C. Response to Preliminary Objection Pursuant to 52 Pa. Code 5.101(a)(4) – Insufficient Specificity

40. Denied. PAWC’s Petition explains in detail why the PUC has primary (rather than exclusive) jurisdiction over this dispute, including but not limited to, because the Amended Complaint raises questions of compliance with the Code, the Commission’s regulations and orders,

and PAWC's Commission-approved Tariff (PAWC Petition, ¶¶ 31-42), and because the Commission has primary and initial jurisdiction over the issues raised in the Amended Complaint (PAWC Petition, ¶¶ 43-53).

Pennsylvania Rule of Civil Procedure 1019(a) requires a plaintiff to state “[t]he material facts on which a cause of action . . . is based . . . in a concise and summary form.” In determining whether a pleading is sufficiently specific, the Commission “must ascertain whether the facts alleged are sufficiently specific to enable a defendant [or respondent] to prepare [its] defense.” *United Sportsman of Pa. v. Pa. Game Comm’n*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008) (citing *Foster v. Peat Marwick Main & Co.*, 587 A.2d 382 (Pa. Cmwlth. 1991), *aff’d*, 544 Pa. 387 (1996)). Further, “in pleading its case, the [petitioner] need not cite evidence but only those facts necessary for the [respondent] to prepare a defense.” *United Sportsman*, 950 A.2d at 1134 (citing *Dep’t of Transp. v. Bethlehem Steel Corp.*, 380 A.2d 1308 (Pa. Cmwlth. 1977)); *accord Commonwealth v. Golden Gate National Senior Care LLC*, 648 Pa. 604, 636 (2018) (reversing grant of preliminary objection for insufficient specificity; “[t]o assess whether a claim has been pled with the requisite specificity, the allegations must be viewed in the context of the pleading as a whole.”). PAWC’s Petition, supported with ample factual and legal support, satisfies this standard of specificity. Holly Ridge has been provided with sufficient notice and specific information in order to prepare its defense.

41. Denied. PAWC’s Petition explains in detail that PAWC complied with its Commission-approved Tariff in rejecting Holly Ridge’s application for service and requiring that Holly Ridge install outdoor water meter pits. PAWC Petition, ¶¶ 54-60. PAWC is not required to prove its case in its pleading, as “there is no requirement to plead the evidence upon which the pleader will rely to establish those facts.” *Golden Gate National Senior Care LLC*, 648 Pa. at 636.

The pleading standard is more liberal and merely requires enough facts for the respondent to prepare a defense. *See id.* PAWC's Petition provides more than enough by way of material facts to explain why PAWC rejected Holly Ridge's application for water service with reference to PAWC's Commission-approved Tariff that requires outdoor water meter pits for new constructions. PAWC Water Tariff Section 5.2(a) (Supplement No. 2 to Tariff Water-PA P.U.C. No. 5 First Revised Page 48); *see also* 66 Pa. C.S. § 1303 (Adherence to tariffs). PAWC's Petition also seeks declaratory relief concerning the nature of the allegations in the Amended Complaint and the Commission's jurisdiction and authority. *See generally* PAWC Petition, ¶¶ 42, 53. PAWC has provided sufficient support and material facts to enable Holly Ridge to prepare a defense to these claims to relief.

42. Denied, for the reasons set forth in Paragraph 41.

By way of further response, PAWC's Petition and the citation to *DiSanto*, 436 A.2d at 201-02, explain that the assertion of damages by Holly Ridge, which is outside the jurisdiction of the Commission, cannot divest the Commission of its primary jurisdiction. PAWC Petition, ¶ 48. The doctrine of primary jurisdiction, which Holly Ridge apparently overlooked in its Preliminary Objections, envisions the Commission and the Court creating a workable relationship where the Court can have the benefit of the Commission's expertise on matters within its legislative grant of authority, including the provision of services by a regulated public utility, the installation and furnishment of meters for public utility service, and the interpretation and enforcement of a Commission-approved tariff. *See Elkin*, 420 A.2d at 375-76; *Pettko*, 39 A.3d at 479; *see also* PAWC Petition, ¶¶ 46-53. PAWC is not required to provide all its evidence to refute Holly Ridge's request for damages at this stage, but PAWC has provided ample support and material facts to enable Holly Ridge to prepare a defense, thereby satisfying the pleading standard.

43. Denied. Holly Ridge cannot satisfy its heavy burden to establish that PAWC's Petition lacks sufficient specificity, and accordingly, Holly Ridge's preliminary objection should be denied.

IV. CONCLUSION

WHEREFORE, PAWC respectfully requests that the Commission deny Holly Ridge's Preliminary Objections and retain jurisdiction over this proceeding and PAWC's Petition.

Respectfully submitted,
COZEN O'CONNOR



David P. Zambito, Esq. (PA ID # 80017)
Jonathan P. Nase, Esq. (PA ID # 44003)
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Date: March 17, 2025

APPENDIX A

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

MAURICE P. KELLY
CLERK OF COURT
JUN 23 10:33 AM
RECORDS CIVIL DIVISION

GIBBONS, J.

MEMORANDUM

I. INTRODUCTION

This matter arises from a 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 seeks a preliminary injunction declaring that it may have water meters installed in “water meter rooms” at the Premises, as opposed to “water meter pits,” that Defendant Pennsylvania American Water Company (“PAWC” or “Defendant”) is in violation of a Water Tariff (the “Tariff”), and that PAWC must reimburse Plaintiff for all its costs and attorney’s fees.

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. Section 3.5 of the Tariff provides that an application for service can only be rejected for “good and sufficient reasons.” *Id.* at ¶9. 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. *Id.* at ¶10. 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. *Id.* at ¶¶12-16.

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

A preliminary injunction is a temporary remedy granted until the parties’ dispute can be fully resolved. *Cutler v. Chapman*, 289 A.3d 139, 149–50 (Pa. Commw. Ct. 2023). The party seeking a preliminary injunction bears the burden of proof and must establish all of the following criteria:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;

- (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits;
- (5) the injunction is reasonably suited to abate the offending activity; and []
- (6) the preliminary injunction will not adversely affect the public interest.

Id. (citations omitted). “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if each [factor] has been fully and completely established.” Pa. AFL-CIO by George v. Commonwealth, 683 A.2d 691, 694 (Pa. Cmwlth. 1996). However, “if the petitioner fails to establish any one of them, there is no need to address the others.” Lee Publications, Inc. v. Dickinson School of Law, 848 A.2d 178, 189 (Pa. Cmwlth. 2004) (*en banc*) (quoting County of Allegheny v. Commonwealth, 518 Pa. 556, 544 A.2d 1305, 1307 (1988)).

The grant or denial of a preliminary injunction is reviewed for an abuse of discretion. Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 573 Pa. 637, 828 A.2d 995, 1000 (2003). This highly deferential standard of review inquires not into the merits, “but examines the record ‘to determine if there were any apparently reasonable grounds for the action of the court below.’” SEIU Healthcare Pa. v. Commonwealth of Pa., et al., 628 Pa. 573, 583-84, 104 A.3d 495, 902 (2014) (citations omitted). Failure to establish any one of the essential factors is sufficient for a denial of injunctive relief. Summit Town Centre, Inc., 828 A.2d at 1002. Establishing a clear right to relief does not require the party seeking an injunction to prove the merits of the underlying claim; he need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties. SEIU Healthcare, 628 Pa. at 590-91, 104 A.3d at 506 (citation omitted).

IV. DISCUSSION

Plaintiff has alleged that relief is necessary to avoid the costs and delays associated with PAWC's requirement of water meter pits, that greater costs and delays will occur from refusing to grant the injunction than from granting it, that the injunction will restore the parties to their previous status quo of PAWC allowing water meter rooms before the alleged wrongful conduct, that Plaintiff has a clear right to relief, that the injunction is reasonably suited to abate PAWC's blockage of water meter rooms, and that the public interest will not be harmed if the injunction is granted. See Compl. at ¶¶16-17, 21-23, 40, 45-47.

Plaintiff has demonstrated it is likely to succeed on the merits of some claims. Plaintiff is seeking a declaration that it may have water meters installed in rooms at the Premises and that PAWC violated the Tariff. Id. at pp. 10-11. 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). Plaintiff has demonstrated (and PAWC does not dispute) that PAWC's past practices in dealings with Mr.

Dunbar, Plaintiff's principal, allowed for meter rooms, and, additionally, that PAWC approved meter rooms for a prior phase in the development of Holly Ridge. See Compl. at ¶¶12-17. PAWC argues it has complied with the Tariff by citing the aforementioned Section 5.2(a), which requires installation of meters outside the building, and PAWC claims that Tariff does not require PAWC to "waive" 5.2(a).¹ See Opp. to Prelim. Injunct. at p. 16. However, Section 5.2(a) also allows for meters to be installed in other locations if "otherwise approved or specified by the Company." Penn. Am. Water Co. Rates, Rules and Regul., Nov. 21, 2024, §5.2(a). PAWC has failed to cite any of the reasons in Section 3.5 of the Tariff as a reason for rejecting Plaintiff's application. Indeed, PAWC has not even argued it had any "good" or "sufficient" reasons for rejecting Plaintiff's application, instead relying on Jacob Rowe's disputed testimony that certain materials required for Plaintiff's application were not received. See Opp. to Prelim. Injunct. at p. 16, PAWC's Post-Hearing Brief at p. 3. Relying on Sections 3.5 and 5.2(a) of the Tariff and past allowances by PAWC in dealings with Mr. Dunbar and Plaintiff, 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.

Plaintiff has failed to demonstrate anywhere in its argument that the costs and delays associated with PAWC's decision cannot be adequately compensated by money damages. Mr. Dunbar testified at the hearing on December 3, 2024 regarding the potential consequences of requiring construction of water meter pits at the Premises. Mr. Dunbar listed a redesigning process, the installation of water meter "pits," the difficulty of winter construction, time delays, and financial costs all as potential consequences. See Transcript of Hearing on Dec 3, 2024 at pp.

¹ 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.

87-90, 105-106, 140. Plaintiff's Brief in Support of Preliminary Injunctive Relief echoes these sentiments, declaring the damages from ceasing construction would consist of "a monetary amount which would be difficult to calculate." See Brief in Supp. Of Prelim. Injunct. at p. 7. However, while such damages may be difficult to calculate, there is no evidence to support a conclusion that such a calculation, when made, would not be adequate. Put another way, Plaintiff's claims, in our view, have an adequate remedy at law. Consequently, Plaintiff has failed to establish one of the necessary factors for a preliminary injunction. Therefore, Plaintiff's Petition for Preliminary Injunction will be **DENIED**.

V. CONCLUSION

For the above reasons, Plaintiff's Petition for Preliminary Injunction will be **DENIED**.
An appropriate Order follows.

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

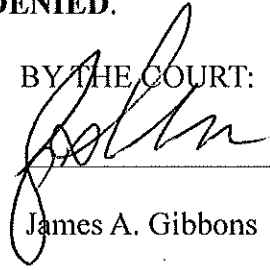
GIBBONS, J.

ORDER

NOW, this 23^d day of January, 2025, upon consideration of Plaintiff's Petition for Preliminary Injunction, it is hereby **ORDERED** that:

- 1. Plaintiff's Petition for Preliminary Injunction is **DENIED**.

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

APPENDIX B

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Philadelphia, PA 19103
(215) 665-2000

*Attorneys for Defendant,
Pennsylvania-American Water Company*

MAURIE B KELLY
LACKAWANNA COUNTY
2025 FEB 11 A 11:04
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

**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

NOTICE OF APPEAL

Notice is hereby given that Defendant, Pennsylvania-American Water Company (“PAWC”), by and through their undersigned counsel, hereby appeal to the Commonwealth Court of Pennsylvania from the Order entered in this matter on January 23, 2025.

Specifically, Defendants appeal the Order overruling Defendant’s preliminary injunction. A copy of the Order is attached hereto as **Exhibit A**. The Order has been entered in the docket as evidence by the attached copy of the docket entry, which is attached hereto as **Exhibit B**.

A copy of the Transcript of Proceedings of Preliminary Injunction is attached hereto as **Exhibit C**.

Respectfully submitted,
COZEN O'CONNOR

/s/ Matthew A. Glazer

Matthew A. Glazer (No. 204540)

MGlazer@cozen.com

Arianna K. McLaughlin (No. 328142)

AMcLaughlin@cozen.com

1650 Market Street, Suite 2800

Philadelphia, PA 19103-3508

Telephone: 215-665-2000

Attorneys for Defendant PAWC

Dated: February 10, 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 10, 2025

MAURI B KELLY
SHERIFF
SHERIFF'S OFFICE
2025 FEB 11 A 11:05
CLERKS OF JUDICIAL
RECORDS CIVIL DIVISION

APPENDIX C

for an injunction. As a result, Defendant requests that we either deny Plaintiff's motion because of the pendency of an appeal or, alternatively, take the motion under advisement pending review by the Commonwealth Court.

Plaintiff maintains that its motion was filed prior to the filing of the Notice of Appeal and was, therefore, available for consideration and remains so.

Pa.R.App.P. 1701 states in pertinent part: “[e]xcept as otherwise prescribed by these rules, after an appeal is taken . . . the trial court . . . may no longer proceed further in the matter.” Pa.R.App.P. 1701(a). *See also, Dovin v. Honey Brook Golf Club, L.P.*, 325 A.3d 1282, 1289 (Pa.Super. 2024). However, Pa.R.App.P. 311(h) specifically provides that: “Pa.R.A.P. 1701(a) shall not be applicable to a matter in which an interlocutory order is appealed under subdivisions (a)(2) or (a)(4) of this rule.” Pa.R.App.P. 311(h).

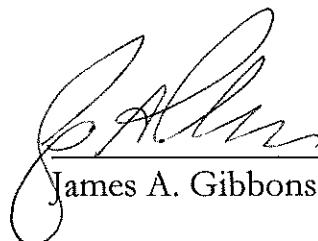
In view of this, we see no need to take the Plaintiff's motion under advisement or, as suggested by Defendant, deny it without prejudice pending review by the Commonwealth Court. Further, no stay has been issued either in this Court or the Commonwealth Court. We will, therefore, grant Plaintiff's motion to amend its Complaint.

ACCORDINGLY, this 14th day of February, 2025, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Amend Complaint is **GRANTED**;
2. Plaintiff shall file its Amended Complaint forthwith;

3. Defendant shall respond to the Amended Complaint within the time prescribed by the applicable rules.

BY THE COURT:


_____ J.
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 Gallacher, Esquire
mgallacherlaw@gmail.com
Counsel for Plaintiff

Matthew A. Glazer, Esquire
mglazer@cozen.com
Arianna K. McGlaughlin, Esquire
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Counsel for Defendant

APPENDIX F

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110 Market Street
Moscow, PA 18444
Phone (570) 319-6472
Fax (570) 319-6613

Attorney for Plaintiff
LACKAWANNA COUNTY
JUL 18 10 11 AM '05
RECORDED

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

Plaintiff

vs

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

Defendant

: IN THE CT OF COMMON PLEAS
: OF LACKAWANNA COUNTY

: CIVIL ACTION

: DECLARATORY
: JUDGMENT/INJUNCTION

: 24 CV 7851

NOTICE 7851

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

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

NORTH PA LEGAL SERVICES, INC.

PA LAWYER REFERRAL SERVICE

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

P. O. Box 1068
100 South State Street
Harrisburg, PA 17108
(PA residents 1-800-692-7375;
Out of State: 717-238-6715)

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 begun within the Holly Ridge Development - an apartment building containing multiple residential units.

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

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

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

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

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

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

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

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

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

services.

31. Upon completion of the services, Dunbar's Evergreen Landscaping, Inc. sent to Mr. Pachick a bill for the services rendered.
32. Upon receipt of the bill from Dunbar's Evergreen Landscaping, Inc., Mr. Pachick contacted George Dunbar and in an indignant manner questioned why he was billed for the services performed by Dunbar's Evergreen Landscaping, Inc. Mr. Pachick expressed that he expected the services to have been provided for free based upon his prior approvals for the developments of which Mr. Dunbar is the principal.
33. Upon receipt of the bill from Dunbar's Evergreen Landscaping, Inc., Mr. Pachick implied that he could and would make things difficult for Mr. Dunbar in his future developments unless the services provided by Dunbar's Evergreen Landscaping, Inc. were free.
34. Mr. Dunbar refused to provide the services for free and to date, Mr. Pachick has failed and refused to pay any of the invoice sent to him by Dunbar's Evergreen Landscaping, Inc. for services provided at his personal residence.

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

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

41. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and until the water meter location is approved.
42. Plaintiff cannot move forward with the continued construction of the Holly Ridge Development unless and until its application for water services is approved.
43. A declaration that the Plaintiff may have water meters installed in the specifically designed and dedicated water rooms in future buildings to be constructed at Holly Ridge is warranted.
44. A declaration that the Defendant is in violation of its tariff is warranted.
45. A declaration that the Defendant is required to approve Plaintiff's application for water services is warranted.
46. Plaintiff is entitled to compensation for any and all effort, delay and expenses caused to the Plaintiff by Defendant's failure and refusal to approve Plaintiff's past or future applications for water services at Holly

Ridge.

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

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

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

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

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

WHEREFORE, Plaintiffs respectfully requests that this

Honorable Court grant the following relief:

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

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

Respectfully submitted,



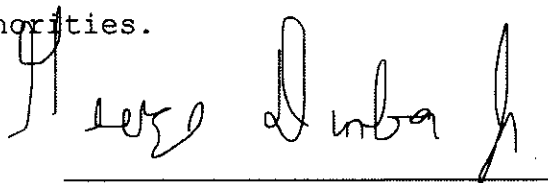
Michael G. Gallacher
Gallacher Law
Counsel for Plaintiff
110 Market Street
Moscow, PA 18444
ID.# 82523

VERIFICATION

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

DATE:

2/10/25



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