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March 19, 2025

VIA ELECTRONIC FILING

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

**RE: Jeffrey McFall v. Pennsylvania-American Water Company
Docket No. C-2025-3053629**

Dear Secretary Chiavetta:

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

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

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------|---|---------------------------|
| Jeffrey McFall, | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2025-3053629 |
| | : | |
| Pennsylvania-American | : | |
| Water Company, | : | |
| Respondent | : | |

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,

STEVENS & LEE



Nicholas A. Stobbe
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DATE: March 19, 2025

*Counsel For Pennsylvania-
American Water Company*

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**PRELIMINARY OBJECTION OF PENNSYLVANIA-AMERICAN WATER COMPANY
TO THE COMPLAINT OF JEFFREY MCFALL**

AND NOW, comes Pennsylvania-American Water Company (“Respondent” or the “Company” and hereby files this Preliminary Objection pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the portion of the Formal Complaint filed by Jeffrey McFall, on behalf of Becks Run Car Wash (“Complainant”), requesting damages be summarily dismissed because the Commission has no power to award damages.

In support thereof, the Company states as follows:

I. BACKGROUND

1. The Company is a “public utility” as the term is defined under the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission.

2. By Secretarial Letter dated February 27, 2025, the Company was served with the above-captioned Complaint. In the Complaint, the Complainant alleges, among other things, that the Company’s infrastructure work on Becks Run Road in Pittsburgh, Pennsylvania, has significantly affected the Complainant’s operations at Becks Run Car Wash and has caused a

decrease in the Complainant's sales. (Complaint ¶ 4, attachment). As relief, the Complainant requests "compensation for income loss December 2024 until [Becks Run] Road is opened to traffic." (Complaint ¶ 5).

3. The Company herein files this Preliminary Objection to the Complaint. For the reasons explained below, the Company respectfully requests that the portion of the Complaint pertaining to a request for monetary damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because a request for damages constitutes impertinent matter. 52 Pa. Code § 5.101(a)(2).

II. STANDARD OF REVIEW

4. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom. *Stilp v.*

Commonwealth, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. V. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. 1992)).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES.

7. The Company incorporates by reference Paragraphs 1 through 6, *supra*, as though fully set forth herein.

8. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

9. In the Complaint, the Complainant argues that the Company should provide “compensation for income loss December 2024 until [Becks Run] Road is reopened to traffic.” (Complaint ¶ 5).

10. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

11. Here, the Complainant's request for damages is impertinent matter "in the sense that it is irrelevant to [the] cause of action" because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g. id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Comm'n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Comm'n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

12. Therefore, consistent with longstanding Commission precedent, the Complainant's request for damages is impertinent matter and should be stricken from the Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Pennsylvania-American Water Company respectfully requests that the portion of the Complaint filed by Jeffrey McFall requesting damages be dismissed because the Commission has no authority to award damages.

Respectfully submitted,

STEVENS & LEE



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VERIFICATION

I, Tawana Dean, Regulatory Compliance Manager with Pennsylvania-American Water Company, verify that the answers and the factual allegations contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

March 19, 2025
Date



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CERTIFICATE OF SERVICE

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

VIA First Class U.S. Mail

Arthur D. Goldman, Esq.
Counsel for Complainant
P.O. Box 115
Paoli, PA 19301
agoldman@arthurgoldmanlaw.com



March 19, 2025

Michael A. Gruin