

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin Henry	:	
	:	
v.	:	F-2025-3053872
	:	
Columbia Water Company	:	

**INTERIM ORDER  
DENYING PRELIMINARY OBJECTION**

This Order denies the preliminary objection of Columbia Water Company and directs that a hearing will be scheduled and held on the claims raised in the Formal Complaint.

**HISTORY OF THE PROCEEDING**

February 27, 2025, Justin Henry (“Complainant” or “Mr. Henry”) filed a Formal Complaint against Columbia Water Company (Columbia) with the Pennsylvania Public Utility Commission (“Commission”). Mr. Henry checked the box “other” on the Formal Complaint form and explained as follows:

The decision was made to run a service line 260’ from my house to a Columbia Water line. Since then, the customer at 4119 Marietta Ave [Complainant’s Service Address] has suffered higher charges for a normal sized house because of the meter charges. 99.2% of all Columbia Water customers have a 5/8” meter, but because of the water main location at 4119 Marietta Ave the customer is forced to pay elevated charges no matter how much water is used.

Complaint, ¶ 4.

For relief, Mr. Henry requested “Columbia Water come up with a solution where I no longer pay more than what a 5/8” meter customer pays” and reimbursement of additional fees previously charges if the Commission determines the fees unjustified. *Id.*, ¶ 5.

On March 28, 2025, Columbia filed an Answer with New Matter to the Complaint. In its Answer, Columbia admitted or denied the allegations of the Complaint. Specifically, Columbia denied that: (1) charges on Complainant’s bill are related to the location of the water main; or (2) charges on Complainant's bill are related to a “normal sized house.” Answer, ¶ 4. Instead, Columbia avers that it bills Complainant in conformity with its Commission approved tariff, i.e., specific rates by meter size. *Id.* Columbia further elaborated in New Matter that it cannot charge Complainant a rate other than the rate specified in its tariff. Columbia concluded its Answer with New Matter by requesting dismissal of the Complaint.

The Answer with New Matter contained a Notice to Plead for Mr. Henry to file a Response to Columbia’s New Matter within 20 days of service. Mr. Henry did not file a Response to Columbia’s New Matter.

On April 30, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

Respondent’s Preliminary Objections are ready to be ruled upon and will be denied in the Ordering paragraphs below.

### DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections and provides:

#### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be

accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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) (emphasis added).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). Therefore, the primary focus is on whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Id.*

Further, while Section 5.63 of the Commission's regulations does permit the presiding officer to consider a fact undisputed when a complainant fails to file a reply to a new

matter, I am mindful that the Complainant is self-represented. 52 Pa. Code § 5.63. In *Carlock v. The United Telephone Company of Pennsylvania*,<sup>1</sup> the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which the self-represented complainant could further explain their position and the factual basis for their complaint. The Commission expressed the concern that, in general, complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. Following this reasoning, it would be inappropriate to grant Columbia's preliminary objection seeking dismissal of the Complaint.

Additionally, as a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility company is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (Code), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with Section 3301 or other provisions of the Code.

In the instant case, viewing the Complaint in the light most favorable to Mr. Henry as the non-moving party and accepting as true every well-pleaded material fact in the Complaint, Mr. Henry raised issues of fact as to Columbia's meter size-based billing. Respondent makes averments in its New Matter and Preliminary Objection that Mr. Henry's billing is correct based upon its Commission-approved tariff. However, that information cannot be ascertained from the face of the Complaint. The Complaint does not indicate Mr. Henry's meter size at the Service Address. The Complaint does not indicate, if Mr. Henry's meter size is 5/8", why he is charged a different rate than a 5/8" meter customer. In deciding preliminary objections, it is only proper to consider the facts set forth in the complaint. Therefore, the facts alleged by Columbia in its New Matter and Preliminary Objection are not considered herein.

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<sup>1</sup> Docket No. F-00163617 (Order entered July 14, 1993).



**F-2025-3053872 - JUSTIN HENRY v. COLUMBIA WATER COMPANY**

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