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File #: 215427

October 14, 2025

***VIA ELECTRONIC FILING***

Matthew Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Pamela Zelaya v. York Water Company**  
**Docket No. F-2025-3053457**

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Dear Secretary Homsher:

Enclosed for filing are the Exceptions of The York Water Company to the Initial Decision in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/bfc  
Enclosures

cc: Special Agent Michael J. Mroczka (*via Email micmroczka@pa.gov*)  
Office of Special Assistants (*via Email ra-osa@pa.gov*)  
Certificate of Service

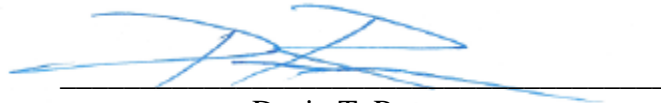
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA EMAIL**

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Date: October 14, 2025



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pamela Zelaya,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2025-3053457
	:	
The York Water Company,	:	
	:	
Respondent.	:	

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**EXCEPTIONS OF THE YORK WATER COMPANY TO THE  
INITIAL DECISION SUSTAINING COMPLAINT**

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## **I. BACKGROUND**

On February 19, 2025, The York Water Company (“York Water” or the “Company”) was served with the Formal Complaint of Pamela Zelaya (“Complainant”), in which the Complainant alleged that the Company had overbilled her for water service.

After receiving an extension to file its responsive pleadings, York Water timely filed its Answer to the Complaint on March 17, 2025.

On June 3, 2025, a telephonic evidentiary hearing was held before Special Agent Michael J. Mroczka (“Special Agent Mroczka”). The Complainant testified on her own behalf and had four exhibits admitted into the record. York Water called one witness to testify on its behalf and had three exhibits admitted into the record. The record closed on June 24, 2024.

On September 23, 2025, the Initial Decision (“ID”) was issued, which sustained the Complaint and directed York Water to recalculate the Complainant’s bills for the billing periods of (1) June 18, 2024 to July 24, 2024 (“July 2024 Billing Period”), (2) July 24, 2024, to August 26, 2024 (“August 2024 Billing Period”), and (3) August 26, 2024, to September 24, 2024 (“September 2024 Billing Period”), using the Complainant’s average usage after September 24, 2024, and to provide a refund to the Complainant for any additional amount already paid by the Complainant.

York Water respectfully files these Exceptions to the ID. As explained in more detail herein, the ID errs in determining that York Water overbilled the Complainant for water usage in the disputed billing periods. No credible evidence supports the ID’s conclusion that York Water’s brand-new meter, which was installed on May 31, 2024, for the Complainant’s recently constructed home, recorded water usage inaccurately, especially when the record reflects that the Complainant’s average daily water usage in the July and August 2024 Billing Periods was lower

than the average daily usage of the Complainant's homebuilder at the same service address before she closed on the property.

Furthermore, the ID incorrectly finds that York Water violated Section 56.12 of the Pennsylvania Public Utility Commission's ("Commission") regulations governing the issuance of estimated bills. According to the ID, York Water failed to present evidence that it "follows or was following the practice of providing estimated bills every other billing month or that it provided [the Complainant] an opportunity to read the meter and provide the usage." (ID at 17.) As a threshold matter, the Complainant did not raise any issues regarding the Company's compliance with Section 56.12 in her Complaint or at the evidentiary hearing. Therefore, any argument about the Company's compliance with Section 56.12 has been waived. Moreover, nothing in the record establishes that York Water failed to provide the Complainant with the opportunity to read the meter and provide the usage to the Company. Instead, the ID improperly makes an adverse finding based solely on the absence of evidence in the record about the Company's compliance. However, findings of fact must be based on substantial evidence that its actually in the evidentiary record. Given that the Complainant did not raise this issue in her Complaint or testimony at the hearing, there was no notice that York Water would need to present any evidence on this issue. Thus, the Commission should reverse the ID's findings regarding the Company's compliance with Section 56.12 of the Commission's regulations, or else York Water will be denied due process.

For these reasons and as explained in more detail in the following sections, York Water respectfully requests that the Commission grant these Exceptions, reverse the ID, and dismiss the Complaint with prejudice.

## II. EXCEPTIONS

### A. EXCEPTION NO. 1: THE ID ERRS IN FINDING THAT YORK WATER OVERBILLED THE COMPLAINANT FOR WATER SERVICE (ID AT 1, 10-15, 18, 21-22; CONCLUSION OF LAW NO. 13.)

The ID should be reversed because it erroneously determines that York Water overbilled the Complainant for water usage in the disputed billing periods. (ID at 1, 10-15, 21-22.) As the Company established, there is no evidence that the meter has been recording water usage inaccurately. (Tr. 54.) This brand-new meter was installed on May 31, 2024, for the Complainant's recently constructed home and was approximately one month old when the account was opened in the Complainant's name on June 18, 2024 (ID at 11.) The Complainant disputed the accuracy of the bills for her water account for the July, August, and September 2024 Billing Periods but not any subsequent billing periods. (ID at 10.) Although the bills for the July, August, and September 2024 Billing Periods were higher than the Complainant's subsequent bills, that does not prove that she was overbilled for the disputed billing periods. (York Exh. C.)

As alleged support for finding that the Complainant was overbilled for water service, the ID points to the builder's elevated water usage in the three weeks preceding the Complainant's water service start date and declares "the fact that the builder was watering the sod over a period of approximately three weeks prior to the opening of Ms. Zelaya's account and allegedly used 54,600 gallons," such usage was "less than the possible usage if the builder continued to water the lawn during Ms. Zelaya's eight-day absence" between June 18, 2024, and June 26, 2024. (ID at 14.) The ID also notes that the Complainant lives alone, has two bathrooms in the house but uses only one of them, does not own any sprinklers to water her lawn, and does not have a swimming pool or a hot tub. (ID at 12.)

The Commission should reverse the ID's conclusion that the Complainant established a *prima facie* case and met her burden to prove that York Water overbilled her for water usage. (ID

at 1, 10-15, 18, 21-22.) The evidentiary record supports the finding that York Water’s meter was recording water usage accurately. The Complainant herself testified that she “doesn’t have any proof” that the meter failed to work properly and that she refused the Company’s offer to test her meter.<sup>1</sup> (Tr. 28.) Also, as the record shows, the builder used approximately 54,600 gallons of water from May 31, 2024, until June 18, 2024, at which time the Complainant started water service in her name. (ID at 4, 7.) That equates to an average daily usage of 3,033 gallons per day (i.e.,  $54,600 / 18 \text{ days} = 3,033 \text{ gallons per day}$ ). (ID at 4, 7.) Across the July and August 2024 Billing Periods, the Complainant used approximately 72,100 gallons, which equates to approximately 1,045 gallons per day (i.e.,  $72,100 / 69 \text{ days} = 1,045 \text{ gallons per day}$ ).<sup>2</sup> (ID at 6.) As for the September 2024 Billing Period, the Complainant’s average daily usage was approximately 200 gallons per day (i.e.,  $5,800 \text{ gallons} / 29 \text{ days} = 200 \text{ gallons per day}$ ). (York Exh. C.)

This trend reveals that the water usage was at its highest when the builder was watering the lawn and in the earlier days of the Complainant’s occupancy of a new home with a new lawn that required extensive watering, after which the water usage decreased over time. That trend is corroborated by the Complainant’s own testimony at the hearing. In particular, she admitted that she “watered [her] shrubs” and that the “[lawn] was green when [she] moved in because it had just

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<sup>1</sup> See Tariff Rule 4.10, Supp. No. 15 to Water-Pa. P.U.C. No. 14, First Revised Page No. 24 (“The meter will be tested upon the written request of the Customer and refund made if a meter is found to be fast at any test in accordance with the Rules set forth in the Water Regulations of the Pennsylvania Public Utility Commission. The Customer shall pay a deposit in advance for testing of the meter in accordance with fees established by the Commission. If the meter tested upon such request shall be found to be accurate within the limits specified by the Commission, the fee shall be retained by the Company; but if not so found, then the cost thereof shall be borne by the Company and the fee deposited by the Customer shall be refunded.”).

<sup>2</sup> The ID incorrectly focuses on this usage figure and compares it to the 8-day period between the Complainant’s closing on the house and her moving into the residence. (ID at 14 n.3.) To be clear, the 72,100 gallons used was for the entire 69 days of the July and August 2024 Billing Periods, not only the 8 days from June 18 to June 26, 2024. (ID at 6.) Moreover, the Complainant testified that she stayed with her son until July 9, 2024, after moving her belongings into the residence. (Tr. 9, 27.) Therefore, the more appropriate comparison is to look at the average daily usage across the 69 days of the July and August 2024 Billing Periods and the average daily usage when the builder had the account in its name. (ID at 6.)

been installed three days before [her] settlement date, where the builder was watering the side morning, noon, and night,” as though “it was never turned off.” (Tr. 9; *see also* Tr. 27, 30.) The Complainant further declared that she did not know “when they stopped watering it” because she was not there “to see” and did not think to “go check.” (Tr. 16.) Therefore, it is reasonable to conclude that the builder was using the water after the account was placed in the Complainant’s name and caused or contributed to the higher water usage on the Complainant’s account.

Yet, the ID concludes that “a comparison of the high bills to the builder’s final bill,” which was based on the 54,600 gallons for 18 days of service, and “Ms. Zelaya’s average bill, suggests that Ms. Zelaya was improperly billed.” (ID at 15.) To the contrary, the comparison of the builder’s final bill for 54,600 gallons actually supports that the meter is accurate, especially when the ID finds that “it is relatively clear that the grass was being watered by someone other than Ms. Zelaya while the account was in her name on June 18, 2024,” and that “it is theoretically possible that there was use of the water by the builder that caused high usage, which did not show up on the first bill because it was estimated.” (ID at 14-15.)

Additionally, it is notable that neither the Complainant nor the ID asserts that the bills rendered since the September 2024 Billing Period are inaccurate. (*See* ID at 10-15; Tr. 32.) In fact, since that billing period, the Complainant’s water usage has been relatively consistent, ranging from 1,300 to 1,800 gallons per month from October 2024 to April 2024. (York Exh. C.) To accept the ID’s conclusion that the meter recorded usage inaccurately, the meter would have to be faulty for the disputed billing periods but somehow correct itself and start recording usage accurately for all subsequent billing periods. Such a conclusion is not supported by the evidentiary record.

Furthermore, the ID appears to fault York Water for not obtaining daily meter reads from the Complainant's meter and not knowing whether the Complainant, the builder, or someone else was using the water during the disputed billing periods. (See ID at 18.) The Company properly obtains monthly meter readings from the Complainant's meter via radiofrequency using its "drive-by system." (Tr. 48.) For the Company to obtain daily meter reads, the Company would have to drive by the Complainant's service address and pull the meter's reading using the drive-by system every day. Such a requirement would be unreasonable, especially since the Company is not required to obtain daily meter reads under the Public Utility Code, the Commission's regulations, or the Company's Commission-approved tariff.<sup>3</sup> Also, the Company cannot tell who is using the water that flows through the meter. (Tr. 46.) York Water only obtains an aggregate reading for the amount of water passing through the meter that was delivered to the Complainant's service address. (Tr. 46.) The Complainant's bills were based on those readings, and the ID errs in finding that those meter reads were inaccurate.<sup>4</sup> (Tr. 46; ID at 1, 10-15, 18, 21-22.)

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<sup>3</sup> See, e.g., 52 Pa. Code §§ 56.2 (defining "billing period"), 56.12; Tariff Rule 10.3, Water-Pa. P.U.C. No. 14, Original Page No. 33 ("Bills for water supplied through meters are due and payable monthly, bi-monthly, or quarter-annually as billed by the Company and shall be paid within twenty (20) days of the postmark date. However, when a meter is removed, the bill becomes payable immediately upon removal of said meter. The Customer will be responsible for the payment of all service rendered by the Company until notice to discontinue the same is received on forms provided by the Company and reasonable time from receipt of such notice has elapsed for the Company to take the final reading of the meter or meters. If the Company renders bills other than monthly, Customers desiring to receive monthly bills will be able to do so upon written notice to the Company.").

<sup>4</sup> Rule 4.9 of York Water's Commission-approved tariff also provides the following:

The quantity recorded by the meter or estimated in accordance with the Company's regular procedures shall be conclusive on both the Customer and the Company, except when the meter has been found to be registering inaccurately or has ceased to register. In such case, an estimated quantity may be determined on the basis of meter registration or such regular estimating procedures during similar preceding periods. No abatement on meter bills will be made for leaks or for water wasted by damaged or defective fixtures or for non-use of water, except as described in Section 56.12(6) of 52 Pa. Code.

Tariff Rule 4.9, Supp. No. 15 to Water-Pa. P.U.C. No. 14, First Revised Page No. 24.

For these reasons, the Commission should grant this Exception, reverse the ID, and dismiss the Complaint with prejudice.

**B. EXCEPTION NO. 2: THE ID INCORRECTLY CONCLUDES THAT YORK WATER FAILED TO COMPLY WITH THE REQUIREMENTS FOR ESTIMATED BILLS UNDER 52 PA. CODE § 56.12 (ID AT 1, 15-18, 21-22; CONCLUSION OF LAW NO. 13.)**

The Commission should reverse the ID's determination that York Water violated the requirements for estimated bills under Section 56.12 of the Commission's regulations. (ID at 1, 15-18, 21-22.) As explained below, the Complainant waived any argument about the Company's alleged noncompliance with Section 56.12, given that the Complainant did not raise the issue in the Complaint, at the hearing, or in any post-hearing submission. Moreover, even if the issue were not waived, nothing in the evidentiary record supports a finding that York Water failed to comply with that regulation.

**1. The Complainant Waived Any Argument that York Water Failed to Comply with Section 56.12 of the Commission's Regulations**

As a threshold matter, the Complainant waived any argument that the Company did not comply with the estimated bill requirements under Section 56.12 of the Commission's regulations. "It is well settled that a party is deemed to have waived its right to assert any issue not addressed during the proceeding or in post hearing Initial Briefs."<sup>5</sup> Here, nothing in the Complaint or in the Complainant's testimony or closing argument at the hearing raised an issue with York Water's

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<sup>5</sup> *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at \*7 (Order dated Feb. 10, 1994) ("*Apollo Gas*"); see also *Pa. PUC v. City of Lancaster – Sewer Fund*, 2007 Pa. PUC LEXIS 783, at \*44 (Order on Remand entered Jan. 31, 2007) ("[I]ssues not raised by a party in its Main Brief are deemed to have been waived") (citing *Apollo Gas*); *Application of Newtown Artesian Water Co. and Indian Rock Water Co.*, 1990 Pa. PUC LEXIS 83, at \*6 (Order dated June 20, 1990) (finding a party does "not have a substantive right to raise entirely new issues in a reply brief where these issues could have or should have been raised in the party's initial brief.") (emphasis in original); *Application of Shenango Valley Water Co.*, 1994 Pa. PUC LEXIS 111, at \*25 (Recommended Decision dated Jan. 25, 1994) (rejecting argument raised for the first time in a party's reply brief, finding that the "argument could and should have been raised in its Main Brief, so [the opposing party] would have an opportunity to respond."), *adopted as modified*, 1994 Pa. PUC LEXIS 110, at \*29 (Order entered July 12, 1994).

compliance with Section 56.12 of the Commission’s regulations. Instead, the ID raises this issue *sua sponte*, thereby denying the Company notice and an opportunity to respond. Therefore, if the Commission were to affirm the ID’s finding on this issue, York Water would be denied due process. Thus, any argument about the Company’s compliance with Section 56.12 has been waived, and the ID’s determination on this point should be reversed for that reason alone.

**2. Nothing in the Evidentiary Record Supports a Finding that York Water Failed to Comply with Section 56.12 of the Commission’s Regulations**

The ID also errs because no evidence in the record supports the finding of noncompliance. Although York Water issued an estimated bill to the Complainant for one month, the July 2024 Billing Period, the ID goes on to find that York Water violated Section 56.12 of the Commission’s regulations because:

There was no evidence presented that York Water follows or was following the practice of providing estimated bills every other billing month or that it provided Ms. Zelaya an opportunity to read the meter and provide the usage. Further, York Water did not offer a cause or claim exigent circumstance that required providing an estimated bill, only that “there could be a number of reasons for that.” Tr. 47. Lastly, there was no testimony that York Water was unable to gain access to the meter to obtain a reading.

(ID at 17) (emphasis added). Findings of fact must be based on substantial evidence in the actual evidentiary record, such as testimony that York Water did not provide the Complainant with the opportunity to read the meter and provide the water usage.<sup>6</sup> The ID, however, erroneously assumes

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<sup>6</sup> Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted). Further, although an agency may use its administrative expertise “to resolve conflicts in the testimony and to draw reasonable inferences from the facts of record,” the “agency cannot use the specialized knowledge . . . as a substitute for evidence.” *Id.* at 872 (citation omitted).

that the Company violated a regulation due to the lack of record evidence on the issue. Because this issue was raised for the first time in the ID and not in the Complaint or in the Complainant's testimony, there was no notice that York Water needed to present any evidence on this issue. Yet, the ID faults the Company for failing to present evidence on its compliance with Section 56.12 and then bases a finding of noncompliance on the absence of any evidence in the record. Thus, the Commission should reverse the ID's findings regarding the Company's failure to comply with Section 56.12 of the Commission's regulations, or else York Water will be denied due process.

Based on the foregoing, the Commission should grant this Exception, reverse the ID, and dismiss the Complaint with prejudice.

**III. CONCLUSION**

WHEREFORE, the Pennsylvania Public Utility Commission should adopt The York Water Company's Exceptions and enter a Final Order consistent with these Exceptions that reverses the Initial Decision and dismisses the Formal Complaint with prejudice.

Respectfully submitted,



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Date: October 14, 2025

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