

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janet Garvey	:	
	:	
v.	:	F-2025-3056873
	:	
Pennsylvania-American Water Company	:	

ORDER
DENYING PRELIMINARY OBJECTION

On August 6, 2025, Janet Garvey (Ms. Garvey or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-America Water Company (PAWC). In her Complaint, the Complainant is challenging her responsibility for payment of a water bill that reflected significantly higher than normal consumption and resulting charges caused by a leak in a coil on her side of the meter in the meter pit. She argues that PAWC’s requirement that the meter pit be located approximately 25 feet from the house prevented her from being able to detect the leak in a timely manner. The Complainant requests that she only be billed for her average water usage towards the leak-affected bill.

On September 3, 2025, PAWC filed an Answer with New Matter along with a Notice to Plead. In its Answer, PAWC admitted in part and denied in part various material allegations of the Complaint. More specifically, PAWC averred that the leak was on the customer’s side of the meter in the meter pit and, therefore, is her responsibility to repair or replace at her expense. In its New Matter, PAWC again argued that the leak was on the customer-owned line and is her responsibility. PAWC also referred to its tariff provision that allows the company to determine and dictate the location of the meter and meter pit. PAWC requested that the Complaint be dismissed.

The Complainant's Answer to PAWC's New Matter was due no later than September 15, 2025. 52 Pa. Code §5.63(a). The Complainant did not file an Answer to PAWC's New Matter.

Also on September 3, 2025, PAWC filed a Preliminary Objection (PO) to the Complaint, along with a Notice to Plead. In its PO, PAWC argued that, because its tariff allows the company to determine and dictate the location of the meter and meter pit, the Complaint is legally insufficient as it fails to set forth a violation of the Public Utility Code, Commission Order or regulation, or the company's tariff.

The Complainant's Answer to PAWC's PO was due no later than September 15, 2025. 52 Pa.Code §§ 5.101(f)(1). The Complainant did not file an Answer to PAWC's PO.

By Motion Judge Assignment Notice dated October 8, 2025, this matter was assigned to me.

PAWC's PO is now ready to be ruled upon. For the reasons discussed below, the PO will be denied and the case will proceed to a hearing.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. The Commission's Rules provide, in relevant part:

§ 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).

When deciding preliminary objections, the Commission must accept as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A. 2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the pleadings in the light most favorable to the nonmoving party and should dismiss a pleading only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); see also, *Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). “For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). 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' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

In this case, the leak at issue was in a coil on the Complainant's side of the meter in the meter pit. Ms. Garvey argues that, because the company required her to locate the meter and meter pit approximately 25 feet from her house when the house was built, she had no reasonable way of detecting the leak in a timely manner. It wasn't until she saw the high consumption notice left on the door of the house that she became aware of a potential leak, which she promptly fixed. In accepting as true all material allegations in the Complaint, as I must do in ruling on PAWC's PO, she is essentially challenging the reasonableness of PAWC's tariff provision that addresses the company's requirements for the location of meters and meter pits. She has the right to do this.

It is well established that a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). However, since the tariff is only *prima facie* reasonable, the Complainant must be given the opportunity to rebut that presumption. It also follows that if the Complainant is able to rebut that presumption, recovery or relief would be possible for the Complainant. That being said, the Complainant should note that a complainant seeking to evade the effect of an existing tariff provision ***carries a very heavy burden*** of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)(emphasis added).

Based on the foregoing, I conclude that PAWC has failed to show that the Complainant would not be entitled to relief under any circumstance as a matter of law and, accordingly, the PO must be denied.

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