

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kura and Janessa Bednash	:	
	:	
v.	:	C-2025-3057280
	:	
Pennsylvania-American Water Company	:	

ORDER
DENYING PRELIMINARY OBJECTION

HISTORY OF THE PROCEEDING

On or about September 2, 2025, John Kura and Janessa Bednash (collectively referred to as “Complainants”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania-American Water Company (“Respondent”). The complaint alleges that Complainants were billed for in excess of 650,000 gallons of water over two billing periods due to a leak in the line located near the water meter. Complaint ¶ 4. The complaint further alleges that Respondent failed to alert Complainants of this usage until close of the billing period on June 30, 2025. Complaint ¶ 4. As relief, the complaint requests adjustment of usage levels and credits to account. Complaint ¶ 5. The complaint was served on September 8, 2025.

On September 29, 2025, Respondent filed an Answer and New Matter along with Preliminary Objections. In its Answer, Respondent denies any wrongdoing and avers compliance with the Commission approved tariff, Rule 4.9. Answer ¶ 4.

In its New Matter, Respondent asserts that the complaint fails to state a claim upon which relief can be granted because Respondent notified Complainants of their elevated usage, the leak occurred in the service line and Respondent complied with Rule 4.9 of Respondent’s Commission approved tariff. New Matter ¶¶ 2-8.

In its Preliminary Objection, Respondent argues that Complainants failed to plead that Respondent violated any applicable law, regulation order or tariff thereby making the complaint legally insufficient as a matter of law under 52 Pa. Code § 5.101(a)(4).

Complainants did not answer or plead to the New Matter.

Complainants did not respond to or plead to the Preliminary Objection.

On October 31, 2025, the Commission issued a Motion Judge Assignment Notice assigning me as the presiding officer.

Respondent's Preliminary Objection is now ready for consideration. For the reasons discussed below, the Preliminary Objection will be denied.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa. Code § 5.101(a). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994) ("*Equitable*"). Commission regulations provide:

§ 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).

For purposes of disposing of Preliminary Objections, the Commission must accept as true all well-pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *County of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). As such, the Commission must view the complaint in this case in the light most favorable to Complainant and should dismiss the complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; see also, *Interstate Traveler Servs., Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979). The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

In this case, Complainants argue that Respondent failed to alert Complainants of the excessive water usage in a timely manner and therefore the usage and bill charges should be adjusted.

The sole Preliminary Objection raised by Respondent is that the complaint is legally insufficient under 52 Pa. Code § 5.101(a)(4). Respondent argues that the complaint is legally insufficient because it fails to allege any act or omission that could be construed as violating the Pennsylvania Public Utility Code, a Commission regulation, a Commission order or Respondent's approved tariff. Specifically, Respondent avers that: (a) Complainants were responsible for the water leak at issue because it occurred in the service line, (b) Respondent notified Complainants about the leak ten days after the close of the first billing period and (c)

Respondent has already applied a 40% leak adjustment to one of the Complainants' service line leak affected bills in accordance with its tariff.

Accepting Complainants' claims that Respondent failed to timely alert Complainants of the service leak and/or properly adjust Complainants' usage could establish a service claim under Section 1501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1501. Although Complainants plead that Respondent notified them of the excess usage by email on June 30, 2025 and came to the property on July 2, 2025 to confirm that leak, Complainants maintain that this constitutes a failure to provide a timely alert of the issue. Given this claim, I must conclude that Complainants have raised a claim upon which relief could be granted, and that dismissal of the case at this preliminary stage must be denied. I will therefore enter an appropriate ruling below.

Although Respondent's Preliminary Objection is denied, I note that the standard of proof at a hearing is different than the standard used to dispose of preliminary motions such as the motion in this case. Complainants must prove, by a preponderance of the evidence, that they are entitled to relief because Respondent has violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff concerning the service provided to them. This is a higher legal standard than that which was used to judge Respondent's Preliminary Objection.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Pennsylvania-American Water company in John Kura and Janessa Bednash v. Pennsylvania-American Water Company at Docket No. F-2025-3057280 is hereby denied.

**F-2025-3057280 - JOHN KURA AND JANELLA BEDNASH v. PENNSYLVANIA
AMERICAN WATER COMPANY**

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