

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Apexus Rosewell Owner LP,

Docket No. C-2025-3059515

Complainant,

v.

The Pittsburgh Water and Sewer Authority  
d/b/a/ Pittsburgh Water,

Respondent.

**ANSWER TO PRELIMINARY  
OBJECTIONS OF THE PITTSBURGH  
WATER AND SEWER AUTHORITY,  
PURSUANT TO 52 Pa. Code § 5.101(f)**

FILED ON BEHALF OF:

Apexus Rosewell Owner, LP

COUNSEL OF RECORD FOR THIS PARTY:

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AND NOW COMES the Complainant Apexus Rosewell Owner LP (“Complainant”), by and through its attorneys, JONATHAN M. KAMIN, ESQUIRE and MOHAMMED S. BURNY, ESQUIRE, and the law firm of GOLDBERG, KAMIN & GARVIN, LLP, and files this *Answer to Preliminary Objections of the Pittsburgh Water and Sewer Authority, Pursuant to 52 Pa. Code § 5.101(f)*, and in support thereof avers as follows:

**I. RESPONSE TO INTRODUCTION.**

1. Complainant admits that Respondent has filed an Answer and New Matter contemporaneously with its Preliminary Objections. Complainant denies that Respondent’s Answer or New Matter establishes any basis for dismissal of the Formal Complaint and its accompanying Addendum. Complainant denies all remaining averments.

2. The corresponding paragraph of Respondent’s Preliminary Objections characterizes a pleading, the averments of which speak for themselves and which Complainant incorporates herein by reference in their entirety. Any mischaracterization of that writing is

denied. By way of a further response, Complainant admits that the Formal Complaint challenges Respondent's charges for stormwater service to its property, that the Complaint specifically challenges Respondent's denial of its application for a stormwater charge credit, and that the Complaint presses the four claims outlined by the Respondent at Paragraph 2 of its Preliminary Objections. Complainant also admits that it has requested the relief described by the Complainant at Paragraph 2, and further responds that it wholly believes that the relief requested is both proper and available under the Pennsylvania Public Utility Code.

3. The corresponding paragraph of Respondent's Preliminary Objections characterizes a pleading, the averments of which speak for themselves. By way of a further response, Complainant admits that Respondent's stormwater charges are calculated using Equivalent Residential Units ("ERUs") pursuant to Respondent's Commission-approved tariff. Complainant denies that Respondent's tariff authorizes the charges imposed in this case as applied to Complainant's property, and further denies that Respondent's denial of stormwater credits to Complainant was lawful, reasonable, or within statutory authority. Finally, Complainant forcefully denies Respondent's characterization of the claims in its Complaint as "entirely baseless, irrelevant, and outside the Commission's jurisdiction."

4. Complainant denies that the Commission lacks jurisdiction over the claims raised in the Formal Complaint or Addendum. Complainant further denies that either the Complaint or the Addendum is legally insufficient or fails to allege entitlement to the requested relief.

## **II. RESPONSE TO PRELIMINARY OBJECTIONS.**

### **A. Response to "Applicable Legal Standards."**

5. The corresponding paragraph of Respondent's Preliminary Objections references a statute that speaks for itself. Any mischaracterization of that statute is denied.

6. The corresponding paragraph of Respondent's Preliminary Objections references a statute that speaks for itself. Any mischaracterization of that statute is denied.

7. The corresponding paragraph of Respondent's Preliminary Objections references Pennsylvania case law which speaks for itself. Any mischaracterization of that case law is denied. By way of a further response, Complainant has sufficiently plead material facts in support of its claims. Claimant incorporates by reference the averments contained in its Formal Complaint and Addendum thereto.

8. The corresponding paragraph of Respondent's Preliminary Objections references Pennsylvania case law which speaks for itself. Any mischaracterization of that case law is denied. By way of a further response, Complainant has sufficiently plead material facts in support of its claims. Claimant incorporates by reference the averments contained in its Formal Complaint and Addendum thereto.

9. The corresponding paragraph of Respondent's Preliminary Objections references a statute that speaks for itself. Any mischaracterization of that statute is denied. By way of a further response, Complainant denies that the Commission lacks jurisdiction over the specific issues presented. Complainant further denies that dismissal is warranted under 52 Pa. Code § 5.101(a)(1).

**B. Response to "Lack of Commission Jurisdiction."**

10. The corresponding paragraph of Respondent's Preliminary Objections references Pennsylvania statutory and case law which speak for themselves. Any mischaracterization of the same is denied. By way of a further response, Complainant admits that the Commission is a statutory agency created by the Pennsylvania General Assembly and in possession of those powers and authority granted to it by the General Assembly and contained in the Public Utility Code. Complainant further admits that the Commission must, as a prerequisite, possess subject matter

jurisdiction to decide a controversy and must act within the scope of this jurisdiction. To the extent that Respondent implies or asserts that the Commission lacks authority or jurisdiction to determine whether a charge imposed by a regulated utility is lawful, reasonable, and within statutory authorization, Complainant denies Respondent's averment that the Commission does not possess such authority or jurisdiction.

11. Denied. The Commission has jurisdiction over Complainant's claims, which concern the legality and application of Respondent's Commission-approved stormwater tariff and the lawfulness of charges assessed thereunder.

- a. Denied. Resolution of whether Respondent may assess stormwater charges for runoff that does not enter Respondent's system, and whether such charges comport with Respondent's tariff and statutory authority, is squarely within the Commission's jurisdiction. The Commission is not being asked to adjudicate aspects of the municipal code in the abstract. To the contrary, Complainant has specifically averred that Respondent has assessed Complainant storm water fees in a manner inconsistent with its tariff. Therefore, the Commission possesses the jurisdiction to decide the issues presented in Section II of the Addendum.
- b. Denied. Determining whether a charge imposed under a Commission-regulated tariff constitutes a lawful service charge or exceeds statutory authority is incidental to, and inseparable from, the Commission's regulatory duties. Complainant does not concede that tax-classification analysis is categorically beyond the Commission's authority. Therefore, the

Commission possesses the jurisdiction to decide the issues presented in Section III of the Addendum.

- c. Denied. The Commission routinely evaluates whether rates, charges, and credit methodologies are applied uniformly and lawfully. Complainant's Uniformity Clause allegations arise directly from Respondent's rate design and tariff application and are properly raised in this proceeding. Therefore, the Commission possesses the jurisdiction to decide the issues presented in Section IV of the Addendum.

12. Denied. The General Assembly has granted the Commission the authority and the jurisdiction, through the Public Utility Code, to regulate public utility rates and charges, including determining whether such charges are lawful, authorized by Commission regulations, and "just and reasonable." 66 Pa. Code §1301. The Commission also has the authority to take appropriate steps to redress the imposition of rates that it finds "unjust, unreasonable, or in anywise in violation of any provision of law." *Id.*, §§ 1301, 1309. *See also* Borough of Lansdale v. Philadelphia Elec. Co., 170 A.2d 565, 566–567 (Pa. 1961) ("...no principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the PUC [Public Utilities Commission]. **Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC—not in the courts. It has been so held involving rates, service, rules of service,...**") (Emphasis added).

13. Complainant denies the averments contained in Paragraph 13 of the Respondent's Preliminary Objections. The Commission possesses jurisdiction over all claims set forth in Complainant's Formal Complaint and Addendum thereto.

14. Complainant denies the averments contained in Paragraph 14 of the Respondent's Preliminary Objections. The Commission possesses jurisdiction over all claims set forth in Complainant's Formal Complaint and Addendum thereto.

**C. Response to "Legal Insufficiency of the Complaint."**

15. Complainant denies the averments contained in Paragraph 15 of the Respondent's Preliminary Objections. Complainant has adequately plead facts which support the relief sought in the Formal Complaint and Addendum thereto.

16. Denied. The Formal Complaint alleges that Respondent imposed stormwater charges beyond the scope of services provided and contrary to the limits of its tariff and statutory authority.

17. Denied. The Formal Complaint alleges violations of the Public Utility Code and Commission-regulated tariff requirements that are legally sufficient to state a claim for relief.

18. Complainant denies the averments contained in Paragraph 18 of the Respondent's Preliminary Objections. Complainant has adequately plead facts which support the relief sought in the Formal Complaint and Addendum thereto.


**III. RESERVATION OF RIGHTS.**

Complainant reserves all rights, claims, defenses, and arguments, whether legal, statutory, regulatory, or constitutional. No averment in this Answer to Respondent's Preliminary Objections shall be deemed a waiver. By asserting Commission jurisdiction over the matters raised in the Formal Complaint, Complainant denies that any issue lies beyond the Commission's authority and preserves the right to seek judicial relief should the Commission determine it lacks authority to grant any portion of the requested relief.

**IV. CONCLUSION.**

WHEREFORE, Complainant Apexus Rosewell Owner LP respectfully requests that the Public Utilities Commission overrule Respondent Pittsburgh Water's Preliminary Objections in their entirety, permit all claims in this matter to proceed, and grant such other relief in favor of the Complainant as the Commission deems just and proper.

Respectfully submitted,

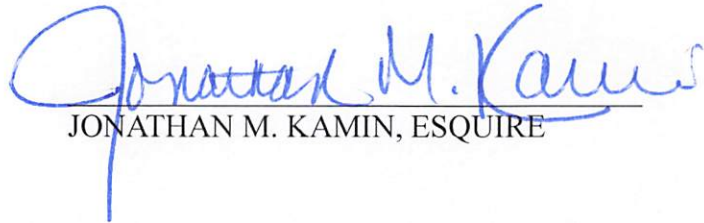
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## VERIFICATION

I, JONATHAN M. KAMIN, Attorney-at-Law, counsel of record for the Complainant in the within matter, hereby certify that the averments set forth in the foregoing ANSWER TO PRELIMINARY OBJECTIONS OF THE PITTSBURGH WATER AND SEWER AUTHORITY, PURSUANT TO 52 Pa. Code § 5.101(f), are true and correct to the best of my knowledge, information, and belief. I am authorized to make this verification on behalf of the Defendant by virtue of my position as counsel of record. I understand that this Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn fabrication to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.

  
JONATHAN M. KAMIN, ESQUIRE

Date: January 30, 2026

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the of the Complainant's ANSWER TO PRELIMINARY OBJECTIONS OF THE PITTSBURGH WATER AND SEWER AUTHORITY, PURSUANT TO 52 Pa. Code § 5.101(f) upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Via Email Only**

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Date: January 30, 2026



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