

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Apexus Rosewell Owner LP	:	
	:	
v.	:	C-2025-3059515
	:	
Pittsburgh Water and Sewer Authority	:	

INTERIM ORDER
Concerning
Preliminary Objections of
Pittsburgh Water and Sewer Authority

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Interim Order denies in part and grants in part the Preliminary Objections of Pittsburgh Water and Sewer Authority and refers the proceeding to the Office of Administrative Law Judge (OALJ) for hearing and disposition. The proceeding concerns the Formal Complaint filed on December 24, 2025, in which Apexus Rosewell Owner LP alleged Respondent’s billing statements contained stormwater management fees that were unjust, unreasonable and did not reflect accurately Complainant’s use of the stormwater system or services.

HISTORY OF THE PROCEEDING

On December 24, 2025, Apexus Rosewell Owner LP (Complainant or Apexus) filed a Formal Complaint (Complaint) against Pittsburgh Water and Sewer Authority (Respondent or PWSA) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged Respondent’s billing statements contained stormwater management fees that were unjust, unreasonable, did not reflect accurately Complainant’s use of the stormwater system or services of PWSA, was an unlawful tax

misidentified as a “fee” that is not reasonably proportional to the benefit received from PWSA’s management, and violates the Uniformity Clause, pursuant to Article VIII, § 1 of the Pennsylvania Constitution. In addition, Apexus argued more than 50% of the stormwater generated from the service address flows directly into Chartiers Creek without conveyance through any element of PWSA’s stormwater management infrastructure. Further, Complainant asserted Chartiers Creek, in Allegheny County, is a legally navigable public waterway outside PWSA’s jurisdiction.

Apexus asked the Commission to: (1) strike PWSA’s method of calculation of the stormwater fee as non-compliant with Pennsylvania law; (2) strike the stormwater fee as an unlawful tax; (3) order PWSA to provide a refund for past stormwater fee charges for stormwater discharged into Chartiers Creek; and (4) reduce the monthly stormwater fee by \$981.61 as a credit for stormwater discharged directly into Chartiers Creek.

On January 20, 2026, Respondent filed and served its Answer and New Matter, with a Notice to Plead. PWSA acknowledged it provides stormwater service to Complainant at the service address consistent with its Commission-approved stormwater tariff. PWSA noted stormwater credits are available to customers who take steps to control and reduce stormwater runoff, for which credit Apexus applied but was denied. PWSA argued it correctly denied the credit because Apexus did not meet the requirements to receive a non-residential credit. Further, PWSA asserted it must comply strictly with the terms of its Commission-approved tariff when imposing stormwater charges, which charges are based on the Equivalent Residential Units (ERUs) of the impervious area at the service address.

PWSA averred it was correct to bill Complainant for stormwater service, and to deny a credit to Apexus, to include the stormwater which flows directly into Chartiers Creek. Respondent argued Apexus must pay for stormwater service consistent with the Commission-approved tariff and, if Apexus is not required to pay for the stormwater service, other customers will be unfairly required to shoulder the burden for any uncollectible amount. PWSA denied the Commission has authority to determine if Chartiers Creek is a “water of the Commonwealth” because the Commission lacks jurisdiction to interpret or apply the City of Pittsburgh Code. PWSA further denied the stormwater fee is a tax because the Commission is empowered to impose the fee but lacks jurisdiction to assess any tax.

In New Matter, PWSA argued the Commission lacks jurisdiction herein to: (1) interpret or apply the City of Pittsburgh Code, or what constitutes a “water of the Commonwealth” pursuant to the City of Pittsburgh Code; (2) determine if the stormwater charge is a “tax”; and/or (3) determine if the calculation of the stormwater charge or the stormwater credit violates the Uniformity Clause of the Pennsylvania Constitution. Accordingly, PWSA contended these claims and all related claims should be dismissed. In addition, PWSA contended the Complaint was insufficient legally, and the Complaint lacked proper verification by an authorized officer or employee.¹

Also, on January 20, 2026, Respondent filed Preliminary Objections (P.O.’s), pursuant to 52 Pa. Code § 5.101 *et seq.*, with a Notice to Plead. PWSA averred the Commission lacks subject matter jurisdiction - which is a prerequisite before the Commission can assume the power to decide a controversy – because: (1) adjudication of the Complaint would require the Commission to interpret, apply and/or adjudicate a claim brought pursuant to the City of Pittsburgh Code concerning what constitutes a “water of the Commonwealth;” (2) the Commission lacks jurisdiction to determine whether PWSA’s stormwater charge is a “tax” under applicable Pennsylvania law; and (3) the Commission lacks jurisdiction to determine whether the calculation of the stormwater charge or stormwater credits violates the Uniformity Clause of the Pennsylvania Constitution.

Further, PWSA averred the Complaint is legally insufficient because Complainant did not set forth any act or omission to act which PWSA, as a public utility, failed to do and/or any statute, regulation or order which PWSA violated. Respondent asserted Complainant did not allege any violation by it and did not allege any facts that would support a finding that it violated the Public Utility Code, the Commission’s regulations or Orders, or PWSA’s Commission-approved tariff. Accordingly, PWSA contended a hearing would consume resources and time on issues over which the Commission cannot grant relief, and the Commission should dismiss the Complaint without a hearing.

On January 30, 2026, Apexus filed the Answer to Preliminary Objections of the Pittsburgh Water and Sewer Authority, pursuant to 52 Pa. Code § 5.101(f) (Answer to P.O.’s). Apexus denied the Commission lacks jurisdiction, denied the Complaint is legally insufficient and denied it is not entitled to the requested relief. Complainant noted the Commission has the authority to determine

¹ On January 30, 2026, Complainant filed with the Commission a fully-executed verification for the Complaint.

which charges are lawful and to take appropriate steps to redress the imposition of rates. Complainant further noted it cannot seek redress through the courts because the lawfulness of imposed rates and fees are specifically within the jurisdiction of the Commission.

On February 10, 2026, Apexus filed the Reply to New Matter in the Answer of the Pittsburgh Water and Sewer Authority, pursuant to 52 Pa. Code § 5.63 (Reply to New Matter). Apexus denied generally the characterizations in Respondent’s New Matter. Apexus denied it requested an interpretation or enforcement of municipal code provisions by the Commission. Complainant argued the Complaint specifically concerned the imposition of stormwater charges and denial of credit eligibility, which it contended are actions by a public utility and within the jurisdiction of the Commission.

By Motion Judge Assignment Notice dated February 23, 2026, the Commission’s Office of Administrative Law Judge (OALJ) assigned the case to the undersigned presiding officer for purposes of ruling on Respondent’s Preliminary Objections.

DISCUSSION

This Interim Order grants in part the Preliminary Objections of PWSA to the extent Complainant seeks a Commission order brought pursuant to the City of Pittsburgh Code (concerning whether Chartiers Creek is a “water of the Commonwealth”), a Commission order determining PWSA’s stormwater charge is a “tax” and a Commission order determining PWSA’s calculation of the stormwater charge or stormwater credit violates the Uniformity Clause of the Pennsylvania Constitution.

This Interim Order denies in part the Preliminary Objections of PWSA because the Complaint alleges claims related to PWSA’s actions when billing for stormwater service and PWSA’s actions to deny Complainant eligibility for stormwater credits.

Preliminary Objections

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Motions.² Commission preliminary motion practice is similar to Pennsylvania civil practice respecting the filing of preliminary objections.³ Commission regulations permit the filing of a preliminary motion questioning the jurisdiction of the Commission.⁴ In ruling on a motion to dismiss, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true.⁵ The motion may be granted only if the moving party prevails as a matter of law.⁶

Preliminary objections, under the Commission's regulations, are available to parties and allow for objections to be filed in response to any pleading except a motion or prior preliminary objections. A party filing preliminary objections must include a notice to plead, must state specifically the legal and factual grounds relied upon and limit the objections 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 Chapter 5, Title 52 of the Pennsylvania Code, or include 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).

² 52 Pa. Code § 5.101 and § 5.103.

³ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (1994).

⁴ 52 Pa. Code § 5.101 and § 5.103.

⁵ *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

⁶ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

The party against whom preliminary objections are filed may file an answer to the preliminary objections but the answer must be filed within ten days of the date when the preliminary objections are served.⁷ Then the presiding officer will decide the preliminary objections within thirty days of the date the preliminary objection is assigned to the presiding officer.⁸

PWSA, as the moving party, may not rely on its own factual assertions, but must accept all well-pleaded, material facts of Apexus, as well as every inference fairly deducible from those facts, for the purposes of disposition of the preliminary objections.⁹ Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that Apexus's factual allegations in the Complaint are true.¹⁰ Accordingly, PWSA's preliminary objection may be granted only if PWSA prevails as a matter of law,¹¹ but any doubt must be resolved in favor of Apexus by refusing to sustain the preliminary objections.¹²

The Commission has the discretion to "dismiss any complaint without hearing if, in its opinion, a hearing is not necessary in the public interest."¹³ A hearing is necessary only to resolve disputed questions of fact and, when the question presented is solely one of law, the Commission need not hold a hearing.¹⁴ The public interest does not require a hearing in a case which would be a fruitless exercise and, therefore, not necessary or in the public interest.¹⁵

Pursuant to Section 501 of the Code, 66 Pa.C.S. § 501, the Commission must "enforce, execute and carry out, by its regulations, orders or otherwise" all the provisions of the Code. Section 701 of the Code, 66 Pa.C.S. § 701, allows any person, having an interest in the subject matter, to file a complaint in writing with the Commission setting forth any act or thing done or omitted to be done by

⁷ 52 Pa.Code § 5.101(f)(1).

⁸ 52 Pa.Code § 5.101(g).

⁹ *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985).

¹⁰ *Id.*

¹¹ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

¹² *Dept. of Auditor General, et al. v. State Employees' Retirement Sys., et al.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

¹³ 66 Pa.C.S. § 703(b). See also 52 Pa.Code § 5.21(d).

¹⁴ *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989). See also *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

¹⁵ *Musisko v. Pennsylvania American Water Co.*, Docket No. C-2008-2061663 (Final Order entered May 13, 2009).

any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer.¹⁶

Disposition

Complainant is a customer of PWSA which receives stormwater service and wastewater conveyance service from PWSA at commercial property located at 2250 Roswell Drive, Pittsburgh, Pennsylvania (service address). Complainant contests the imposition of the stormwater fee on its account because one-half of the stormwater run-off at the service address flows into a local creek and outside PWSA's stormwater conveyance system. In addition, Complainant is heard to complaint about PWSA's refusal to find it is eligible for a stormwater credit.

First, the regulations permit PWSA to file preliminary objections to dismiss a pleading for lack of jurisdiction if PWSA would prevail on its claims as a matter of law,¹⁷ assuming all well-pleaded facts in the Complaint are true. However, any doubt must be resolved in favor of Apexus, after accepting as true all well-pleaded facts in the Complaint.¹⁸

As a creature of the legislature, this Commission only has those duties, powers, responsibilities, and jurisdiction specifically granted to it.¹⁹ The Pennsylvania Supreme Court has held this Commission does not have jurisdiction to determine the scope and validity of an easement.²⁰ Furthermore, jurisdiction may not be conferred by the parties where none exists.²¹ In other words, the Commission cannot gain jurisdiction even if both sides to the dispute agree the Commission has jurisdiction. The Commission has initial jurisdiction only over "matters involving the reasonableness, adequacy or sufficiency of a public utility's service, facilities or rates."²² Subject matter jurisdiction is

¹⁶ See 52 Pa.Code § 5.21(a).

¹⁷ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

¹⁸ See 52 Pa.Code § 5.101(a)(1).

¹⁹ *Rogoff v. Buncher Co.*, 151 A.2d 162 (Pa. 1985).

²⁰ *Fairview Water Co. v. Pa. Pub. Util. Comm'n.*, 502 A.2d 162 (Pa. 1985).

²¹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

²² *DeFrancesco et al. v. Western Pennsylvania Water Company*, 435 A.2d 614, 616 (Pa. Super. 1981) vacated and remanded on other grounds, 453 A.2d 595 (Pa. 1982).

a prerequisite to the exercise of the power to decide a controversy and without it, the Commission cannot proceed to adjudicate a dispute.²³

The proceeding cannot be dismissed entirely on the grounds Complainant failed to allege an issue within the Commission's jurisdiction. Herein, there is a factual dispute about an issue over which the Commission does have jurisdiction. Three issues remain arising, primarily, from PWSA's obligation to provide reasonable and adequate, and each issue is squarely within the Commission's jurisdiction to hear and adjudicate. Those three issues are: (1) whether the stormwater fee charged to Complainant was calculated correctly by Respondent and consistent with the Commission-approved tariff; (2) whether circumstances have changed so significantly since the Commission approved PWSA's tariff provision – permitting the imposition of the stormwater fee – that the imposition of the fee to Complainant's account has become unjust and unreasonable despite its prior approval by the Commission; and (3) whether Respondent provided reasonable and adequate customer service when it denied Complainant's request for a stormwater credit.

Lastly, the Complaint raises a claim that would show, if proven, Respondent failed in some way to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, pursuant to 66 Pa.C.S. § 1501. The Commission has subject matter jurisdiction over claims concerning how Respondent calculated billing statements including stormwater fees, how it determined eligibility for stormwater credits and the reasonableness of a duly-approved tariff.²⁴ Section 703 of the Public Utility Code, 66 Pa.C.S. § 703(b), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing, is not necessary in the public interest. However, in this proceeding, a hearing is necessary to the public interest. 66 Pa.C.S. §§ 332, 1501 and 703(b).

Accepting as true all well-pleaded facts in the Complaint, I find Complainant alleges sufficient facts that, if proven, might justify the issuance of an Initial Decision sustaining the Complaint and finding PWSA failed to provide adequate and reasonable customer service, pursuant to 66 Pa.C.S. § 1501, and/or failed to comply in some way with the Commission's regulations, rules or orders.

²³ *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

²⁴ 66 Pa.C.S. § 101, *et seq.* and § 332.

Respondent's P.O.'s will be denied, to the extent the three issues specified above remain at issue. The P.O.'s will be granted to the extent the Complaint prays for an adjudication and/or relies on interpretation of any order, statute, regulation or provision that does not arise from the Pennsylvania Public Utility Code and/or the Commission's own regulations and order, as well as Respondent's duly authorized tariff.

Accordingly, the Complaint will be scheduled for hearing before an administrative law Judge in the Office of Administrative Law Judge, in the Ordering Paragraphs below.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Pittsburgh Water and Sewer Authority in the Formal Complaint of Apexus Rosewell Owner LP against Pittsburgh Water and Sewer Authority at Docket No. C-2025-3059515 are denied in part and granted in part.
2. That the Preliminary Objections filed by Pittsburgh Water and Sewer Authority are granted in part in that the Public Utility Commission lacks jurisdiction over claims and/or adjudications brought pursuant to the City of Pittsburgh Code, over claims alleging the stormwater charge is a tax or whether the stormwater charge violates the Uniformity Clause of the Constitution of the Commonwealth of Pennsylvania.
3. That the Preliminary Objections filed by Pittsburgh Water and Sewer Authority are denied in part in that the allegations in the Formal Complaint are legally sufficient to show Complainant is entitled to an opportunity to prove the stormwater fee was calculated incorrectly,

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