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File #: 3297/139007

August 27, 2009

BY E-FILE AND BY HAND

James J. McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265


**RE: Robert W. Lynyak v. Superior Water Company, Inc.; Docket No. C-2009-2124527;
PRELIMINARY OBJECTIONS OF SUPERIOR WATER COMPANY, INC. TO
THE COMPLAINT OF ROBERT W. LYNYAK**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the Preliminary Objections of Superior Water Company, Inc. to the Complaint of Robert W. Lynyak in the above-referenced proceeding.

If you have any questions regarding this filing, please direct them to me. Please date-stamp the extra copy and return it with our courier. Thank you for your attention to this matter.

Very truly yours,


Christopher T. Wright

CTW/skr
Enclosures
cc: Certificate of Service

CERTIFICATE OF SERVICE

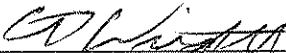
I, Christopher T. Wright, hereby certify that I have this day served a true copy of the foregoing Preliminary Objections to the Complaint of Robert W. Lynyak upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

VIA FIRST CLASS MAIL

Robert W. Lynyak
118 Birdsong Way
Pottstown, PA 19464

Complainant Pro Se

DATED: August 27, 2009



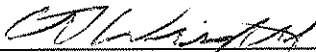
Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT W. LYNKYAK,	:	
Complainant	:	
	:	Docket No. C-2009-2124527
v.	:	
	:	
SUPERIOR WATER COMPANY, INC.,	:	
Respondent	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR SUPERIOR WATER COMPANY, INC.



David P. Zambito, I.D. No. 80017
Christopher T. Wright, I.D. No. 203412
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DATED: August 27, 2009

Counsel for Superior Water Company, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT W. LYNYAK,	:	
Complainant	:	
	:	Docket No. C-2009-2124527
v.	:	
	:	
SUPERIOR WATER COMPANY, INC.,	:	
Respondent	:	

**PRELIMINARY OBJECTIONS OF
SUPERIOR WATER COMPANY, INC.
TO THE COMPLAINT OF ROBERT W. LYNYAK**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes Superior Water Company, Inc. ("Superior"), by and through its attorneys, Post & Schell, P.C., and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission ("Commission") at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss, in its entirety, the above-captioned Complaint filed by Robert W. Lynyak, docketed at Docket No. C-2009-2124527 ("Complaint"). In support thereof, Superior states as follows:

I. BACKGROUND

1. Superior is a certificated Pennsylvania public utility providing safe, reliable and affordable water service to the public in Montgomery, Berks and Chester Counties, pursuant to

certificates of public convenience at Docket Nos. A-212955, *et al.* Superior's principal place of business is 1885 Swamp Pike, Suite 109, Gilbertsville, Pennsylvania 19525.

2. Mr. Lynyak is an adult individual residing at 118 Birdsong Way, Pottstown, Montgomery County, Pennsylvania 19464. Mr. Lynyak is a customer of Superior. (Complaint at p. 5.)

3. Superior filed a rate case in May 2008. On February 5, 2009, the Commission approved a final rate increase of \$522,500 at Docket No. R-2008-2039261. Prior to such increase, Superior had not sought or received a rate increase since 2000.

4. The 2009 rate increase was fully supported by the substantial evidence of record, and the Office of Trial Staff and the Office of Consumer Advocate fully participated in the case.

5. On August 5, 2009, Mr. Lynyak filed a Formal Complaint against Superior. Said Complaint was served on August 14, 2009.

6. In the Complaint, Mr. Lynyak challenges the rate increase approved by the Commission on February 5, 2009, at Docket No. R-2008-2039261, contending that the rate increase is "egregious" and "outrageous." (Complaint at p. 6, ¶ 4.)

7. In his prayer for relief, Mr. Lynyak requests, *inter alia*, that the Commission limit the increase in Superior's rates to 7%. (Complaint at p. 6, ¶ 5.)

8. Also in his prayer for relief, Mr. Lynyak makes several unsubstantiated allegations suggesting that both the Commission and Superior have purportedly engaged in unethical, inappropriate, or otherwise unlawful behavior. (Complaint at p. 6, ¶ 5.)

9. Superior herein files these Preliminary Objections to Mr. Lynyak's Complaint and, for the reasons explained below, request that the Complaint be dismissed in its entirety, pursuant to Section 5.101(a) of the Commission's Rules of Administrative Practice and

Procedure, 52 Pa. Code § 5.101(a), for inclusion of scandalous and impertinent matter and for legal insufficiency of the pleading.

II. STANDARD OF REVIEW

10. Pursuant to the Commission’s Rules of Administrative Practice and Procedure, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

11. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep’t of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005); accord *Complaint of Nat’l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

III. PRELIMINARY OBJECTIONS

A. Preliminary Objection No. 1: Inclusion of Scandalous or Impertinent Matter

12. Superior incorporates by reference Paragraphs 1 through 11 as if fully set forth herein.

13. In his Complaint, Mr. Lynyak includes the following unsubstantiated allegations suggesting that Superior has purportedly engaged in unethical, inappropriate, or otherwise unlawful behavior:

- (a) “People can no longer borrow to pay CEOs of shitty-ass utility companies such as superior.”
- (b) “Please remove the seamlessly corrupt managers of the PUC who were behind this passing and why your at it launch an ethics probe into their personal finances to make sure they’re not accepting bribes.”

(Complaint at p. 6, ¶ 5.)

14. In his Complaint, Mr. Lynyak includes the following unsubstantiated allegations suggesting that the Commission has purportedly engaged in unethical, inappropriate, or otherwise unlawful behavior:

- (a) “I want someone from the PUC fired ASAP!”
- (b) “What was the PUC thinking? And better yet which director needs to be fired?”
- (c) “Please remove the seamlessly corrupt managers of the PUC who were behind this passing and why your at it launch an ethics probe into their personal finances to make sure they’re not accepting bribes.”

(Complaint at p. 6, ¶¶ 5, 6.)

15. Importantly, Mr. Lynyak's Complaint purports to challenge the Commission's approval of a rate increase for Superior. The Pennsylvania Public Utility Code requires that all rates shall be just and reasonable and non-discriminatory. 66 Pa.C.S. §§1301, 1304.

16. The above-mentioned averments set forth in Paragraphs 5 and 6 of Mr. Lynyak's Complaint are not relevant or material to whether the Commission-approved rate is just, reasonable, non-discriminatory, and otherwise in compliance with the law.

17. Allegations that are immaterial and inappropriate to the proof of the cause of action qualify as scandalous or impertinent matter. *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998).

18. For example, *Rollinson v. Clarke-DeMarco*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 363 (Pa. County Ct. 2007), a trial court sustained preliminary objections, with prejudice, for inclusion of the phrase that the party "never made any inquiries regarding payment on supposed balance due, and stopped work in breach of his contractual obligation, and because he had obviously, inappropriately, squandered or otherwise dissipated, the money paid upfront, and *needed to find another unwary victim*, and work on a different project instead." *Id.* at *12-*13 (emphasis in original). The court concluded that the language was clearly impertinent and prejudicial and, therefore sustained the preliminary objections with prejudice.

19. The above-mentioned averments set forth in Paragraphs 5 and 6 of Mr. Lynyak's Complaint are scandalous and impertinent and, therefore, are grounds for preliminary objections pursuant Section 5.101(a)(2) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101(a)(2).

B. Preliminary Objection No. 2: Legal Insufficiency of Pleading.

20. The Complaint fails to state a cause of action upon which relief can be granted.

21. Mr. Lynyak's Complaint purports to challenge the Commission's approval of a rate increase for Superior.

22. On February 5, 2009, the Commission approved a final rate increase of \$522,500 at Docket No. R-2008-2039261.

23. The 2009 rate increase was fully supported by the substantial evidence of record, and the Office of Trial Staff and the Office of Consumer Advocate fully participated in the case.

24. The Pennsylvania Public Utility Code requires that all rates shall be just and reasonable and non-discriminatory. 66 Pa.C.S. §§1301, 1304.

25. The Complaint fails to set forth any material facts to suggest that the existing rates are unjust and unreasonable.

26. Accordingly, Lynyak's Complaint fails to state a cause of action upon which relief may be granted and, therefore, should be dismissed pursuant Section 5.101(a)(2) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101(a)(2).

IV. CONCLUSION

27. Mr. Lynyak's allegations suggest, without any supporting evidence, that both the Commission and Superior have engaged in unethical, inappropriate, or otherwise unlawful behavior. Further, Mr. Lynyak's Complaint uses crude and offensive language that demeans the dignity of this Honorable Commission's legal process.

28. Inclusion of such scandalous and impertinent matter is grounds for the granting of Superior's preliminary objections.

29. Lynyak's Complaint is legally insufficient because it fails to set forth a cause of action upon which relief may be granted by this Commission.

30. Based on the foregoing, the Complaint should be dismissed.

WHEREFORE, Superior Water Company, Inc. respectfully requests that the Complaint of Robert W. Lynyak be dismissed in its entirety.

Respectfully submitted,



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DATED: August 27, 2009

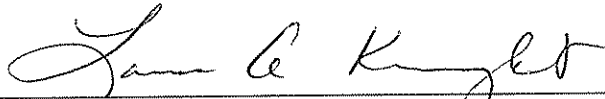
Counsel for Superior Water Company, Inc.

VERIFICATION

I, Louise A. Knight, Chief Operating Officer of Superior Water Company, Inc. d/b/a Superior Water Company, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

8/27/09



Louise A. Knight, Chief Operating Officer
Superior Water Company, Inc.
d/b/a Superior Water Company
1885 Swamp Pike, Suite 109
Gilbertsville, PA 19525