

MARGARET A. MORRIS, ESQUIRE  
DIRECT DIAL: (215) 495-6524  
E-MAIL: [mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

April 30, 2010

**VIA Electronic Filing**

Ms. Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building – 2 North  
P.O. Box 3265  
Harrisburg, PA 17105

**Re: Docket No. C-2010-2167287  
Jerry Rubin v Aqua PA, Inc.  
Preliminary Objections of Aqua Pennsylvania, Inc.**

Dear Secretary Chiavetta:

Enclosed for filing, please find the original of the Preliminary Objections of Aqua Pennsylvania, Inc. in the above-captioned proceeding.

As indicated on the certificate of service, a copy of the Preliminary Objections has been provided to the Complainant in the manner indicated.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris, Esquire

MAM/jmm  
Enclosures

cc: Jerry Rubin

**Re: Docket No. C-2010-2167287  
Jerry Rubin v Aqua PA, Inc.  
Preliminary Objections of Aqua Pennsylvania, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**Via E-mail and First Class Mail**

Mr. Jerry Rubin  
998 E. Circle Drive  
Whitefish Bay, WI 53217  
[jrubin1@wi.rr.com](mailto:jrubin1@wi.rr.com)

Dated: April 30, 2010

  
Margaret A. Morris, Esquire

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JERRY RUBIN,** :  
 :  
 **Complainant** :  
 :  
 **v.** : **Docket No. C-2010-2167287**  
 :  
 **AQUA PENNSYLVANIA INC.** :  
 :  
 **Respondent.** :

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Aqua Pennsylvania, Inc. within ten (10) days from service of this notice, the facts set forth by Aqua Pennsylvania, Inc. in the Preliminary Objections may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania, Inc., Margaret A. Morris and where applicable the Administrative Law Judge presiding over the issue.

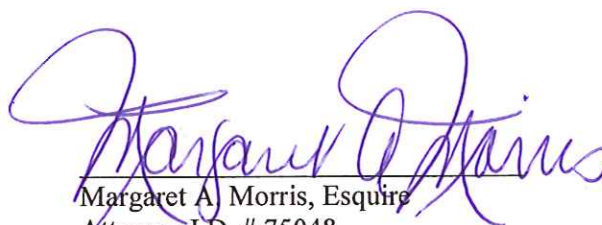
**File with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building – 2 North  
P.O. Box 3265  
Harrisburg, PA 17105

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall, LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Dated: April 30, 2010



Margaret A. Morris, Esquire  
Attorney I.D. # 75048  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 (voice)  
(215) 495-6600 (fax)  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Counsel for Aqua Pennsylvania, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JERRY RUBIN</b>	:	
<b>Complainant</b>	:	
<b>v.</b>	:	<b>Docket No. C-2010-2167287</b>
<b>AQUA PENNSYLVANIA, INC.</b>	:	
<b>Respondent.</b>	:	

**PRELIMINARY OBJECTIONS**

TO: The Pennsylvania Public Utility Commission

Aqua Pennsylvania, Inc. (“Respondent” or “Company”) hereby moves, pursuant to 52 Pa. Code § 5.101, to dismiss with prejudice the Formal Complaint of Jerry Rubin (“Complainant”) as the Complainant is not a customer of record for the premise located in the Company’s service territory. Furthermore, the Complaint lacks sufficient specificity so that the Respondent can adequately answer the pleading<sup>1</sup>. The Complaint was filed on March 26, 2010, in the above captioned proceeding, and in support thereof, the Company avers as follows:

**A. Summary of Argument**

1. The Complaint alleges that there is a “reliability, safety or quality problem” with the water service provided at 1 Lindley Avenue, Factoryville, PA (“the premise”). Additionally, the Complaint opposes the Company’s proposed rate increase.

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<sup>1</sup> Consistent with PUC Regulations, an Answer will not being filed until further directed by the presiding officer or the Commission. 52 Pa Code § 5.101(e) (1).

Complaint ¶ 4A. The allegations were “checked” in Section 4 of the PUC Formal Complaint form. No other information/details are provided.

2. The requested relief is stated below in its entirety:

“As you can see by their letter & confirmed by them & my neighbors it is not my home alone but rater [sic] the whole area where they are drawing our water. There [sic] letter clearly states that it is the well.”

Complaint ¶ 5.

No letters or documents were attached to the Complaint.

3. The customer of record is Rubin Frost Holdings LLC, a corporation registered in the state of Wisconsin. The Complaint was filed in the name of Jerry Rubin.

4. The Complainant has not provided any documentation that he has the legal authority to file a complaint on behalf of the customer of record.

5. The Complainant provides no information as to the relationship of the customer of record and himself. The Complainant lacks the capacity to sue and should be dismissed. 52 Pa Code § 5.101(a) (5.)

6. The Complaint as drafted is insufficient as to specificity so that the Respondent can answer the Complaint. The allegations are general in nature and it is unclear as to the relief requested. Without further information, Respondents is unable to respond, let alone resolve, the alleged problems with the utility service rendered to the premise. The Complaint must be amended so that the Respondent can answer and defend the matter. 52 Pa Code § 5.101(a) (3.)

**B. Procedural History**

7. On March 26, 2010, the Complainant filed a Formal Complaint with the Commission under Docket No. C-2010-2167287, a copy of which is attached hereto as Exhibit "A".

8. The Complainant seeks a hearing, before the Commission regarding (1) its opposition to the Company's rate increase and (2) a reliability, safety or quality problem with water service at the premise in Factoryville, PA. No relief is stated.

9. The customer of record is Rubin Frost Holdings LLC.

**C. The Complaint Should Be Dismissed Since The Complainant Is Not The Customer Of Record And Does Not Have The Legal Authority To File The Complaint.**

10. The customer of record is Rubin Frost Holdings, LLC, a registered Wisconsin corporation. A copy of the certificate of standing for the customer of record is attached hereto as Exhibit "B".

11. Commission precedent does permit a non-attorney officer on behalf of a corporation to complete the Commission's formal complaint form. *Snyderville Community Development Corp. v PGW*, Docket No. C-20055032, entered July 31, 2006. However, the corporation must be represented by counsel at the hearing. *LeStat Corp. v PPL*, Docket No. C-00946284, entered August 30, 1995.

12. In the present proceeding, the Complaint was filed by Jerry Rubin in the name of Jerry Rubin, not Rubin Frost Holdings LLC. There is no indication as to the relationship of Jerry Rubin to the customer of record.

13. The Complainant does not provide any indication or support of its relationship to file the Complaint on behalf of the customer of record, a Wisconsin corporation.

14. The Complaint filed in the name of Jerry Rubin should be dismissed with prejudice. 52 Pa Code § 5.101(a) (5.) In the alternative, Jerry Rubin must provide documentation regarding his authority to file the Complaint on behalf of the customer of record, a Wisconsin corporation.

**D. The Complaint, As Filed Does Not Provide Specificity As To The Allegations or Relief Requested so that the Respondent Can Answer The Complaint.**

15. The Complaint as filed is too vague and general with no requested relief stated. More specificity, as well as referenced documentation, is required as to the allegations so that the Respondent can answer the Complaint.

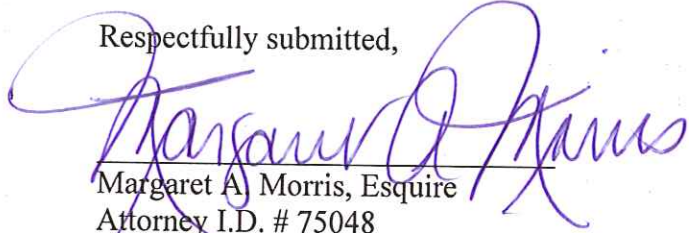
16. The Complaint must be amended so that the allegations and relief requested are clearly stated so that the Company can answer the Complaint. 52 Pa Code § 5.101(a) (3.)

**WHEREFORE**, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that this Honorable Court, in the absence of a hearing, dismiss with prejudice the Complaint filed by Jerry Rubin since Mr. Rubin is neither the customer of record and there is no indication that Mr. Rubin is authorized to act on behalf of the customer of record, Rubin Frost Holdings LLC, a Wisconsin corporation. Furthermore, Aqua Pennsylvania requests that the Complaint be amended so that the allegations are clearly

explained and the relief requested stated so that Aqua Pennsylvania can answer the Complaint.

Dated: April 30, 2010

Respectfully submitted,



Margaret A. Morris, Esquire  
Attorney I.D. # 75048  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 (voice)  
(215) 495-6600 (fax)  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Counsel for Aqua Pennsylvania, Inc.

**Docket No. C-2010-2167287**

**Jerry Rubin v Aqua PA**

**EXHIBIT "A"**

**FORMAL COMPLAINT**

**filed on March 26, 2010**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

4-5-10  
received

IN REPLY PLEASE  
REFER TO OUR FILE

**DATE SERVED: March 31, 2010**

C-2010-2167287

AQUA PENNSYLVANIA INC  
NICHOLAS DEBENEDICTIS CHAIRMAN  
762 WEST LANCASTER AVE  
BRYN MAWR PA 19010

Dear Mr. DeBenedictis:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by JERRY RUBIN. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

**CUSTOMER OF A UTILITY**

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

**COMPANY/UTILITY**

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

March 31, 2010

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script that reads "James J. McNulty". The signature is written in dark ink and is positioned above the printed name and title.

James J. McNulty  
Secretary

ane

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DATE SERVED: March 31, 2010**

**JERRY RUBIN**

Complainant

v.

**AQUA PENNSYLVANIA, INC.**

Respondent

Complaint Docket

No: **C-2010-2167287**

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**FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY**

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**TO: AQUA PENNSYLVANIA, INC.**

**TAKE NOTICE:**

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

COPY

Please print in ink or type. C-2010-2167287

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name JERRY RUBIN

Street/P.O. Box 998 E. CIRCLE DRIVE Apt #

City WHITEFISH BAY State WI Zip 53217

County MILWAUKEE

Daytime Telephone Number Where We Can Contact You: (414) 698-9638

E-mail Address (optional): jrubin1@wi.rr.com

Utility Account Number (from your bill) 001101406 0805026

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name JERRY RUBIN

Street/P.O. Box 1 LINDLEY AVENUE

City FACTORVILLE State PA Zip 18419

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

AQUA PENNSYLVANIA

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE (local, long distance)

RECEIVED 2010 MAR 26 AM 9:27 PA.P.U.C. SECRETARY'S BUREAU

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

AS YOU CAUSE BY THEIR LETTER & CONFIRMED  
BY THEM & MY NEIGHBORS IT IS NOT MY HOME  
ALONE BUT RATHER THE WHOLE AREA WHERE  
THEY ARE DRAWING OUR WATER.  
THEIR LETTER CLEARLY STATES THAT IT IS  
THE WELL!

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

PLEASE SEE THEIR COMPLETE RESPONSE

8. LEGAL REPRESENTATION (IF ANY) NONE @ THIS TIME

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

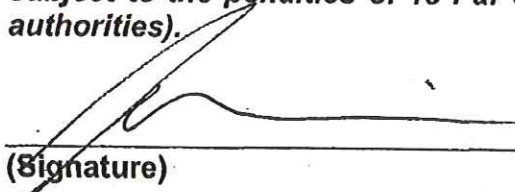
Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

**9. VERIFICATION AND SIGNATURE**

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

**Verification:** I, JERRY RUBIN, hereby state that the facts above set forth are true and correct (or 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).

  
\_\_\_\_\_  
(Signature) 22 MAR 2010  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

**10. FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

**Docket No. C-2010-2167287**

**Jerry Rubin v Aqua PA**

**EXHIBIT "B"**

**CERTIFICATE OF STANDING**

**For Rubin Frost Holdings LLC**

United States of America  
State of Wisconsin



DEPARTMENT OF FINANCIAL INSTITUTIONS

Division of Corporate & Consumer Services

To All to Whom These Presents Shall Come, Greeting:

I, RAY ALLEN, Deputy Administrator, Division of Corporate & Consumer Services, Department of Financial Institutions, do hereby certify that

**RUBIN/FROST HOLDINGS, LLC**

is a domestic corporation or a domestic limited liability company organized under the laws of this state and that its date of incorporation or organization is July 19, 2006.

I further certify that said corporation or limited liability company has, within its most recently completed report year, filed an annual report required under ss. 180.1622, 180.1921, 181.1622 or 183.0120 Wis. Stats., and that it has not filed articles of dissolution.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department on April 30, 2010.

A handwritten signature in black ink, appearing to read 'Ray Allen'.

RAY ALLEN, Deputy Administrator  
Division Of Corporate & Consumer Services  
Department of Financial Institutions

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Effective July 1, 1996, the Department of Financial Institutions assumed the functions previously performed by the Corporations Division of the Secretary of State and is the successor custodian of corporate records formerly held by the Secretary of State.

DFI/Corp/33

**To validate the authenticity of this certificate**

Visit this web address: <http://www.wdfi.org/apps/ccs/verify/>

Enter this code: **77839-DF8C5261**