

MARGARET A. MORRIS
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February 4, 2011

Via Electronic Filing

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

**Re: Docket No. C-2010-2169756
Dale Sattar v. Aqua PA, Inc.
Motion to Strike Portions of Reply Brief of Dale Sattar**

Dear Secretary Chiavetta:

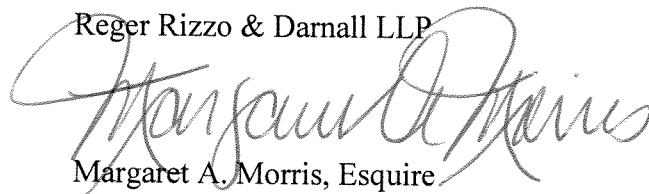
Enclosed for filing is Aqua Pennsylvania, Inc.'s original Motion to Strike Portions of the Reply Brief of Dale Sattar in the above-captioned matter.

As indicated on the Certificate of Service, a copy of the Motion been provided to the Complainant in the matter indicated.

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

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris, Esquire

Enclosure

cc: Honorable Ky Van Nguyen [w/enc.]
Dale Sattar [w/enc.]

**Re: Docket No. C-2010-2169756
Dale Sattar v. Aqua PA, Inc.
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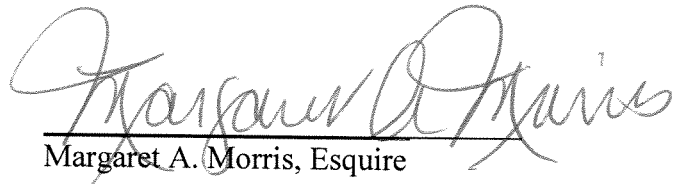
CERTIFICATE OF SERVICE

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

Via First Class Mail

Mr. Dale Sattar
504 Marian Court
Conshohocken, PA 19428

Dated: February 4, 2011


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DALE SATTAR :
Complainant :
v : **Docket No. C-2010-2169756**
AQUA PENNSYLVANIA, INC. :
Respondent

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103(b), you are hereby notified that, if you do not file a written response answering or objecting to the enclosed Motion to Strike of Aqua Pennsylvania, Inc. within twenty (20) days from service of this notice, the facts set forth by Aqua Pennsylvania, Inc. in the Motion to Strike may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Motion to Strike, 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 the Administrative Law Judge Ky Van Nguyen.

File with:

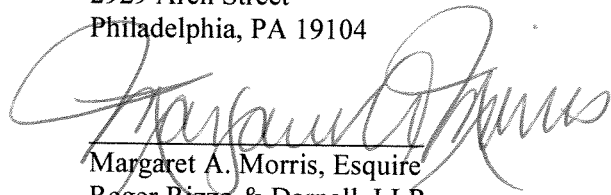
Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Honorable Ky Van Nguyen
Administrative Law Judge
Philadelphia State Office Building
801 Market Street
Philadelphia, PA 19107

Dated: February 4, 2011

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



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Counsel for Aqua Pennsylvania, Inc.

of the monthly distribution charge to partially cover the costs of billing, meter reading, equipment and service line maintenance.

3. The proceeding was assigned to Administrative Law Judge Ky Van Nguyen (the ALJ) for the conduct of evidentiary hearings and the issuance of a decision.

4. On November 17, 2010, the ALJ conducted an evidentiary hearing in Philadelphia which produced a transcript of eighty (80) pages.

5. By letter dated December 16, 2010, the ALJ ordered that main briefs be filed on January 14, 2011, and reply briefs be filed on January 31, 2011.

6. On January 14, 2010, Aqua timely filed its Main Brief. The Complainant chose to not file a main brief.

7. On January 31, 2011, the Complainant timely filed his Reply Brief.

Issues/arguments presented in the Complainant's Reply Brief

8. Although labeled a Reply Brief, the majority of the document constitutes issues/arguments that could have or should have been presented in a main brief preventing the Respondent from having the opportunity to respond to them. He also presents arguments not based on record evidence. The due process rights of Aqua are violated without the opportunity to refute those issues/arguments.

9. Specifically, at pages 2-4, the Complainant sets forth his opinion which challenges the Commission approved customer charge¹ contrary to his testimony regarding the scope of the proceeding. TR 52. The issue is this proceeding is not the amount of Aqua's customer charge but rather his proposal that customers be permitted to pay their bill in advance so as to eliminate the customer charge. The Complainant was an active participant in Aqua's last rate proceeding and presented his position to the Commission (Aqua Exhibit 6).

¹ See *Aqua PA Rate Application*, Opinion and Order Entered June 16, 2010 at Docket No. R-2009-2132019.

10. A portion of the argument presented by the Complainant is based on extra record evidence which the Respondent has not had the opportunity to cross examine. Reliance on those non record assertions by the Commission would violate the substantive due process rights of Aqua.

11. At pages 4-5, the Complainant asserts that the Respondent is “stealing” from customers. The ALJ sustained the Respondent’s objection to the characterization and the language was stricken from the record. TR 11.

12. At page 5 of the Reply Brief, the Complainant challenges the ALJ’s ruling which sustained Respondent’s objection when the Complainant sought to have Aqua’s witness explain why PECO’s customer charge was lower than Aqua’s. TR 55.

13. When a party has been ordered to file a main brief and fails to include all the issues they wish to have reviewed, the issues not briefed have been waived. *Jackson v Kassab*, 2002 Pa. Super. 370, 812 A.2d 1233 (2002); *Brown v PA Dep’t of Transportation*, 843 A.2d 429 (Pa. Commw., 2004).

14. Because the material in question was not previously raised in a main brief, reliance on it by the Commission in evaluating the Complaint would violate the substantive due process rights of the Respondent. The Commission has recognized that a party does not have a right to raise issues in a reply brief that could have or should have been raised in the party’s initial brief. *Application of Newtown Artesian Water Company and Indian Rock Water*, Docket No. A-212070, Order entered June 20, 1990. The Complainant had the opportunity to file a brief but chose not do. It is not appropriate for those issues/arguments to be considered since the Respondent has not had the opportunity to address them.

15. While the Commission does have the ability to liberally construe its rules particularly when the proceedings involve a *pro se* litigant, 52 Pa Code §1.2, the Commission has recognized that it does not have the authority to do so when it would affect the substantive rights of a party. *Info Connections, Inc. v PA PUC*, 640 A.2d 498 (Pa. Cmwlth. 1993).

16. Finally many of the Complainant’s arguments are not based on record evidence but are merely his opinion. Personal opinion, no matter how strongly held, does not constitute evidence. *Pennsylvania Bureau of Corrections v City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

17. The improper raised issues/arguments as delineated on Attachment A should be stricken.

Impertinent and/or slanderous verbiage

18. At pages 4 and 5, the Complainant does respond to the arguments raised by the Respondent in its Main Brief. Unfortunately, the Complainant chose to use impertinent and/or slanderous verbiage.

19. Commission precedent supports striking this impertinent/slanderous language from the Complainant's Reply Brief. As Judge Louis Cocheres stated in his Initial Decision in *Coppedge v PECO Energy Company*², at page 8 in striking language from a Complaint that alleged that PECO had engaged in fraud:

There are no definitions of "scandalous" or "impertinent" in the Commission's regulations. However, I find that Black's Law Dictionary provides sufficient guidance. It defines the words, "impertinent" and "scandal" as follows:

Impertinent. That which does not belong to a pleading, interrogatory, or other proceeding; out of place; superfluous; irrelevant. A term applied to matter not necessary to constitute the cause of action or ground of defense. Such matter may be ordered stricken from the pleading. Fed.R.Civil P. 12(f). See also Immaterial averment; Surplusage.

Scandal. Defamatory reports or rumors; aspersion or slanderous talk, uttered recklessly or maliciously. Scandalous matter may be ordered stricken from the pleadings by a motion to strike. Fed.R.Civ.P. 12(f). See also Defamation.

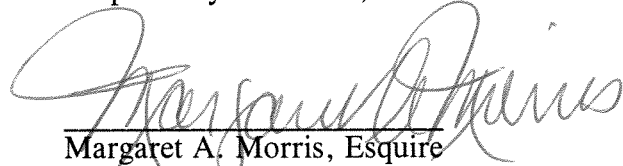
Black's Law Dictionary 679 and 1206 (rev. 5th ed. 1979) (Emphasis in the original.)

20. The Complainant's characterizations should be stricken. There is no record evidence to support such outrageous allegations and the language as delineated on Attachment A should be stricken.

² Initial Decision dated March 18, 2010 at Docket No. F-2009-2135893.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that the Commission strike portions of the Reply Brief filed by Dale Sattar as delineated on Attachment A.

Respectfully submitted,



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Dated: February 4, 2011

Counsel for Aqua Pennsylvania, Inc.

Docket No. C-2010-2169756

Dale Sattar v Aqua PA

ATTACHMENT A

**AQUA'S PROPOSED LANGUAGE TO BE STRICKEN
FROM REPLY BRIEF OF DALE SATTAR
IS DELINEATED BY BRACKETS**

Dale Sattar
504 Marian court
Conshohocken, PA 19428

January 30, 2011

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

Re: Docket No. C- 2010-2169756
Dale Sattar V. Aqua Pennsylvania, Inc.
Reply Brief of Dale Sattar

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Brief of Dale Sattar in the above-captioned matter.

As indicated on the Certificate of Service, a copy of the Reply Brief of Dale Sattar has been provided to Aqua Pennsylvania, Inc (Respondent).

Sincerely,



Dale Sattar

CC: Honorable Ky Van Nguyen
Reger Rizzo & Darnall LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person in accordance with the requirements of § 1.54.

VIA FIRST CLASS MAIL

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Center, 13th Floor
2929 Arch Street
Philadelphia, PA 19104-2899

Dated January 30, 2011

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Sattar", written in a cursive style.

Dale Sattar

[WHAT THE CASE IS ABOUT

There Are many aspects of the Aqua Pennsylvania, Inc. (Aqua) customer service charge that are unfair, unjust, unreasonable and outrageous. I am performing a public service by pointing these out to you, the Pennsylvania Public Utility Commission (PUC). I am appealing to your sense of fairness, what is right, and in the interest of the public to change and/or amend the existing law to rectify that. The following are some examples:

A – A typical monthly statement from Aqua was submitted as Exhibit C-4. The customer service charge is shown as \$17.56. The water consumption charge is shown as \$4.79. The customer service charge is $(17.56 \text{ divided by } 4.79)$ 3.67 times higher than the cost of water. There are many many residential customers that are in the same situation – that is the cost of service charge is several times higher than the cost of their water consumption. **Do you consider this fair and reasonable?**

Consider that you go to a restaurant and order a meal for \$10. A service charge of \$36.7 (3.67×10) is added to your bill (for serving you the food) for a total charge of \$46.7. How would that make you feel? You are not going to that restaurant again? But what if that was the law of the land and no matter what restaurant you go to you must pay 3.67 times the cost of food for service charge **What do you think of the regulatory body that made or approved that law?** In this example you might give up, completely, to ever again to go to a restaurant and cook at home. But with Aqua one does not have any other option and all one can do is take up the matter with the regulatory body that made or approved the law and hope that they can see the law is not reasonable and is unjust and they do something about it

If the PUC amend the law, as an example, that the service charge can not be higher than the cost of water for those whose cost of water consumption is less than the service charge, it would be somewhat, more fair. Therefore, in the example of going to a restaurant, one must pay no more than 100% per cent of the cost of food for the service charge. It may, still, be not fair or reasonable, but it is not as bad as paying almost four (4) times more than the cost of food.

There is also another disadvantage with the current law. There is no incentive for one to conserve water. If an effort is made to conserve water by 10%, the charge for water consumption becomes $4.79 - 4.79 \times 10\% = 4.31$. The total charge would be $\$17.56 + \$4.31 = \$21.87$. The savings for conserving water by 10% becomes $22.35 - 21.87 = 0.48$. $(17.56 + 4.79) \text{ minus } 21.87 \text{ divided by } 22.35 = 2\%$. As you can see if one conserves our water resource by 10%, the savings in the total cost is only 2%. But if the law is amended, again as an example, that the service charge can not be higher than the charge for water consumption, then the savings for conserving 10% water becomes $9.58 - 8.62 = 0.96$. $(4.79 + 4.79) \text{ minus } 8.62 \text{ (} 4.31 + 4.31 \text{) divided by } 9.58 = 10\%$. Now there is a direct ratio between the rate of conserving water and the cost associated with it.]

B – The current monthly service charge, as shown on Exhibit C-3, is \$17.56. This amount for reading the meter and issuing a bill is excessive and outrageous. Outrageous because Peco's customer charge is \$5.32, see Exhibit C-4, and Peco is not known for low prices. Since currently Aqua issues a monthly bill for the water, after reading the meter, it is expected that they get compensated for their effort. But if they do not do it on a monthly basis, and say they do it on a once a year basis, then Aqua does not have to be compensated for work not performed. There would be a great amount of savings for the residents who choose to pay Aqua a large sum of money, as a bond, in advance for the whole year. Aqua would have the benefit of getting paid for the whole year in advance. The customers who choose to apply for this option save the monthly service charge. At the end of the year, Aqua can deduct the charge for the water from the payment made in advance and issue a credit for the balance because the money advanced to Aqua would be greater than the anticipated charge. The cycle starts anew by making advance payment to Aqua for the next year. If the calculation of the water consumed must be on a monthly basis, the water consumed for the year can be divided by twelve (12) to obtain a monthly rate of consumption. **This is a very viable way of saving customers who elect to pay Aqua for the whole year in advance the outrageous monthly service charge.**

C – The Complainant purchased the property at 504 Marian court on March 4, 2009. The first Aqua bill is submitted as Exhibit C-1 and shows a customer charge of \$26.71 for the month of March and part of the month of April with no water consumption (0 gallons). The place was vacant until May of 2010 (because the previous house owned took much longer to sell). Exhibit C-2 shows that the first month that there was any water consumption was March of 2010 when 100 gallons was consumed for the whole month (3 3 gallons per day). The service charge paid in 2009 and 2010 up to the month of March when there was a little water consumption is \$26.71 (partial monthly service charge for March and April of 2009) +15.71 (monthly customer charge at the time) times 11 (months for May 2009 to March 2010) = \$199.52. **About \$200 was paid to Aqua while the place was vacant with no water consumptions (0 gallons) for absolutely nothing. Does PUC consider this fair and just?**

D – There is a separate customer charge for reading the meter for the fire service sprinklers in addition to the customer charge for reading the meter for the water consumption. The meter for the fire service sprinklers would register a reading for gallons of water used, only, if there was a fire. Since the over-whelming majority of homes do not have a fire, the residents should not pay a customer charge for the reading of the meter for the fire service sprinklers. **They pay this customer charge for absolutely nothing. There should be a customer charge, only, if there was a fire and the meter showed water has been used.**

E – The Plymouth Township, where the Complainant's residence is located, requires sprinklers system but they do not require a separate water line from the street with associated hardware (such as check valves, control valves, isolation valves, meters, ETC)]

[which adds thousands of Dollars to the cost of building a house or condo. Exhibit C-5 is a letter from Plymouth Township indicating that "separate water lines for fire service sprinklers are an Aqua Water Company requirements, not Plymouth Township." At the hearing and again in the Main Brief Aqua argues, in vain, that "This requirement is driven by safety policy as it allows for termination of water service while not compromising the safety of the resident or the structure." I am a retired Registered Professional Mechanical Engineer in the State of Pennsylvania. **Aqua can have one meter for both lines, the water consumption and fire protection, so that there would be only one customer charge instead of two (2), as the case is now, and have a control valve downstream of the fire protection line so that they can terminate the water service and not the fire protection line and thus not compromise any safety.**]

Aqua has presented two (2) kind of arguments, both at the hearing and in the Main Brief. These arguments are repeated over and over and over.

[The first kind ranges between absurd, laughing arguments, and insulting the intelligence of the reader including the Complainant.] As an example, in order to reject the viable idea of the Complainant regarding reading the meter once a year in order to save on the [outrageous] monthly customer charge, Aqua "expert witness" argued at the hearing and it is stated in Aqua's Main Brief "Common problems such as leak or defective toilet flap could go undetected for several months and lead to inordinately higher bills and wasted consumption." Let's think for a moment about this statement. 1) - The water consumption reflected in Aqua's monthly statement for anyone is not precisely the same every month. It varies from month to month and sometimes greatly because of many factors. 2) - If there is a small leak or minor problem with the toilet flap, the Aqua's monthly water consumption, as stated, because varies from month to month, would not give a clue to anyone that there is a leak. 3) - If there is a major leak or the water in the toilet is constantly running because of the flap malfunction, it would be a joke that the way it is discovered is when one receives the monthly statement from Aqua. The arguments that the monthly statement is necessary to be issued every month in order to detect a leak is made, repeatedly, on pages 2, 4, 9, 10, and 12 of the Aqua's Main Brief. Another example is the statement (on page 12) of Aqua's Main Brief that "The Commission wants customers to be able to know what is going on with respect to the usage and not be saddled with a large catch-up bill." The customers who choose to pay in advance for a year are volunteering to do that and therefore are not going to be saddled with a large bill because they have already paid in advance. And yet another example is the statement on page 12 of the Aqua's Main Brief that "Aqua requires the domestic water and fire service to be separate to eliminate cross connection and the possibility of contamination." [This is an absurd statement and does not make any sense at all because: 1) - both lines come from the same source so why cross connection would contaminate the water 2) - the pipe line for the water consumption of all customers and all the houses that feed the kitchen where people get their water to drink and cook is the same pipe line that feeds all the toilets in the house and no one has any concern about contamination and 3) - the lines have check valves - a check valve allows water or fluid to go forward but can flow backward.]

The second kind of arguments is about what is in the tariff and therefore is the law. If the law is unfair, unreasonable, and unjust, the tariff must be amended to rectify that.

[The Complainant defines stealing as money taken from him and not getting back anything in return. Aqua has been stealing from the Complainant. Unfortunately they are licensed to steal.] For example, the Complainant paid Aqua about \$200 for absolutely nothing, when his residence was vacant, for just customer charge with no water consumption (0 gallons), in other words he got nothing in return. According to Aqua, it is in the tariff that the customer charge must be paid even if there is no water consumption which is quite unfair and unjust. [Aqua has also been stealing every month with their outrageous amount of customer charge even when there is water consumption.] Aqua charges the Complainant \$17.56 every month for customer charge (about 4 times the cost of water used) when Peco's customer charge is only \$5.32.

[Both at the hearing and also in the Main Brief, Aqua, in great detail, described the qualifications of Mary McFall Hopper, Esquire. On page 11, states "Mary McFall Hopper, Esquire is employed by Respondent and competent to testify regarding Respondent's approved tariff, Respondent's residential billing practice, the Commission's rate making process, and the Public Utility Code as it applies to the parties in this proceeding." On page 14, states "Aqua's testimony consisted of its expert witness who is well qualified to render an expert opinion on Aqua's tariff, Commissions regulations and the rate making process." At the hearing Aqua stated as part of Ms. Hopper's qualification that she worked for many years for Peco doing the same thing. When the Complainant questioned Ms. Hopper as to why Peco's customer charge is \$5.32 as opposed to Aqua's \$17.56, the response was that "she is not qualified to answer that"]

[Aqua has a gold mine by taking an outrageous amount of money from all customers for customer charge every month. They are not going to give that up easily.] **As the Complainant has witnessed at the hearing and now in Aqua's Main Brief, they would adhere to any means including untrue statements and invalid arguments [to protect their gold mine.] If the Public Utilities Commission wants to serve the interest of the public, then the tariff must be revised and/or amended to rectify the items discussed in this Brief that are unfair, unreasonable, and unjust.**