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April 29, 2011

**VIA Electronic Filing**

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

**Re: Docket No. C-2010-2169756  
Dale Sattar v. Aqua Pennsylvania, Inc.  
Reply Exceptions of Aqua PA**

Dear Secretary Chiavetta:

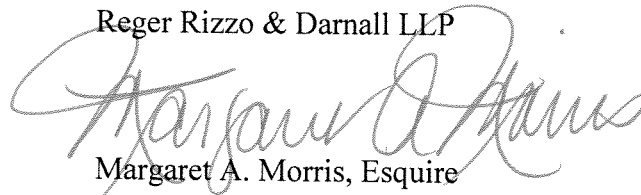
Enclosed for filing is the original Reply Exceptions of Aqua Pennsylvania, Inc. in the above-captioned matter. Please note that an extension to file the Reply Exceptions was granted until April 29, 2011 by Ms. Cheryl Walker Davis on April 21, 2011.

As indicated on the Certificate of Service, a copy of the Reply Exceptions of Aqua Pennsylvania, Inc. has 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

cc: Cheryl Walker Davis, OSA  
Dale Sattar

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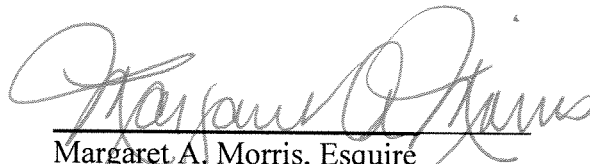
**CERTIFICATE OF SERVICE**

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: April 29, 2011

  
Margaret A. Morris, Esquire



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## I. Introduction

Aqua Pennsylvania, Inc. (“Aqua”) by and through its attorneys, *Reger Rizzo & Darnall LLP*, hereby files its Reply Exceptions<sup>1</sup> to the Exceptions filed on April 13, 2011 of Dale Sattar (“Complainant”) to the Initial Decision (“ID”) of Administrative Law Judge Ky Van Nguyen (“ALJ Nguyen”) issued on March 24, 2011.

The Complaint seeks to amend Aqua’s Tariff so as to permit customers to prepay their water bill one year in advance to avoid paying the Commission approved monthly customer service charge. The Complainant asserts that the customer charge “simply is a fee that Aqua charges [the residents] [sic] every month to let them know how much they owe.” Complaint ¶4B.

Aqua opposes the proposal since it is (1) inconsistent with Chapter 56 Regulations; (2) would require extensive program and software changes to its billing system; (3) contrary to well-established standard ratemaking concepts; (4) violates Aqua’s Commission approved Tariff and (5) violates the Public Utility Code. Aqua asserts that in addition to those impediments, it is not in the public interest for consumers to receive an annual bill since monthly bills are critical for customers to monitor their usage and for leak detection. Main Brief at 4.

A briefing schedule was established by ALJ Nguyen and the parties were directed to brief the issues. Aqua filed its Main Brief but the Complainant chose not to file a brief. He did however file a Reply Brief. Aqua filed a Motion to Strike portions of the Reply Brief based on the fact that it raised issues that should have been previously raised, relied on non record evidence and contained slanderous and/or impertinent language. The Complainant filed an Answer to Aqua’s Motion. ALJ Nguyen granted Aqua’s Motion to Strike.

ALJ Nguyen carefully weighed the testimony of the witnesses and record evidence and found that the Complainant did not carry his burden of proof and that the Commission’s Regulations and Commission approved tariff prohibit Aqua from billing the Complainant only once a year. As a result, the Formal Complaint was dismissed.

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<sup>1</sup> Aqua notes that the due date for the Reply Exceptions was extended from April 25 to April 29, 2011.

The Complainant's Exceptions argue that ALJ Nguyen "is not qualified to be an administrative law judge<sup>2</sup>" and that his rulings are not valid because (1) the parties were directed to file a Main Brief, (2) there are untrue statements in his ruling, (3) he did not pay attention during the hearing, (4) he did not understand the Complainant's testimony and (5) he adopted Aqua's "defense like a robot." Exceptions at 1-2.

The ID is founded on competent and relevant record evidence and should be adopted without modification. The Complainant failed to carry his burden of proof that Aqua should be directed to implement his proposal. ALJ Nguyen properly weighed the testimony and record evidence and dismissed the Formal Complaint. The Exceptions are without merit and should be denied.

## II. The Complainant's Exceptions

The Complainant alleges that ALJ Nguyen was not "fair" and that his rulings should be invalidated. The arguments presented by the Complainant are without merit. Simply because the Complainant disagrees with ALJ Nguyen's rulings does not mean the hearing was not fair. Aqua incorporates its arguments as set forth in its *Main Brief* at pp. 5-10 and Aqua's Motion to Strike, pp. 2-4.

The alleged "errors" in the ID are not substantive and do not invalidate the findings of ALJ Nguyen. The record evidence supports the findings that the Complainant did not meet his burden of proof that customers be permitted to avoid the customer charge by prepayment of the bill. Rather the record evidence reflects that the customer charge which was approved by the Commission is calculated based on sound ratemaking principles and includes more than "just the cost of reading the meter and sending a bill." Aqua's expert witness credibly testified that such a proposal could result in an unusually high bill for a customer at the end of the year due to an undetected leak which could have been repaired if the customer received the monthly bill showing the change in consumption. The Complainant's proposal deprives the customer of managing his/her water usage on a monthly basis. Finally, ALJ Nguyen's ruling which struck the Complainant's Reply Brief was consistent with Commission precedent and law.

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<sup>2</sup> Aqua notes that the Exceptions do not conform to Commission's Regulations, specifically §5.482 for the disqualification of a presiding officer.

Specifically, five exceptions are identified and each Exception is addressed separately.

*Complainant's Exceptions #1: ALJ Nguyen requested the parties file a Main Brief.*

**Aqua Response: ALJ Nguyen was within his authority to request the parties to brief the issues presented at hearing and correctly ruled that the issues in the Reply Brief were improperly raised and due process required that those issues be stricken.**

The Complainant questions why ALJ Nguyen requested briefs from the parties rather than rule on the presentation and arguments at hearing since the Complainant made it clear that he would not be filing a brief. He mistakenly concluded that ALJ Nguyen struck his Reply Brief because he did not file a Main Brief. That is not what happened.

ALJ Nguyen has the authority to regulate the course of the hearing, 52 Pa Code §5.483. Consistent with this authority, ALJ Nguyen requested the parties file briefs and address the issues he identified on the record. N. T. 71-73.

The Complainant choose not to file a Brief. He did however file a Reply Brief that improperly (1) cited to material that was not previously raised; (2) presented issues that are not part of the evidentiary record; and (3) contained impertinent and/or slanderous verbiage. As a result, Aqua filed a Motion to Strike portions of the Reply Brief arguing that the issues/arguments raised in the Complainant's Reply Brief violated the due process rights of Aqua since it did not have the procedural opportunity to respond or refute those statements. The Complainant filed an Answer to Aqua's Motion. ALJ Nguyen granted Aqua's Motion consistent with Commission precedent.

Contrary to the Complainant's assertions, his Reply Brief was not struck because he did not file a Main Brief. Rather, ALJ Nguyen ruled:

“Here, the Complainant was directed to file a Main Brief, but he did not file it. Instead, he filed a Reply Brief, which improperly raised issues that could have or should have been raised in his Main Brief. For this reason, the Complainant was precluded from filing a Reply brief.”

ID at 6.

Due process required that those issues be stricken since Aqua would not have the opportunity to respond to the newly raised issues or non record evidence. The Complainant was deemed to have waived the opportunity to raise issues as a result of choosing not to file a Main Brief.

The first Exception filed by the Complainant should be denied. ALJ Nguyen was within his authority to request a brief from the parties. Furthermore, the Complainant's Reply Brief was properly struck because he raised issues that could have or should have been previously raised.

*Complainant's Exceptions #2: ALJ makes untrue statements in his ruling.*

**Aqua Response: ALJ Nguyen correctly summarized Aqua's Motion to Strike.**

ALJ Nguyen stated:

“The Respondent seemed to argue that because the Complainant did not file his Main Brief, he should be precluded from raising issues in his Reply Brief, such as the legality of the Tariff, the customer charge the need for separate line of sprinkles and domestic use (N.T. 71-78; Motion to Strike, paragraphs 13-15).

ID at 5.

The Complainant states that Aqua never made such an argument since how would have Aqua have known what was going to be in the Complainant's Reply Brief. Exceptions at 2.

The Complainant is incorrect. ALJ Nguyen was summarizing Aqua's position as set forth in its Motion to Strike the Complainant's Reply Brief.

The second Exception filed by the Complainant should be denied. ALJ Nguyen statement is correct. Furthermore, the statement is not crucial to the findings of the ID.

*Complainant's Exceptions #3: ALJ did not understand that the Complainant paid over \$200 for customer service charges when no water was consumed.*

**Aqua Response: ALJ Nguyen's questions during the hearing were appropriate.**

The Complainant insinuates that ALJ Nguyen's questions regarding his proposed exhibits reflect that he “probably was asleep at the hearing”. Exceptions at 1. There is no

basis for such a comment. ALJ Nguyen was within his authority to question any witness regarding testimony or exhibits.

The third Exception filed by the Complainant should be denied. ALJ Nguyen's questions were appropriate.

*Complainant's Exceptions #4: ALJ incorrectly states that the second bill was dated March 26.*

**Aqua Response:** ALJ Nguyen's statement referenced the Complainant's 2<sup>nd</sup> Exhibit and use of the word "bill" rather than "exhibit" does not negate the findings based on the record evidence.

The Complainant argues that because ALJ Nguyen used the word bill rather than exhibit, it reflects that he did not understand that the Complainant had paid \$200 in customer service charges before he used consumed any water.

The Complainant contacted Aqua to initiate service so that work could be performed before he moved into the premise. The Complainant chose to initiate service. As a result, a customer charge was assessed to the account even though no consumption was being used. The record evidence supports the finding that the customer charge includes more than just "reading the meter and issuing a bill" and is properly assessed, consistent with Aqua's Tariff, regardless of any water consumption.

The fourth Exception filed by the Complainant should be denied. ALJ Nguyen's use of the word "bill" rather than "exhibit" does not support a conclusion that he did not understand the Complainant's proposal.

*Complainant's Exceptions #5: ALJ, "like a robot" repeated Aqua's argument regarding the necessity to send bills monthly as a reason to dismiss the Complainant's case.*

**Aqua Response:** ALJ Nguyen properly weighed the testimony of both parties and concluded that the Complainant did not carry his burden of proof and that the Commission's Regulations and Commission approved tariff prohibit Aqua from issuing Complainant only one bill a year.

The Complainant's testimony consists of unsupported opinions and assertions. 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). Aqua's testimony consisted of its expert witness who is well qualified to render an expert opinion on Aqua's Tariffs, Commission regulations and the ratemaking process.

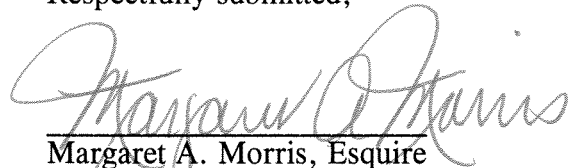
The fifth Exception filed by the Complainant should be denied. ALJ Nguyen's properly weighed the evidence and found Aqua's expert testimony more credible than the opinions of the Complainant.

**Conclusion**

The Complainant's Exceptions are without merit. ALJ Nguyen's ruling are based on the substantial record evidence and consistent with Commission precedent and the law. Both parties have been afforded their due process rights. The Complainant has offered nothing more than his opinion that he disagrees with ALJ Nguyen's decision. The ID should be affirmed without modification.

**WHEREFORE**, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that Initial Decision of ALJ Nguyen, issued on March 24, 2011, be affirmed and the Formal Complaint of Dale Sattar be dismissed in its entirety.

Respectfully submitted,



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Dated: April 29, 2011

Counsel for Aqua Pennsylvania, Inc.