

DEL SOLE CAVANAUGH STROYD LLC

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June 21, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17101

Re: Painter v. Aqua Pennsylvania, Inc. (C-2011-2239556)

Dear Ms. Chiavetta:

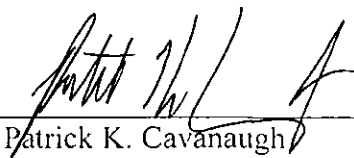
Please find the enclosed Reply to New Matter submitted by Complainants in the above-captioned matter. Counsel is in the process of obtaining Complainants' signed Verification of their Reply to New Matter and will submit the same as soon as possible.

Also enclosed is Complainants' Response to Respondent's Objections to Complainants' Requests for Production of Documents and Notices of Deposition.

Thank you for your attention to this matter.

Very truly yours,

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh

Enclosures

cc: Honorable Conrad A. Johnson (w/ enclosures)
Christopher T. Wright, counsel for Aqua Pennsylvania, Inc. (w/ enclosures)

SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2011 JUN 24 AM 11:17
SECRETARY'S BUREAU

WALTER PAINTER and DONNA)	
PAINTER, on behalf of themselves and all)	
others similarly situated,)	
)	
v.)	C-2011-2239556
)	
AQUA PENNSYLVANIA, INC.,)	

REPLY TO NEW MATTER

Complainants Walter and Donna Painter, on behalf of themselves and all others similarly situated, hereby submit this Reply to New Matter, averring as follows:

1. The allegations of Paragraph 1 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of further answer, this case was transferred to the Commission from the Court of Common Pleas of Lawrence County in order for the Commission to rule on certain issues. The case remains pending in the Court of Common Pleas and has been stayed. Complainants hereby incorporate by reference the December 13, 2010 Opinion of President Judge Dominick Motto, a true and correct copy of which is attached hereto as Exhibit A. In his Opinion, Judge Motto stated:

The Court finds that the PUC has initial and primary jurisdiction over the subject matter of this Complaint; to wit, the rates charged by the Defendant and the Defendant's billing practices, but that the jurisdiction of the PUC is not exclusive beyond these matters and the remedies allowed by the Public Utility Code... [T]his proceeding shall be stayed pending the transfer of this case to the PUC, with this Court to thereafter proceed on the claims not resolved by the PUC after its eventual rulings issues relating to rates and billing practices.

Opinion at 2. Complainants specifically deny that they have "characterize[d]" their claims as Unfair Trade Practices and Consumer Protection Law (UTPCPL) claims. Complainants have brought several distinct claims, one of which is a claim under the UTPCPL. Respondent is not

immune to a UTPCPL claim by virtue of being a public utility. The Public Utility Code specifically states:

Remedies cumulative. Except as otherwise provided in this part, nothing in this part shall abridge or alter the existing rights of action or remedies in equity or *under common or statutory law of this Commonwealth*, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.

66 Pa.C.S.A. § 103(c). Thus, the plain language of the Public Utility Code states that the remedies provided to customers by the Commission do not nullify the statutory and common law rights of action also available. Should the Commission find that any of Complainants' claims or requested remedies are not within its jurisdiction, which Complainants specifically deny, those matters will (pursuant to Judge Motto's Opinion) be resolved by the Court of Common Pleas in light of the Commission's ruling on the matters within its jurisdiction.

2. The allegations of Paragraph 2 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of further answer, there is nothing in the Public Utility Code or the Commission's regulations that specifically denies the Commission jurisdiction over class actions or grants public utilities immunity from class actions.

3. The allegations of Paragraph 3 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of further answer, Complainants incorporate their response to Paragraph 1 of Respondent's New Matter.

4. The allegations of Paragraph 4 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of further answer, Complainants incorporate their response to Paragraph 1 of Respondent's New Matter.

5. The allegations of Paragraph 5 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. By way of further answer, Complainants incorporate their response to Paragraph 1 of Respondent's New Matter.

6. The allegations of Paragraph 6 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied.

7. The allegations of Paragraph 7 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied.

8. The allegations of Paragraph 8 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied.

9. The allegations of Paragraph 9 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent

that Respondent's interpretation is inconsistent with the texts, it is denied. Complainants specifically deny that the Commission "suggested that the DSIC surcharge apply on a 'bills rendered' basis" or that the Commission's reference to "bills rendered" on the first page of Appendix A, Attachment A authorized Respondent to apply the new surcharge to services rendered before the effective date. "Bills rendered" is undefined. Even if the surcharge will first appear only on bills that get sent out on and after the effective date, nothing in Appendix A, Attachment A authorizes Respondent to apply the surcharge to services rendered before the effective date.

10. The allegations of Paragraph 10 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied.

11. The allegations of Paragraph 11 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied.

12. The allegations of Paragraph 12 of Respondent's New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent's interpretation is inconsistent with the texts, it is denied. Complainants

specifically deny that the Commission “recommend[ed] that PSWC modify its DSIC from ‘service rendered’ to ‘bills rendered basis’” or that the Commission’s reference to “bills rendered” in Appendix C authorized Respondent to apply the new surcharge to services rendered before the effective date. “Bills rendered” is undefined. Even if the surcharge will first appear only on bills that get sent out on and after the effective date, nothing in Appendix C authorizes Respondent to apply the surcharge to services rendered before the effective date.

13. The allegations of Paragraph 13 of Respondent’s New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent’s interpretation is inconsistent with the texts, it is denied. Complainants specifically deny that “Aqua has issued customer bills and collected the DSIC surcharge in accordance with the Pennsylvania Public Utility Code, the orders, regulations and policies of the Commission, and the terms and conditions of Aqua’s Commission-approved tariff.” Complainants hereby incorporate by reference the allegations of their Complaint.

14. The allegations of Paragraph 14 of Respondent’s New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent’s interpretation is inconsistent with the texts, it is denied. Complainants specifically deny that “Aqua billed and collected the DSIC surcharge in accordance with the Pennsylvania Public Utility Code, the orders, regulations and policies of the Commission, and the terms and conditions of Aqua’s Commission-approved tariff.” Complainants specifically

deny that applying surcharges “on a bills rendered basis does not place any customer at a disadvantage.” Complainants hereby incorporate by reference the allegations of their Complaint.

15. The allegations of Paragraph 15 of Respondent’s New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent’s interpretation is inconsistent with the texts, it is denied. The relief sought by Complainants does not violate the “Commission-made rates” doctrine. Complainant denies that the Commission approved Respondent’s application of the DSIC surcharge on a “bills rendered” basis and not on a “services rendered” basis.

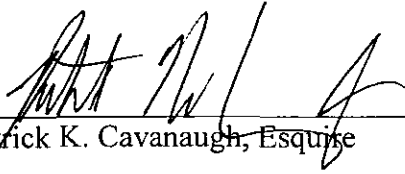
16. The allegations of Paragraph 16 of Respondent’s New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied. Respondent purports to interpret the effect of various provisions of law, pronouncements of the Commission, and/or other documents. These texts speak for themselves. To the extent that Respondent’s interpretation is inconsistent with the texts, it is denied. Because Respondent applied the DSIC surcharge in a manner contrary to law, the relief sought by Complainants would not retroactively change any rate.

17. The allegations of Paragraph 17 of Respondent’s New Matter contain conclusions of law to which no response is required. To the extent a response is required, said allegations are denied.

WHEREFORE, Walter Painter and Donna Painter, on behalf of themselves and all others similarly situated, respectfully request that the Pennsylvania Public Utility Commission rule in

their favor and against Respondent on all claims and requests for relief set forth in the Complaint.

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh, Esquire

Counsel for Complainants

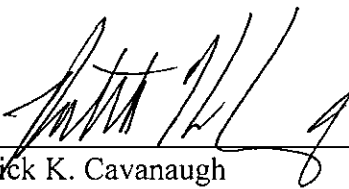
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of June, 2011 a true and correct copy of the foregoing *Reply to New Matter* was served on the following by first class, U.S. mail:

Honorable Conrad A. Johnson
Administrative Law Judge
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburgh, PA 15222

Christopher T. Wright, Esquire
17 North Second Street
12th Floor
Harrisburg, PA 17101
Counsel for Respondent



Patrick K. Cavanaugh

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SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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SECRETARY'S BUREAU

WALTER PAINTER and DONNA)	
PAINTER, on behalf of themselves and all)	
others similarly situated,)	
)	
v.)	C-2011-2239556
)	
AQUA PENNSYLVANIA, INC.,)	

**RESPONSE TO RESPONDENT'S OBJECTIONS TO COMPLAINANTS'
REQUESTS FOR PRODUCTION OF DOCUMENTS AND NOTICES OF DEPOSITION**

Complainants Walter and Donna Painter, on behalf of themselves and all others similarly situated, hereby submit this Response to Respondent's Objections to Complainants' Requests for Production of Documents and Notices of Deposition, averring as follows:

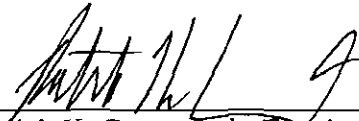
1. On June 6, 2011, Complainants served upon Respondent a set of Requests for Documents as well as Notices of Deposition for a corporate representative of Respondent and its Manager of Rates, William Packer.
2. On June 20, 2011, Respondent served Objections to the Requests for Documents and the Notices of Deposition.
3. Respondent has requested that a hearing on this matter be postponed indefinitely, pending the disposition of a Motion for Judgment on the Pleadings that it intends to file.
4. Complainants do not oppose the postponement of the hearing pending the disposition of Respondent's Motion for Judgment on the Pleadings.
5. In its Objections, Respondent argues that Complainants' document requests and depositions should be stayed pending the disposition of the Motion for Judgment on the Pleadings.
6. Complainants do not oppose the stay of discovery pending the disposition of the

Motion for Judgment on the Pleadings, but assert their right to take discovery in the form of document requests and depositions in the event that Respondent's Motion fails and the case proceeds.

- 7. Respondent objects to Complainants' choice of location for the depositions.
- 8. Complainants are amenable to moving the location of the depositions to a location more convenient to Respondents.
- 9. Respondent objects to Complainants' Notice of Deposition for a corporate representative of Respondent, claiming that the corporate representative it intends to choose is William Packer, whose deposition Complainants have noticed individually.
- 10. Complainants' position is that it is entitled to take the deposition of a corporate representative of Respondent on the subjects set forth in their Notice of Deposition.
- 11. Should Respondent determine that Mr. Packer is the best person to speak for it on these matters, then a separate, individual deposition of Mr. Packer would most likely be unnecessary.

WHEREFORE, Walter Painter and Donna Painter, on behalf of themselves and all others similarly situated, respectfully request that the Pennsylvania Public Utility Commission rule on Respondent's Objections in a manner consistent with Complainants' position as set forth above.

DEL SOLE CAVANAUGH STROYD LLC

By: 
 Patrick K. Cavanaugh, Esquire
Counsel for Complainants

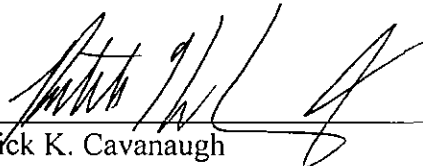
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of June, 2011 a true and correct copy of the foregoing *Response to Respondent's Objections to Complainants' Requests for Production of Documents and Notices of Deposition* was served on the following by first class, U.S. mail:

Honorable Conrad A. Johnson
Administrative Law Judge
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburgh, PA 15222

Christopher T. Wright, Esquire
17 North Second Street
12th Floor
Harrisburg, PA 17101
Counsel for Respondent

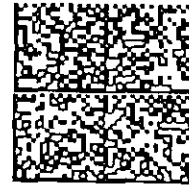


Patrick K. Cavanaugh

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