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Christopher T. Wright

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File #: 2657/147386

June 20, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Walter Painter and Donna Painter v. Aqua Pennsylvania, Inc.
Docket No. C-2011-2239556

Dear Secretary Chiavetta:

Enclosed please find the Objection of Aqua Pennsylvania, Inc. to Complainant's Notices of Deposition for the above-referenced proceeding. Copies will be provided as indicated on the certificate of service.

Respectfully Submitted,

Christopher T. Wright

CTW/skr

Enclosure

cc: Certificate of Service
Kimberly A. Joyce
Honorable Conrad A. Johnson

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JUN 20 2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Walter Painter, Donna Painter, and Others Similarly Situated,	:	
	:	
	:	
Complainants,	:	
	:	Docket No. C-2011-2239556
v.	:	
	:	
Aqua Pennsylvania, Inc.,	:	
	:	
Respondent.	:	

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JUN 20 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**OBJECTION OF AQUA PENNSYLVANIA, INC. TO
COMPLAINANT'S NOTICES OF DEPOSITION**

TO ADMINISTRATIVE LAW JUDGE
CONRAD A. JOHNSON:

AND NOW, comes Aqua Pennsylvania, Inc. ("Aqua"), by and through its attorneys, Post & Schell, P.C., and hereby objects to Complainant Donna/Walter Painter's ("Complainant's") Notices of Deposition, pursuant to Section 5.343(f) of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.343(f). In support thereof, Aqua states as follows:

I. INTRODUCTION

1. On or about April 21, 2011, Complainant filed the above-captioned Complaint with the Commission. Aqua was served with the Complaint by a Secretarial Letter dated May 5, 2011.

2. The allegations set forth in the Complaint relate to Aqua's Distribution System Improvement Charge ("DSIC") and whether the DSIC should be billed on a "services rendered" or "bills rendered" basis.

3. On May 25, 2011, Aqua filed and served its Answer and New Matter.

4. On June 6, 2011, Complainant filed two notices of depositions: (1) Notice of Deposition of Aqua Pennsylvania, Inc.; and (2) Notice of Deposition of William C. Packer. True and correct copies of the aforementioned Notices are attached hereto and marked as "**Appendix A**" and "**Appendix B**," respectively.

5. On June 14, 2011, Counsel for Aqua contacted Counsel for Complainant, asserting oral objections to the Notices of Deposition.

6. Under 52 Pa. Code § 5.343(f), a party may file an objection to a notice of deposition within ten (10) days from the date of service. For the reasons set forth below, Aqua objects to Complainant's Notices of Deposition.

II. OBJECTIONS

A. STAY OF DEPOSITIONS

7. Pursuant to Section 5.63 of the Commission's regulations, Complainant's reply to Aqua's New Matter was due on or before June 14, 2011. As of the date of this Objection, Aqua has not been served with Complainant's reply to Aqua's New Matter.

8. Upon receipt of Complainant's reply to Aqua's New Matter, Aqua intends to file a motion for judgment on the pleadings. The disposition of the forthcoming motion may summarily resolve the above-captioned matter in its entirety as a matter of law.

9. On June 15, 2011, Aqua filed a Motion to Stay the Hearing Date, requesting that the Hearing Date be stayed indefinitely pending the disposition of a forthcoming motion that may summarily resolve the above-captioned matter in its entirety. Counsel for Complainant

indicated that Complainant did not oppose the request to stay the Hearing Date indefinitely. Aqua's unopposed motion to stay indefinitely the Hearing Date currently is pending before Your Honor.

10. Because Aqua's forthcoming motion for judgment on the pleadings may ultimately resolve the above-captioned matter in its entirety, Aqua objects to Complainant's Notices of Deposition and requests that any and all discovery in this matter be stayed pending the disposition of the forthcoming motion for judgment on the pleadings.

11. Unless and until Aqua's summary motion has fully and finally been resolved, any and all discovery, including depositions, is unnecessary and ultimately may become moot.

12. An indefinite stay of discovery and depositions until the resolution of the forthcoming motion for judgment on the pleadings will help the parties mutually avoid the costs of undertaking discovery and preparing for an evidentiary hearing that ultimately may not occur. If necessary, Aqua intends to file a formal motion to stay discovery in the near future.

B. OBJECTION TO LOCATION

13. Complainant's Notices of Deposition both request that the deponents appear "at the law offices of Del Sole Cavanaugh Stroyd LLC, The Waterfront Building, Suite 300, 200 First Avenue, Pittsburgh, Pa 15222." See Appendices A and B.

14. The principle place of business of Aqua and William C. Packer is 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010. As a result, the taking of depositions in Pittsburgh would require substantial travel and, therefore, imposes a considerable burden on Aqua in terms of attorney time and expense.¹

¹ The existing federal rule requires persons to attend depositions only in the county wherein they were served, or within 40 miles from the place of such service, or at such convenient place as would be fixed by an order of court. Fed. R. Civ. P. 45(d)(2). See, e.g., *Twardzik v. Sepauley*, 286 F. Supp 346 (E.D. Pa. 1968) (refusing to require defendants who resided and were employed

15. To the extent that discovery is not indefinitely stayed pending the disposition of the forthcoming motion for judgment on the pleadings, Aqua requests that the depositions be scheduled to occur 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 or, alternatively, that Complainant be ordered to reimburse Aqua all reasonable expenses, including attorneys' fees, incurred in attending depositions in Pittsburgh.

C. IDENTITY OF DEPONENT

16. Complainant's Notice of Deposition of Aqua Pennsylvania, Inc. seeks to depose a representative of Aqua with the knowledge and understanding of Aqua's DSIC and billing activities.

17. In a separate Notice of Deposition, Complainant also seeks to depose William C. Packer. Mr. Packer is the Manager of Rates - Mid-Atlantic Group with Aqua. Mr. Packer is the corporate representative with the knowledge and understanding of Aqua's DSIC and billing activities.

18. Because Complainant's Notices of Deposition are redundant, Aqua objects to the Notice of Deposition of Aqua Pennsylvania, Inc. in its entirety.

in Schuylkill County to go to Philadelphia for the purpose of depositions, holding that it would be "oppressive" to do so). The existing Pennsylvania rule provides that:

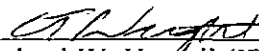
If a deposition is to be taken by oral examination more than one hundred miles from the courthouse, the court upon motion may make an order requiring the payment of reasonable expenses, including attorneys' fees, as the court shall deem proper.

Pa. R. Civ. P. 4008.

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. objects to Complainant’s Notices of Deposition and respectfully requests that Administrative Law Judge Conrad A. Johnson enter an order: (1) staying any and all discovery and depositions pending the disposition of the forthcoming motion that may summarily resolve the above-captioned matter in its entirety; (2) denying the Notice of Deposition of Aqua Pennsylvania, Inc.; and (3) directing that any and all depositions shall occur at the offices of Aqua Pennsylvania, Inc. at 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 or, alternatively, directing Complainant, as a condition precedent to the deposition, to reimburse Aqua Pennsylvania, Inc. all reasonable expenses, including attorneys’ fees for travel time, incurred to attend depositions in Pittsburgh, Pennsylvania.

Respectfully submitted,



Michael W. Hassell (ID # 34851)
David P. Zambito (ID # 80017)
Christopher T. Wright (ID # 203412)
Post & Schell, P.C.
17 North Second Street
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Phone: 717-731-1970
Fax: 717-731-1985
E-mail: mhassell@postschell.com
dzambito@postschell.com
cwright@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: June 20, 2011

Attorneys for Aqua Pennsylvania, Inc.

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JUN 20 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE OF DEPOSITION OF AQUA PENNSYLVANIA, INC.

To: Aqua Pennsylvania, Inc.
c/o Christopher T. Wright, Esquire
17 North Second Street
12th Floor
Harrisburg, PA 17101

Please take notice that on Monday, June 27, 2011 at 1:30 p.m., pursuant to 52 Pa. Code § 5.343, the undersigned shall take the deposition of Aqua Pennsylvania, Inc. at the law offices of Del Sole Cavanaugh Stroyd LLC, The Waterfront Building, Suite 300, 200 First Avenue, Pittsburgh, PA 15222, before an officer duly authorized by law to take depositions. The deposition will take place on the designated date and may continue from day to day until completed.

Under § 5.343(c), Complainants make the following brief statement of the matters for which the inquiry is being made:

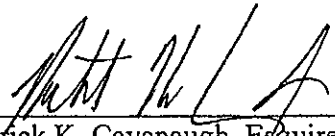
1. Aqua Pennsylvania's implementation, billing, collection, and reconciliation of the DSIC charge.
2. Aqua Pennsylvania's understanding of the meaning of "bills rendered" and "services rendered."
3. Aqua Pennsylvania's understanding of whether or not the DSIC charge should be prorated so that a new rate is not applied to services rendered before the effective date.

4. Aqua Pennsylvania's understanding of whether or not it is allowed to bill its customers a new DSIC rate for an entire billing cycle even where part of the billing cycle occurs before the new rate's effective date.

5. The exhibits attached to Aqua Pennsylvania's Answer and New Matter.

Under § 5.343(e), you have ten (10) days from the service of this Notice to designate the person(s) who will testify on behalf of Aqua Pennsylvania, Inc. The deponent(s) should be the person(s) most knowledgeable on the matters set forth above.

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh, Esquire

Counsel for Complainants

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

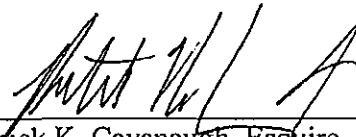
WALTER PAINTER and DONNA)	
PAINTER, on behalf of themselves and all)	
others similarly situated,)	
)	
v.)	C-2011-2239556
)	
AQUA PENNSYLVANIA, INC.,)	

NOTICE OF DEPOSITION OF WILLIAM C. PACKER

To: William C. Packer
Manager of Rates at Aqua Pennsylvania, Inc.
c/o Christopher T. Wright, Esquire
17 North Second Street
12th Floor
Harrisburg, PA 17101

Please take notice that on Monday, June 27, 2011 at 9:00 a.m., pursuant to 52 Pa. Code § 5.343, the undersigned shall take the deposition of William C. Packer at the law offices of Del Sole Cavanaugh Stroyd LLC, The Waterfront Building, Suite 300, 200 First Avenue, Pittsburgh, PA 15222, before an officer duly authorized by law to take depositions. The deposition will take place on the designated date and may continue from day to day until completed.

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh, Esquire

Counsel for Complainants

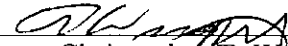
CERTIFICATE OF SERVICE

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

VIA E-MAIL & FIRST CLASS MAIL

Patrick K. Cavanaugh, Esquire
Del Sole Cavanaugh Stroyd LLC
The Waterfront building, Suite 300
200 First Avenue
Pittsburgh, PA 15222

Date: June 20, 2011



Christopher T. Wright

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JUN 20 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

From: (717) 731-1970
 Christopher T. Wright
 Post & Schell, P.C.
 17 North Second Street
 12th Floor
 Harrisburg, PA 17101

Origin ID: MDTA



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Rosemary Chiavetta, Secretary
 PA Public Utility Commission
 400 NORTH ST FL 2
 2ND FLOOR NORTH
 HARRISBURG, PA 17120

Ref # 2657/147386
 Invoice #
 PO #
 Dept #

TUE - 21 JUN A1
 PRIORITY OVERNIGHT

TRK# 7948 8418 9325

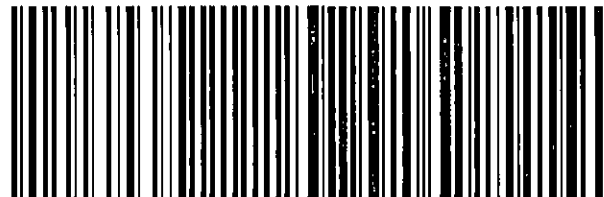
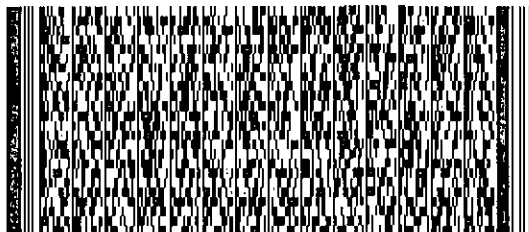
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