



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Fax
www.postschell.com

Christopher T. Wright

cwright@postschell.com
717-612-6013 Direct
717-731-1985 Fax
File #: 2657/147386

June 16, 2011

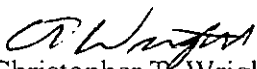
Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Answer of Aqua Pennsylvania, Inc. to Complainant's Motion for Change of Hearing Date 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

RECEIVED
2011 JUN 16 PM 4: 16
PAUC
SECRETARY'S BUREAU

1. Admitted. It is admitted that on or about April 21, 2011, Complainant filed the above-captioned Complaint with the Commission. By way of further response, Aqua was served with the Complaint by a Secretarial Letter dated May 5, 2011.

2. Admitted. It is admitted that on May 25, 2011, Aqua filed and served its Answer and New Matter. By way of further response, pursuant to Section 5.63 of the Commission's regulations, 52 Pa. Code § 5.63, Complainant's reply to Aqua's New Matter is due on or before June 14, 2011. As of the date of this Answer, Aqua has not been served with Complainant's reply to Aqua's New Matter.

3. Admitted.

4. Denied. The averments contained in Paragraph 4 of the Complainant's Motion are requests for relief to which no responsive pleading is required. By way of further response, Complainant's Motion failed to include a notice to plead as required by Section 5.103(b) of the Commission's regulations, 52 Pa. Code § 5.103(b). Further, Counsel for Complainant did not contact or otherwise confer with Counsel for Aqua prior to filing Complainant's requested change in the hearing date, as requested by Your Honor's Prehearing Order dated May 31, 2011.

In further response, contemporaneously with this Answer, Aqua is filing and serving a motion requesting that the Hearing Date for this matter be stayed indefinitely pending the disposition of forthcoming motions that may summarily resolve the above-captioned matter in its entirety, and be rescheduled for a later to-be-determined date, if necessary, following an initial prehearing conference pursuant to Section 5.222 of the Commissions regulations, 52 Pa. Code § 5.222. By way of further response, Counsel for Complainant has indicated that Complainant does not oppose the request to stay the Hearing Date indefinitely.

5. Admitted. It is admitted that on or about June 6, 2011, Complainant served Aqua with a request for production of documents. In further response, upon receipt of Complainant's reply to Aqua's New Matter, Aqua will 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. Unless and until Aqua's summary motion has fully and finally been resolved, any and all discovery, including interrogatories and requests for production of documents, is unnecessary and ultimately may become moot. Consequently, Aqua intends to timely file an appropriate motion requesting that any and all discovery in this matter be stayed pending the disposition of the forthcoming motion for judgment on the pleadings.

6. Admitted. It is admitted that on or about June 6, 2011, Complainant served Aqua with two notices of deposition. In further response, upon receipt of Complainant's reply to Aqua's New Matter, Aqua will 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. 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. Consequently, Aqua intends to timely file an appropriate motion requesting that any and all discovery in this matter be stayed pending the disposition of the forthcoming motion for judgment on the pleadings.

7. Admitted. By way of further response, contemporaneously with this Answer, Aqua is filing and serving a motion requesting that the Hearing Date for this matter be stayed indefinitely pending the disposition of forthcoming motions that may summarily resolve the above-captioned matter in its entirety, and be rescheduled for a later to-be-determined date, if necessary, following an initial prehearing conference pursuant to Section 5.222 of the

Commission's regulations, 52 Pa. Code § 5.222. By way of further response, Counsel for Complainant has indicated that Complainant does not oppose the request to stay the Hearing Date indefinitely.

8. Denied. It is Aqua's position that the only issue pending before the Commission is whether Aqua has, at all times material hereto, rendered service and billed for said service 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. It also is denied that, for purposes of this Commission complaint proceeding, there is a "class action involving all of [Aqua's] residential water customers in Pennsylvania." The only complainant in this matter is Donna/Walter Painter. There is nothing in the Pennsylvania Public Utility Code that authorizes the Commission to entertain class action complaints.

9. Denied. It is well-established that the Commission does not have the jurisdiction to order a public utility to pay monetary damages.¹ Further, the Commission is without jurisdiction to adjudicate claims asserted under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.²

10. Denied. Upon receipt of Complainant's reply to Aqua's New Matter, Aqua will file a motion for judgment on the pleadings. Aqua contends that the disposition of the forthcoming motion will summarily resolve the above-captioned matter in its entirety as a matter

¹ See *Diane M. Hamilton and Eva J. Hamilton v. Verizon Pa., Inc.*, Docket No. C-2009-2135715, 2010 Pa. PUC LEXIS 234 at *8 (July 28, 2010) (Initial Decision) (citing *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977)); *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages).

² See *Pa. Pub. Util. Comm'n v. The Bell Telephone Co. of Pa.*, Docket Nos. R-891200, *et al.*, 1989 Pa. PUC LEXIS 198; 71 Pa. PUC 338 (Nov. 9, 1989).

of law. Aqua therefore denies that this matter will require a substantial record and/or discovery. Aqua incorporates by reference Paragraphs 5 and 6, *supra*, as though set forth fully herein.

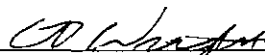
11. Admitted. By way of further response, the Court of Common Pleas of Lawrence County entered an order granting preliminary objections on the basis that the Commission has primary jurisdiction over this matter, staying the civil action before the Court pending conclusion of the proceedings before the Commission, and transferring jurisdiction to the Commission. (Complainant's Motion, Exhibit A, p. 11-13.)

12. Denied. Aqua incorporates Paragraph 11, *supra*, as though set forth fully herein.

13. Admitted.

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that Administrative Law Judge Conrad A. Johnson enter an order: (1) denying Complainants Motion for Change of Hearing Date; and (2) granting the Motion of Aqua Pennsylvania, Inc., filed on this same date, to stay the Hearing Date pending the disposition of forthcoming motions that may summarily resolve the above-captioned matter in its entirety.

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
12th Floor
Harrisburg, PA 17101-1601
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 16, 2011

Attorneys for Aqua Pennsylvania, Inc.

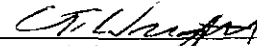
CERTIFICATE OF SERVICE

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 16, 2011



Christopher T. Wright

RECEIVED

2011 JUN 16 PM 4: 16

PA 5:00
SECRETARY'S BUREAU