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August 15, 2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Re: Richard Demmitt v. Shrewsbury Borough Municipal Authority
Docket No. C-2011-2251339

Dear Sir or Madam:

Enclosed please find Complainant's Response to Preliminary Objections to the Authority and two copies of each for filing in your office. Also enclosed is a self-addressed stamped envelope for you to return the time-stamped copies to me.

Very truly yours,
KATHERMAN, HEIM & PERRY

Stacey R. MacNeal

SRM/trw
Enc.

cc: Jeffrey L. Rehmeyer, Esquire
Eric Suter, Esquire
Mr. Richard Demmitt

BEFORE THE PENNSYLVANIA
PUBLIC UTILITIES COMMISSION

RICHARD DEMMITT,
Complainant,

No. C-2011-2251339

vs.

SHREWSBURY BOROUGH
MUNICIPAL AUTHORITY
Respondent

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RESPONSE TO PRELIMINARY OBJECTIONS

NOW, TO WIT, comes Complainant Richard Demmitt and answers Respondent's

Preliminary Objections as follows:

1. Admitted.
2. Admitted in part and Denied in part. Market Place, LLC has a street address of Elm Drive. There is no numerical address for this property.
3. Admitted in part and Denied in part. The allegations contained in this paragraph are denied to the extent that the Shrewsbury Borough Municipal Authority (the "SBMA") is operating as a sham, paper authority and a front for Shrewsbury Borough (the "Borough") in order to avoid the Public Utilities Commission (the "PUC") regulations.
4. Admitted. However, Richard Demmitt ("Demmitt") is an owner of Market Place, LLC and, therefore, has an interest in this matter.
5. Admitted.
6. Denied. Demmitt is the owner of Market Place, LLC and representing Market Place, LLC as its owner.
7. Admitted.

8. Denied. Demmitt brings this action pro se as owner and holder of interest in Market Place, LLC.

9. Denied. The Borough provides sewer service in the Township through SBMA, which is a leaseback Authority.

10. Denied. Area within the Borough are shown on a map of SBMA's service area.

11. Denied. The SBMA is a leaseback Authority and Demmitt is billed by and pays all fees to the Borough, not SBMA.

12. Denied. As stated in the Complaint, SBMA is a leaseback authority, and the Borough conducts all necessary billing and establishes rates and fees for the SBMA. SBMA is merely a front for the Borough. By way of further answer Presidential Heights Associates is not a subject of this Complaint.

13. Admitted.

14. Denied. As stated in the Complaint, Market Place, LLC owns property on Elm Street within Shrewsbury Township and within the Borough's sanitary service area, wherein services are provided through its leaseback Authority SBMA.

I. Preliminary Objections

A. Absence of Regulatory Jurisdiction

15. Admitted.

16. Admitted in part and Denied in part. It is admitted that generally authorities are not regulated by the PUC; however, authorities that leaseback their operations to the municipality may be subject to PUC regulations.

17. Denied. See response to number 16 above.

18. Admitted. This matter has been appealed by the Complainant as well as the Law Bureau Prosecutory Staff (the "LBS").

19. Denied. The PUC is able to determine the extent of PUC jurisdiction in the context of a proceeding brought under the provisions of the Public Utility Code.

20. Denied. See response to numbers 16, 18 and 19 above.

21. Denied. The Borough is providing sewer services outside of its geographical boundaries through its leaseback authority, SBMA. Pursuant to East Hempfield Township v. City of Lancaster and the City of Lancaster Authority, 273 A.2d 333 (Pa. 1971), the PUC regulates municipalities providing sewer services beyond their geographical boundaries through a leaseback authority. The PUC is able to determine the extent of PUC jurisdiction in the context of a proceeding brought under the provisions of the Public Utility Code. White Rock Sewage Corporation v. PA Public Utility Commission, 578 A.2d 984 (Pa. Cmwlth. 1990).

B. Lack of Standing/Capacity to Sue

22. Denied. This allegation contains conclusion of law to which no response is required.

23. Admitted.

24. Denied. Demmitt is the owner of Market Place, LLC, which owns property impacted by the Borough's establishment of rates beyond its boundaries, through its leaseback authority SBMA, without regulation by the PUC.

25. Denied. See response to number 24 above.

26. Denied. See response to number 24 above.

27. Denied. The allegations contained in this paragraph state conclusion of law to which no response is required.

28. Denied. See response to number 24 above.

29. Denied. See response to number 21 above.

30. Denied. See response to number 21 above.

31. Denied. See response to number 21 above.

32. Denied. The allegations contained in the Complaint are legally sufficient to provide the Respondent with reasonable notice of the issues at hand.

C. Failure to Conform to Code

33. Admitted.

34. Denied. The Complaint sets forth sufficient facts to support a violation.

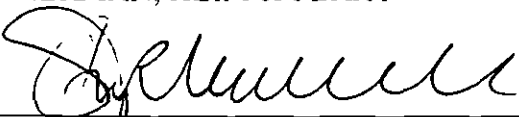
II. Conclusion

35. Denied. For the reasons set forth herein and in the Complaint, the allegations of which must be deemed to be true, the Complaint is legally sufficient and the PUC has jurisdiction over this Complaint.

DATE: 8/15/2011

Respectfully submitted,

KATHERMAN, HEIM & PERRY

By: 

Stacey R. MacNeal, Esquire
Supreme Ct. I.D. #80099
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RICHARD DEMMITT,
Complainant,

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SHREWSBURY BOROUGH
MUNICIPAL AUTHORITY
Respondent

No. C-2011-2251339

CERTIFICATE OF SERVICE


I hereby certify that on this 15th day of August, 2011, Complainant's Responses to Preliminary Objections to Respondent's Preliminary Objections have been served via first-class United States mail, postage prepaid, upon the following:

Jeffrey L. Rehmeier, Esquire
Eric Suter, Esquire
CGA Law Firm
135 North George Street
York, PA 17401

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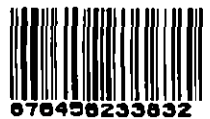
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