



Susan Simms Marsh P (717) 531-3208
Corporate Counsel F (717) 531-3399
800 Hershey Park Drive
Hershey PA 17033
susan.marsh@amwater.com

February 28, 2012

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

**Re: Utility Workers Union of American System Local 537 v.
Pennsylvania-American Water Company, Docket No. C-2012-2287204**

Dear Secretary Chiavetta:

On behalf of Pennsylvania American Water, I have attached for filing Motion to Dismiss regarding the Formal Complaint of the Utility Workers Union of America System Local 537. This is a qualified document permitted to be filed electronically.

As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served.

Respectfully submitted,

Susan Simms Marsh

Enclosures

cc: Utility Workers Union of America System Local 537

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UTILITY WORKERS UNION OF
AMERICA SYSTEM LOCAL 537
Complainant

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY
Respondent

Docket No. C-2012-2287204

NOTICE TO PLEAD

To: *Utility Workers Union of America System Local 537*

You are hereby notified to file a responsive pleading to the attached Motion of Pennsylvania-American Water Company within twenty (20) days from the date of service of this motion. If you do not file a written response within twenty (20) days of service, the facts set forth by Pennsylvania-American Water Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120



Susan Simms Marsh
Corporate Counsel
Pa. Attorney I. D. 44689
Pennsylvania American Water
800 West Hershey Park Drive
Hershey, Pennsylvania 17033

Seth A. Mendelsohn
Corporate Counsel
Pa. Attorney I.D. 77063
seth.mendelsohn@amwater.com
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033

Dated: February 28, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UTILITY WORKERS UNION OF
AMERICA SYSTEM LOCAL 537
Complainant

v.

PENNSYLVANIA-AMERICAN WATER
COMPANY,
Respondent

:
:
:
:
:
:
:
:
:
:
:

DOCKET NO. C-2012-2287204

MOTION TO DISMISS FORMAL COMPLAINT

NOW COMES the Respondent, Pennsylvania-American Water Company (the "Company"), by its attorney, and moves this Honorable Commission, pursuant to 52 Pa. Code §5.103, to dismiss the Formal Complaint of Utility Workers Union of America System Local 537 (UWUA) without a hearing as follows:

1. The Complainant instituted this action against the Company by Formal Complaint filed February 7, 2012.
2. The Commission served the Formal Complaint on the Company on February 8, 2012.
3. The Company filed an Answer to the Formal Complaint simultaneously with the filing of this Motion. The Company denied the material allegations of the Formal Complaint.
4. Complainant is the authorized collective bargaining representative for certain employees of the Company.

5. The Complainant is not a customer of the Company. Therefore, the Complainant has no aggrieved rights which are noted by the fact that UWUA failed to allege how their rights have been affected.

6. The duration of the contract between the Complainant and the Company was November 18, 2004 to November 17, 2009. The Complainant and the Company have not reached an agreement on new contract and UWUA members are continuing to work under the terms of the expired contract. However, the fact that UWUA and the Company have not reached an agreement on new contract does not qualify as right thereby conferring standing as it relates to whether or not PAWC has violated the Commission's regulations that affects PAWC water customers.

7. Additionally, what the UWUA has brought forth is a report to the Commission as to a possible violation as noted in the Complaint at Paragraph 6 the Complainant's desire to get protection against retaliation. This does not provide UWUA the perquisite standing to move forward with the Complaint including seeking penalties against the Company. At most, the document filed by UWUA at this docket should be considered a report to the Commission. It is now in the Commission hands as to how it will proceed in the event the Commission determines there is cause.

8. Therefore, for the reasons stated, herein, Complainant has no direct interest or right thereby conferring standing to file the Formal Complaint against the Company that is the subject of this Motion.

9. In order to have standing, a party must (1) have a substantial interest in the subject matter; (2) that interest must be direct; and (3) that interest must be immediate and not a remote consequence. Penn-Harris Hotel Company v. Pa. Public Utility Commission, 166 Pa. Superior Ct. 394, 71 A.2d 853 (1950); William Penn Parking Garage, Inc. v. City of

Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Pennsylvania Petroleum Association v. Pennsylvania Power and Light Company, 32 Pa. Cmwlth. 19, 377 A.2d 1270 (1977) Aff'd, 488 Pa. 308, 412 A.2d 822 (1980); and Franklin Township v. Pa. Department of Environmental Resources, 500 Pa. 1, 452 A.2d 718 (1982). The core concept of the question of standing is “. . . that a person, who is not adversely affected in any way by the matter he seeks to challenge, is not ‘aggrieved’ thereby and has no standing to obtain judicial resolution of his challenge.” William Penn Parking Garage, 464 Pa. 168, 346 A.2d 92 (1975).

10. The term “standing” is not defined in the Public Utility Code nor the Commission’s Rules of Administrative Practice and Procedure. The Commission, however, has exercised its discretion and applied the aforementioned appellate courts’ test in determining whether a party has standing. Application of Frederick C. Cianciulli, t/d/b/a Cianciulli’s Limousine Service, Docket No. A-00104570, (Order Entered November 7, 1984); Appalachian Gas Sales, Inc. v. PECO, 67 Pa. P.U.C. 246 (1988); Pennsylvania Gas Association v. T.W. Phillips Gas & Oil Co., Docket Nos. C-902909 and C-913239, (Order Entered December 20, 1991); Landlord Service Bureau, Inc. v. Equitable Gas Company, 79 Pa. P.U.C. 342 (1993), and Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F0001, Am-B (Order Entered December 23, 1994).

11. The Formal Complaint does not meet the “standing” test used by the Commission. There is no direct, substantial and immediate interest on the part of the Complainant.

THEREFORE, for the reasons stated herein, Pennsylvania-American Water Company requests this Honorable Commission to dismiss Utility Workers Union of America System Local 537 Formal Complaint at Docket No. C-2012-2287204 without a hearing.

Respectfully submitted,



Susan Simms Marsh
Corporate Counsel
Pa. Attorney I. D. 44689
susan.marsh@amwater.com
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033

Seth A. Mendelsohn
Corporate Counsel
Pa. Attorney I.D. 77063
seth.mendelsohn@amwater.com
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033

Dated: February 28, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UTILITY WORKERS UNION OF
AMERICA SYSTEM LOCAL 537
Complainant

v.

PENNSYLVANIA-AMERICAN
WATER COMPANY
Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. C-2012-2287204

VERIFICATION

I, Deborah Lippert, hereby state that the facts set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsifications to authorities).

2/28/2012

Date



Deborah Lippert

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UTILITY WORKERS UNION OF	:	
AMERICA SYSTEM LOCAL 537	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2012-2287204
	:	
PENNSYLVANIA-AMERICAN WATER	:	
COMPANY,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Pennsylvania-American Water Company's Motion to Dismiss, upon the participant listed below, in accordance with the requirements of §1.54:

VIA EMAIL AND FIRST CLASS MAIL

Scott J. Rubin
Attorney for Utility Workers Union of America
System Local 537
333 Oak Lane
Bloomsburg, PA 17815-2036

Dated this 28th day of February, 2012.



Susan Simms Marsh
Corporate Counsel
Pa. Attorney I. D. 44689
susan.marsh@amwater.com
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033

Seth A. Mendelsohn
Corporate Counsel
Pa. Attorney I.D. 77063
seth.mendelsohn@amwater.com
Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, Pennsylvania 17033