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July 26, 2012

David P. Zambito
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dzambito@cozen.com

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

Re: Olga Vasko v. Superior Water Company, Inc.
Docket No. C-2012-2311670

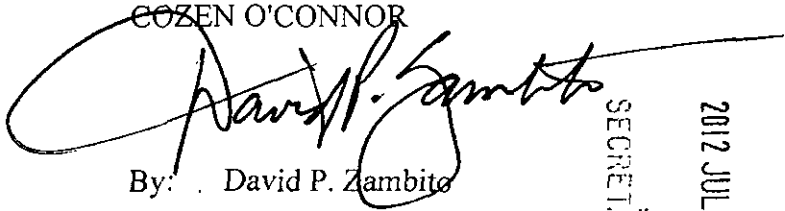
PRELIMINARY OBJECTIONS OF SUPERIOR WATER COMPANY, INC.

Enclosed for filing with the Commission on behalf of Superior Water Company, Inc. ("Superior") are an original and three (3) copies of its Preliminary Objections in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Please date-stamp the extra copy and return it with our courier. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By:  David P. Zambito

DPZ/kmg
Enclosures

cc: Olga Vasko

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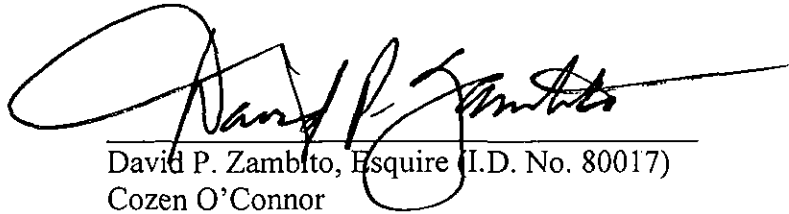
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Olga Vasko,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2311670
	:	
Superior Water Company, Inc.,	:	
Respondent	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101(f), YOU MAY RESPOND TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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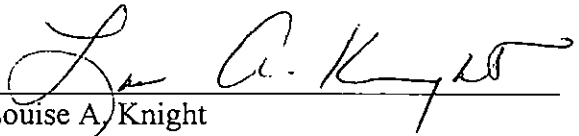
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VERIFICATION

I, Louise A. Knight, Chief Operating Officer of Superior Water Company, Inc., hereby state that the facts above set forth 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 made are subject to the penalties of 18 Pa. C.S. § 4904(a) (relating to unsworn falsification to authorities).

Date: 7/26/12


Louise A. Knight

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Olga Vasko,	:	
Complainant	:	
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v.	:	Docket No. C-2012-2311670
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**PRELIMINARY OBJECTIONS OF
SUPERIOR WATER COMPANY, INC.**

NOW COMES Superior Water Company, Inc. ("Superior"), by and through its counsel, Cozen O'Connor, and files, pursuant to 52 Pa. Code § 5.101, preliminary objections to the formal complaint ("Complaint") of Ms. Olga Vasko ("Ms. Vasko"). In support thereof, Superior argues as follows:

Background

1. On July 6, 2012, the Secretary of the Pennsylvania Public Utility Commission ("Commission") served the Complaint on Superior. The Complaint alleges that Superior's drilling of a water supply well in New Hanover Township, Montgomery County, Pennsylvania ("Superior Well") adversely affected the water supply of Ms. Vasko's well. Ms. Vasko is not a customer of Superior, as demonstrated by the undisputed fact that she currently receives her water supply from a private well. Ms. Vasko's sole request for relief is \$1950 in monetary damages.

2. On July 26, 2012, Superior filed an Answer and New Matter to the Complaint, asserting *inter alia* that the Commission lacks jurisdiction over well drilling/ground water disputes and lacks the authority to award monetary damages.

3. The Commission's regulations at 52 Pa. Code § 5.101(a)(1) permit preliminary objections for lack of Commission jurisdiction.

4. When considering preliminary objections, the Commission must determine whether the law says with certainty, based on well-pleaded factual averments, that no recovery or relief is possible. *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002); *Pa. Dep't of Auditor General v. State Employees' Retirement System*, 836 A.2d 1053 (Pa. Cmwlth. 2003).

Preliminary Objection No. 1

5. It is well-settled that the Commission cannot exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). As a creature of legislation, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa. C.S. § 101 *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

6. Water well drilling is governed in Pennsylvania by the relevant River Basin Commission (in this case, the Delaware River Basin Commission ("DRBC")) and the Pennsylvania Department of Environmental Protection ("DEP"). *See, e.g.*, 18 C.F.R. § 1.10.1 *et seq.* (regarding DRBC review of projects); *see also* Pennsylvania Safe Drinking Water Act, 35

P.S. §§ 721.1-721.17 (establishing drinking water quality standards, permit requirements, design and construction standards, system management responsibilities, and requirements for public notification); 25 Pa. Code Chapters 109 (regarding “Safe Drinking Water”) and 110 (regarding “Water Resources Planning”); *see generally Pickford v. Pennsylvania-American Water Company*, Docket No. C-20078029 *et al.* (Order entered May 14, 2009), at pp. 20-21 (involving DEP-permitted use of chloraminated water by water utility)(“The DEP’s statutory focus in administering the PA SDWA is the protection of the public health, while the Commission’s focus is the provision of safe, adequate and reasonable utility service.”).

7. It is long-established that disputes concerning ground water rights are governed by Pennsylvania common law and jurisdiction over ground water disputes is vested with Pennsylvania civil courts. *See, e.g., Weinschenk v. Western A.R. Co.*, 82 A. 750 (Pa. 1912)(recognizing that where a property owner is deprived of any of the advantageous uses of his customary water supply by the acts of another private party, there exists an infringement on the property owner’s property rights).

8. Nothing contained in the Pennsylvania Public Utility Code provides the Commission with jurisdiction over well drilling issues or ground water disputes. The Commission’s jurisdiction is limited to the review of the provision of safe, adequate and reasonable utility service. *See generally Pickford, supra.* Ms. Vasko is not a customer of Superior and does not receive service from Superior. Accordingly, the Commission is without jurisdiction in this matter.

9. Ms. Vasko should not be permitted to attack collaterally, under the guise of unreasonable utility service, the jurisdiction of DRBC and DEP over well permitting and the jurisdiction of Pennsylvania’s civil courts over ground water disputes.

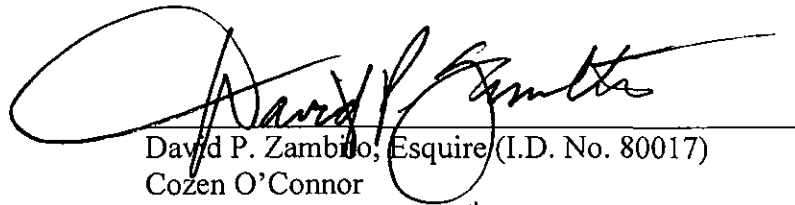
10. For the above reasons, this preliminary objection should be granted and the Complaint should be dismissed in its entirety with prejudice.

Preliminary Objection No. 2

11. The Commission does not have the authority to award monetary damages. *See Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *DeColli v. Atlas Transp. Co.*, 48 Pa. PUC 479 (1974); *Waetzman v. Charles P. Rutherford, Inc.*, 44 Pa. PUC 646 (1970).

12. Ms. Vasko's sole request for relief is monetary damages. Because the Commission lacks jurisdiction to award monetary damages, this preliminary objection should be granted and the Complaint should be dismissed in its entirety with prejudice.

WHEREFORE, Superior Water Company, Inc. respectfully requests that these Preliminary Objections be granted, the Formal Complaint of Ms. Olga Vasko be dismissed in its entirety with prejudice, and the docket be marked closed.



David P. Zambito, Esquire (I.D. No. 80017)
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305 North Front Street, 4th Floor
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Facsimile: 717-703-5901
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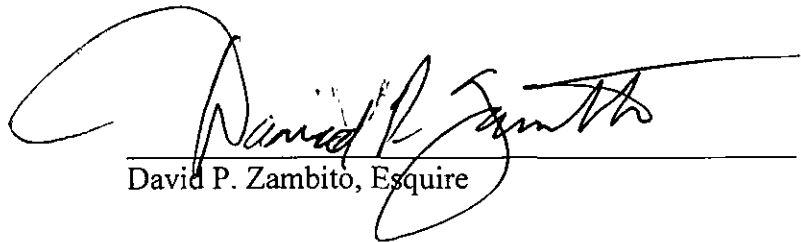
CERTIFICATE OF SERVICE
Docket No. C-2012-2311670

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objections upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL:

Olga Vasko
2405 N. Charlotte Street
Pottstown, PA 19464

Date: July 26, 2012



David P. Zambito, Esquire

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