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File #: 147386

September 4, 2012

Honorable Conrad A. Johnson
Administrative Law Judge
PA Public Utility Commission
Suite 220, Piatt Place
301 Fifth Avenue
Pittsburgh, PA 15222

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

Your Honor:

Pending before Your Honor in the above-reference matter is the Motion for Judgment on the Pleadings filed by Aqua Pennsylvania, Inc. ("Aqua") on July 22, 2011. This letter is intended to update Your Honor on matters that are directly related to and/or cited in said Motion.

On or about April 21, 2011, Complainants Walter and Donna Painter filed the above-captioned Complaint with the Pennsylvania Public Utility Commission ("Commission").¹ 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. Specifically, the Complaint alleges that Aqua implemented increases in its DSIC on a "bills rendered" basis instead of pro-rating those increases on a "services rendered" basis.

In response to the Complaint, Aqua filed a Motion for Judgment on the Pleadings asserting, among other things, that Aqua's Commission-approved tariff authorizes Aqua to apply the DSIC surcharge to customers' bills on a "bills issued" or "bills rendered" basis.² In support, Aqua cited to, among other things, a complaint against the Pennsylvania American Water Company ("PAWC"), asserting substantially similar claims regarding PAWC's implementation of periodic increases in its DSIC. See *Pettko v. Pennsylvania American Water Company*, Docket No. C-2011-2226096 (hereinafter "*Pettko*"). Aqua submits that there have been new developments in

¹ The Complaint is styled as a "class action" and asserts the following four claims against Aqua: (1) violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, 73 P.S. §§ 201-1 to 201-9; (2) conversion; (3) breach of contract; and (4) refund pursuant to Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312.

² Aqua's Motion further asserted that the Complaint is a utility rate claim subject to the exclusive jurisdiction of the Commission, and that the Complainants are not entitled to the relief sought in the Complainant.

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the *Pettko* matter that may directly affect the disposition of Aqua's Motion currently pending before Your Honor.

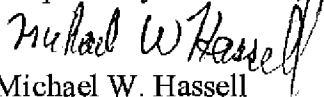
On May 29, 2012, PAWC filed a Motion for Summary Judgment in the *Pettko* matter asserting that PAWC implements the DSIC consistent with Commission Orders and specific directives of the Commission's Bureau of Audits on a "bills rendered" basis.³ On July 20, 2012, Administrative Law Judge Joel H. Cheskis issued an Initial Decision granting PAWC's Motion for Summary Judgment, holding that PAWC is entitled to judgment as a matter of law because the facts averred by the complainant did not give rise to any violation of the Public Utility Code, Commission Order or regulation, or Commission-approved tariff even when the DSIC is implemented on a bills rendered basis. Exceptions and Reply Exceptions to the Initial Decision in the *Pettko* matter are currently pending before the Commission.

Aqua further notes that on February 14, 2012, Governor Corbett signed Act 11 of 2012 amending the Public Utility Code to allow jurisdictional water and wastewater utilities, natural gas distribution companies, city natural gas distribution operations, and electric distribution companies to petition the Commission for approval to implement a DSIC. On August 2, 2012, the Commission entered a Final Implementation Order to establish procedures and guidelines to carry out the ratemaking provisions of Act 11. Therein, the Commission directed that "all utilities bill their customers for DSIC on a *bills rendered basis*." *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, pp. 26-27 (August 2, 2012) (emphasis added).

Aqua believes that the foregoing matters may directly affect the disposition of the Motion for Judgment on the Pleadings currently pending before Your Honor in this matter. Aqua therefore believes that it is appropriate to advise Your Honor of these new developments that have occurred since the date that Aqua filed its Motion for Judgment on the Pleadings.

Please do not hesitate to contact me should you have any questions concerning this matter. Copies of this letter have been served in the manner indicated in the enclosed Certificate of Service.

Respectfully Submitted,


Michael W. Hassell

MWH/skr

cc: Rosemary Chiavetta
Kimberly A. Joyce
Certificate of Service

³ On or about March 23, 2011, PAWC filed a Motion for Judgment on the Pleadings in the *Pettko* matter. On October 5, 2011, Administrative Law Judge Joel H. Cheskis issued an Order granting in part PAWC's Motion for Judgment on the Pleadings with respect to the portion of the *Pettko* Complaint pertaining to a "class action," monetary damages, the Unfair Trade Practices Consumer Protection Law, attorneys' fees, and the overall accuracy of the total amount collected by PAWC in its implementation of the DSIC.

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: September 4, 2012



Michael W. Hassell