

December 2, 2013

Via Electronic Filing

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

**Re: Docket No. C-2013-2369043
Arnetta Archer Minto v. Aqua Pennsylvania, Inc.
Motion for Summary Judgment of Aqua PA**

Dear Secretary Chiavetta:

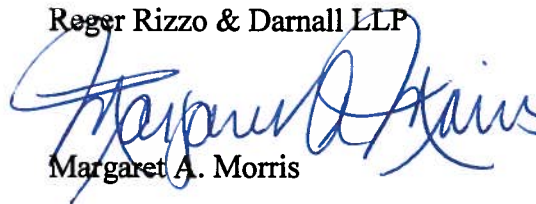
Attached for filing is the Motion for Summary Judgment of Aqua Pennsylvania, Inc. to the Complaint filed by Arnetta Archer Minto in the above captioned proceedings.

A copy of the Motion for Summary Judgment has been provided to counsel for the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Enclosure

cc: The Honorable Christopher P. Pell [w/enc.]
Mary McFall Hopper, Esquire, Aqua Pennsylvania Inc. [w/enc.]
Gerard K. Schrom, Esquire, Schrom, Schaffer & Botel, PC [w/enc.]

**Re: Docket No. C-2013-2369043
Arnetta Archer Minto v. Aqua PA
Motion for Summary Judgment of Aqua PA**

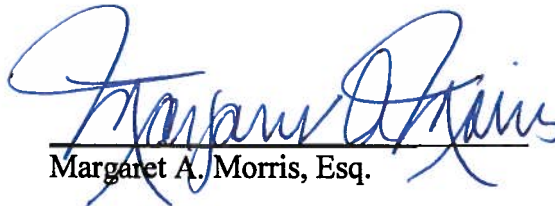
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person on the attached service list, in accordance with the requirements of §1.54 (relating to service by a participant).

Via First Class and Electronic Mail

Gerard K. Schrom, Esquire
Schrom, Schaffer & Botel, PC
4 W. Front Street
Media, PA 19063
gschrom@schromandshaffer.com

Dated: December 2, 2013


Margaret A. Morris, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ARNETTA ARCHER MINTO :
:
v. : DOCKET NO. C-2013-2369043
:
AQUA PENNSYLVANIA, INC. :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103 (b), you are hereby notified that if you do not file a written response to the enclosed Motion for Summary Judgment within twenty (20) days from service of this Notice, the facts set forth by Aqua Pennsylvania, Inc. in the Motion may be granted. All pleadings, such as an Answer to the Motion for Summary Judgment, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania, Inc., and where applicable, the Administrative Law Judge presiding over the case.

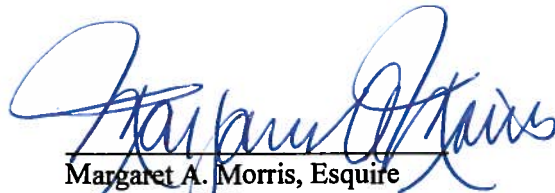
File with:

Rosemary Chiavetta, Esquire
Pennsylvania Public Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: December 2, 2013



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Counsel for Aqua Pennsylvania, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ARNETTA C. ARCHER MINTO	:	
	:	
v	:	Docket No. C-2013-2369043
	:	
	:	
AQUA PENNSYLVANIA, INC.	:	

MOTION OF AQUA PENNSYLVANIA, INC.
FOR SUMMARY JUDGMENT

I. Introduction and Overview

Pursuant to 52 Pa. Code §§ 5.102 and 5.103, and the directive of the Honorable Christopher P. Pell (Judge Pell) at the November 13, 2013 hearing, Aqua Pennsylvania, Inc. (Aqua or the Company) moves for Summary Judgment with respect to the Formal Complaint of Arnetta C. Archer Minto (Complainant) at the above-referenced docket.

The gravamen of her Complaint alleges issues with the quality of water being provided by Aqua. The issue of water quality lies exclusively within the jurisdiction of the Pennsylvania Department of Environmental Protection (DEP), not the Pennsylvania Public Utility Commission (Commission). In response to discovery, the Complainant specifically identified four DEP Regulations that she alleged Aqua has violated. There are no genuine material issues of fact in controversy; *all issues raised in the Formal Complaint directly relate to the quality of water*; the Commission lacks

subject matter jurisdiction to entertain water quality issues. The Complaint, alleging water quality issues, should be dismissed.

II. Background

1. On June 10, 2013, the Complainant filed her Formal Complaint, *pro se*, checking off the box marked “reliability, safety or quality problem with my utility service.” She alleged that Aqua had provided “dirty water” which contributed to her and her neighbors’ medical and health issues. *Complaint* at ¶¶ 4 and 5. The Complaint listed Gary P. Heslin, Esquire as her counsel¹.

2. On July 10, 2013, the Company filed an Answer and New Matter denying the material elements of the Complaint. Specifically, Aqua denied that there was a reliability, safety or quality problem with the water service it provides to the Complainant. As New Matter the Company argued that: (1) the Complainant was without standing to allege injuries on behalf of her neighbors; and (2) the Commission could not award damages. That same day, the Company filed its Preliminary Objections seeking the dismissal of the requested relief: (1) on behalf of the Complainant’s neighbors for lack of standing; and (2) for damages for lack of subject matter jurisdiction.

3. Judge Pell issued an Initial Decision, Granting in Part and Denying in Part, the Preliminary Objections, dated August 20, 2013. (*PO Order*). No Exceptions were filed to the Initial Decision which became final by operation of law on October 7, 2013.

¹ Aqua did confirm with Attorney Heslin that he was not representing the Complainant; Aqua did not serve him with any pleading.

Judge Pell specifically ruled that the Hearing, which was scheduled for October 3, 2013, was to proceed to address the issue of whether Aqua provided the Complainant with adequate, efficient, safe, and reasonable service. Specifically, Judge Pell ruled:

“Therefore, questions remain as to whether, pursuant to the Public Utility Code and applicable regulations, Aqua provided the complainant with adequate, efficient, safe, and reasonable service. Complainant is advised that she will bear the burden of proof at hearing and must present evidence sufficient to prove that the respondent violated a statute, regulation, its tariff or an order of the Commission. 66 Pa. C.S.A. § 332(a).”

PO Order at 7.

4. By letter dated August 29, 2013, Gary P. Heslin, Esquire, advised Judge Pell that neither he nor his firm were representing the Complainant in this matter and that the Complainant had advised that she was being represented by Gerard Schrom. Attorney Heslin stated he was unable to confirm with Mr. Schrom that he was in fact representing the Complainant, but Attorney Heslin did forward a copy of the *PO Order* and Hearing Notice to both Mr. Schrom and the Complainant.

5. Attorney Schrom had several discussions with Aqua’s counsel regarding the Complaint beginning in July 2013. Attorney Schrom formally filed his Entry of Appearance on September 30, 2013.

6. Complainant’s counsel requested a postponement of the Hearing scheduled for October 3, 2013. Aqua did not object to the request for the continuance, which was granted. A new Hearing was scheduled for November 13, 2013.

7. The parties engaged in informal discovery. On October 22, 2013, Aqua provided the agreed upon documents in the informal discovery process; Complainant had yet to provide any agreed upon documents.

8. As a result of not receiving any documents pursuant to the informal discovery request, Aqua, on October 24, 2013, propounded its First Set of Interrogatories to the Complainant as well as its First Request for Production of Documents (Discovery Request). A copy of the Discovery Request is provided as Attachment 1.

9. On November 12, 2013, the day before the scheduled hearing and the due date for the responses, the Complainant provided, *via fax*, a partial response to the Discovery Request (Response). Specifically, the Complainant answered two of the ten questions: (1) the proposed violations that the Complainant was alleging Aqua had engaged in as a basis for the Formal Complaint; and (2) the requested relief sought pursuant to the Formal Complaint, in light of *PO Order*. A copy of the Response is provided as Attachment 2.

10. The hearing commenced as scheduled on November 13, 2013. Counsel for Aqua presented an oral Motion in Limine to ascertain what violations of the Commission's rules or regulations the Complainant was alleging. It was confirmed during oral argument that the sole issue raised in the Formal Complaint concerned water quality. However, for the first time, the Complainant attempted to orally amend the Complaint to include violations of irrelevant Commission Regulations. Judge Pell

requested that the parties reduce their respective argument to writing and file same with the Commission.

III. Procedural Matters

11. Aqua would note that the Response is not in conformance with the Commission's Regulations regarding Answers to Written Interrogatories by parties. 52 Pa. Code §5.342. Specifically, §5.342 states that answers to interrogatories must identify each interrogatory fully and completely unless an objection is made; must restate the interrogatory which is being answered and must provide verification. As reflected in Attachment 2, counsel for Complainant has ignored the Commission's Regulations; on that basis alone the Response should be stricken.

IV. Legal Standard for Granting Summary Judgment

12. The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§5.101-5.103. The Commission's regulation at 52 Pa. Code §5.102(a), permits any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code §5.102(c). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1).

13. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super.1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlth. 1976). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

14. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983); Commonwealth v. Diamond Shamrock Chemical Co., 391 A.2d 1333 (Pa. Cmwlth. 1978); Stover v. The United Telephone Co. of Pennsylvania, Docket No.C-00923833 (Order entered July 21, 1992). The Commission has interpreted Section 5.102(c) of its regulations in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. South River Power Partners, L.P. v. West Penn Power Company, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. Nicastro v. Cuyler, 467 A.2d 1218 (Pa. Cmwlth. 1983); Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc., 467 A.2d 330 (Pa. Super. 1983); Geriot v. Council of Borough of Darby, 457 A.2d 202 (Pa. Cmwlth. 1983).

15. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super.1954).

16. The Complainant in its Response alleged that Aqua violated seven (7) regulations; specifically citing the regulations of two (2) separate agencies; DEP and this Commission. The Complainant alleges that Aqua violated four (4) provisions of Section 109 of DEPs Regulations, 52 Pa. Code §109 *et seq.* and Sections 65.2(b)(2) and 3.501(a)(3)(iii) of the Commission's Regulations, 52 Pa. Code §65.2 (b)(2) and 52 Pa. Code §3.501(a)(3)(iii).

Water Quality

17. The Commission lacks subject matter jurisdiction to determine a proposed violation of DEP's regulations. DEP has the exclusive jurisdiction to entertain complaints regarding water quality in Pennsylvania. The Pennsylvania Safe Drinking Water Act, 35 Pa. C.S. §721.1-721.17 and the Federal Safe Drinking Water Act, 42 USCS §300(j)-300(i)-10 do not delegate any authority to the Commission. Rather, jurisdiction over water quality has remained exclusively with DEP.

18. Even if all the facts set forth in the Complaint are assumed to be true, the Company is entitled to complaint dismissal as a matter of law since the Complaint cannot be sustained under Section 701 of the Public Utility Code (Code) for lack of subject matter jurisdiction. 66 Pa. C.S. § 701. The Commission may not exceed jurisdiction and must act within it. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 427 Pa. 581, 235 A.2d 602 (1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. As a creature of Legislature, the Commission possesses only the authority the state legislature has specifically granted to it in the Code. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell of Pa., 477 Pa. 1, 383 A.2d 791 (1977); Allegheny County Port Authority v. Pennsylvania Pub. Util. Comm'n., 427 Pa. 562, 237 A.2d 602 (1967); Behrend v. Bell of Pa., 257 Pa. Superior Ct. 35, 390 A.2d 233 (1978); Harrisburg Taxicab & Baggage Co. v. Pennsylvania Pub. Util. Comm'n., 786 A.2d 288 (Pa. Cmwlth. 2001); and City of Erie v. Pa. Electric Co., 383 A.2d 575 (Pa. Cmwlth. 1978).

19. Precedent makes clear the distinction between water service which the Commission may regulate and water quality which may only be regulated by DEP. Therefore, the proposed alleged violations set forth in the Response with respect to violations of DEP regulations must be summarily dismissed; the Commission lacks subject matter jurisdiction to entertain or to rule on the allegation. 66 Pa. C.S. § 701.

Untimely Amended Complaint

20. The Complainant alleges, for the first time in its Response, that Aqua violated two (2) specific Commission Regulations. Specifically, the Complainant alleges that: (1) the Company failed to submit a report of a reportable accident involving the facilities or operations of the utility violation of 52 Pa. Code §65.2 (b)(2); and (2) the Company violated 52 Pa. Code §3.501(a)(3)(iii) in that Aqua did not formulate a plan to demonstrate its ability to provide adequate water supply in a proceeding for a certificate of public convenience and necessity.

21. First, the alleged violations of the Commission's Regulations at Sections 65 and/or 3 are not raised in the Formal Complaint. It is a well-settled principle of law that the issues before the court are those properly raised in the pleadings. Under the Pennsylvania system of fact pleading, the pleader must define the issues: every act or performance essential to that end must be set forth in the complaint. See, Pike County Hotels Corp. v. Kiefer, 262 Pa. Super. 126 (1978). The complaint must provide notice to Aqua of the basis of the claim, as well as a summary of the facts essential to support that claim. Alpha Tau Omega Fraternity v. University of Pennsylvania, 318 Pa. Super 293 (1983). While the Complaint was filed *pro se*, counsel has had ample opportunity to amend the Complaint to raise the allegations set forth in the Response. The back door attempt to amend the Complaint in the Response and to expand the scope of the hearing without notice to the Company should not be permitted. The alleged violations have never been raised to Aqua. Commission Regulations do not permit the amendment of pleadings within five (5) days of the hearing or at hearing unless directed or permitted by

the presiding judge. 52 Pa. Code § 5.91(c). The Complainant has not presented any compelling reason why the pleadings should be amended at this late date nor alleged any prejudice to the Complainant by being required to properly file a complaint consistent with Commission Regulations. *See*, 52 Pa. Code § 5.21 *et seq.*

22. Once the Complainant was represented by counsel, Aqua sought to clarify the scope of the proceeding and propounded its Discovery Request. Specifically, the Complainant was asked to identify the specific provision(s) of the Code that she alleged Aqua had violated. In Response, the Complainant did not identify any provision of the Code but rather alleged a violation of the application procedure for a certificate of public convenience and necessity (Section 3.501(a)(3)(iii)) and a violation of an accident reporting requirement (Section 65.2(b)(2)).

Section 3.501(a)(3)(iii)

23. The allegation that Aqua violated Section 3.501(a)(3)(iii), which was not pled in the Formal Complaint, should be dismissed. The violation, even if deemed properly raised, is irrelevant to this Complaint proceeding. Section 3.501(a)(3)(iii) sets forth the requirement for a utility seeking a certificate of public convenience and necessity to provide regulated water or wastewater services in the Commonwealth. Aqua is certificated as a water supplier to the Complainant; this regulation is not applicable to the present proceeding.

Section 65.2(b)(2)

24. The allegation that Aqua violated 52 Pa. Code §65.2 by failing to submit a report of a reportable accident is also without merit. The Complaint did not raise nor allege any violation of this Regulation. The violation, even if deemed properly raised, is irrelevant to this Complaint proceeding.

25. While the Complainant did allege in her Complaint that she had been “hospitalized,” that mere allegation does not trigger the reporting requirements of Section 65.2 which requires the filing of a Form UCTA-8 within 30 days of the occurrence. The Complainant has provided no explanation as to how this regulation, which addresses “reportable accidents” involving “utility facilities or operation,” is applicable to the issues raised in the Formal Complaint.

26. There is no genuine issue of material fact. Aqua is entitled to judgment as a matter of law. The Complainant in her Response does not set forth any allegation of any law, regulation or order of the Commission.

27. Judicial economy is served by avoiding a hearing where no factual dispute exists. Even viewing the evidence in the light most favorable to the Complainant and all doubts being resolved in favor of the Complainant, Aqua is still entitled to a dismissal as a matter of law since the sole issue raised in the Formal Complaint is water quality. DEP has exclusive jurisdiction over water quality issues.

V. Conclusion

The Formal Complaint does not allege that Aqua violated a statute, regulation, order of the Commission or its tariff. Rather, it is alleged that Aqua violated the federal and state Safe Drinking Water Acts; the quality of water issue is exclusively within the jurisdiction of DEP, not the Commission. The Formal Complaint should be dismissed for lack of subject matter jurisdiction.

The request to amend the Complaint on the eve of the hearing is inappropriate and should be denied. The Complainant has never raised the allegation that Aqua has violated these two (2) specific Commission Regulations; Aqua has the right to defend against allegations that have been properly pled.


Granting Aqua's Motion does not result in any prejudice to the Complainant. The Complaint before the Commission does not address a subject matter that is within the jurisdiction of the Commission. The Complainant is not barred from properly filing a formal Complaint alleging a violation of any statute, regulation, or an order of the Commission or Aqua's tariff. Aqua, on the other hand, is prejudiced by the late amendment of the Complaint which prevents the Company from engaging in discovery or the preparation for the evidentiary hearing. While the Complaint was originally filed *pro se* by the Complainant, she has been represented by counsel since July of 2013. There have been ample opportunities for counsel to amend the Complaint to timely include violations not previously raised.

There is no genuine issue of material fact. Aqua is entitled to judgment as a matter of law. The Complainant in her Response does not set forth any allegation of any law, regulation or order of the Commission. Judicial economy is served by avoiding a hearing where no factual dispute exists.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania, Inc., respectfully requests that this Honorable Court, in the absence of hearing, grant its Motion for Summary Judgment and dismiss the Formal Complaint filed on behalf of Arnetta C. Archer Minto against Aqua Pennsylvania, Inc., at Docket No. C-2013-2369043, with prejudice.

Respectfully submitted,

Dated: December 2, 2013

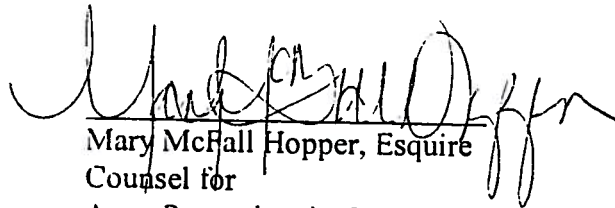


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Counsel for Aqua Pennsylvania, Inc.

VERIFICATION

I, Mary McFall Hopper, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect the Company 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 falsification to authorities).



Mary McFall Hopper, Esquire
Counsel for
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
(610) 645-1170

Dated: 12-2-13

**Re: Docket No. C-2013-2369043
Arnetta Archer Minto v. Aqua PA**

Attachment 1

**Aqua's First Set of Interrogatories and First
Request for Production of Documents
(Discovery Request)**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ARNETTA C. ARCHER MINTO :
 :
 v : **Docket No. C-2013-2369043**
 :
AQUA PENNSYLVANIA, INC. :

**AQUA PENNSYLVANIA, INC.’S FIRST SET OF INTERROGATORIES TO
COMPLAINANT, ARNETTA C. ARCHER MINTO**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341, *et seq.*, Aqua Pennsylvania, Inc. (“Aqua” or the “Company”), propounds the following Interrogatories on Arnetta C. Archer Minto (“Responding Party”).

INSTRUCTIONS AND DEFINITIONS

1. In accordance with 52 Pa. Code § 342(d), the Responding Party shall serve answers to these interrogatories within twenty (20) days from the date of service, unless otherwise modified by the presiding officer or by agreement. To the extent that the Responding Party objects to any portion of these interrogatories, any such objections must be served within ten (10) days from the date of service pursuant to 52 Pa. Code § 5.342(e).
2. The “Responding Party,” “you,” or “your” means the party to which these interrogatories are propounded and/or all attorneys, agents, affiliates, employees, consultants, members, constituents and representatives acting on behalf of the Responding Party.
3. “Commission” means the Pennsylvania Public Utility Commission.
4. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address and last known telephone number.
5. To “identify” a business entity means to state the full name of such business, the form of the business and its location or address.
6. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:
 - a. The title or other means of identification of each such document;

- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

7. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

8. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

9. “Date” means the exact day, month and year, if ascertainable, or if not, the best approximation thereof.

10. Items referred to in the singular include those in the plural and items referred to in the plural include those in the singular.

11. Items referred to in the masculine include those in the feminine and items in the feminine include those in the masculine.

12. The answers provided should first restate the question asked and identify the person(s) supplying the information.

13. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

14. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

15. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of any interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

16. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

17. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

18. As set forth in 52 Pa. Code § 5.342(g), these interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

INTERROGATORIES

1. Please set forth your theory of the case. Please indicate the specific provisions of the Pennsylvania Public Utility Code, Commission regulations, Commission Orders, and/or the Company's Commission-approved tariff that you allege the Company violated.

2. Please set forth the relief requested pursuant to your Complaint, in light of the Order issued by Judge Pell dated October 7, 2013, granting the Company's Preliminary Objections.

3. Please provide your educational background, identifying the school, graduation date and degree obtained.

4. Please state your occupational history for the past ten (10) years.

5. Have you ever been arrested, charged with or convicted of a criminal offense? If so, identify:

- a. The police department or authority that arrested you;
- b. Date of occurrence;
- c. Nature of offense; and
- d. Disposition of the case including the sentence or discipline imposed.

6. Please identify all civil lawsuits that you have been involved with including the court, caption, case number, date of filing, nature of the allegations and disposition of the case.

7. Identify each person whom you expect to call as a witness at the hearing;

- a. State the expected scope of testimony to be provided by the witness;
- b. State the exhibits you anticipate the witness sponsoring at the hearing;
- c. Provide the educational background for each witness;
- d. Provide the business background for each witness; and

- e. Provide any license or business certification for each witness.
8. Identify each person whom you expect to call as an expert witness at the hearing:
- a. State the subject and scope of testimony on which the expert is expected to testify;
 - b. For each such expert, have the expert state the substance of the facts and opinion to which the expert is expected to testify and summarize the grounds for each such opinion;
 - c. Set forth the qualifications of each expert, listing the schools attended, the years of attendance, degrees received, and experience in any particular field of specialization or expertise; and,
 - d. For each expert identified above, please attach his or her report(s) signed by him or her.
9. Have you or anyone on your behalf conducted tests on the reliability, safety and/or quality of water at the Service Location? If so, identify:
- a. Who obtained the sample;
 - b. Chain of custody of the water sample from the time the sample was obtained to the time it was tested;
 - c. All laboratories or facilities where the water was tested;
 - d. Whether the laboratory is certified as an independent laboratory;
 - e. If the laboratory is certified, who certified the laboratory;
 - f. The results of said tests including any contaminants and whether the water meets appropriate standards, including regulatory and water quality compliance with the Commission, Pennsylvania Department of Environmental Protection, and the United States Environmental Protection Agency;
 - g. Whether the water sample was tested for and/or contained any coliform bacteria;
 - h. Whether the water sample was tested for and/or contained any "pylori";

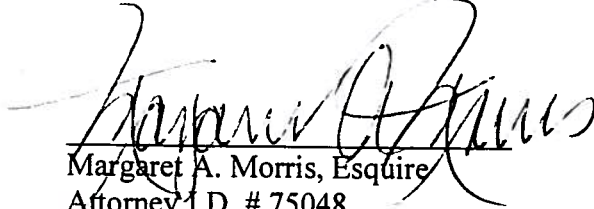
- i. Please attach all reports regarding any water testing, setting forth the author and date of such reports.

10. State whether you or anyone on your behalf has contacted any local, state or federal agencies, offices, officials, representatives or agents, regarding the safety and/or quality of Aqua's water and/or the allegations in the Complaint. If so, please indicate:

- a. The name of the agency, office, official or agent and the address, telephone number and email address of same;
- b. The date, time and manner in which you contacted them;
- c. Your complaint to the agency, office, official or agent regarding the safety and/or quality of Aqua's Water and/or the allegations in the Complaint;
- d. Their response to your complaint; and
- e. Please attach any notes, reports, correspondence, emails, or any other related documents related to any contact you had in connection with the above contact.

Very truly yours,

REGER RIZZO & DARNALL LLP



Margaret A. Morris, Esquire

Attorney I.D. # 75048

Cira Centre, 13th Floor

2929 Arch Street

Philadelphia, PA 19104

(215) 495-6524 (voice)

(215) 495-6600 (fax)

mmorris@regerlaw.com

Dated: October 24, 2013

Counsel for Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ARNETTA C. ARCHER MINTO	:	
	:	
v	:	Docket No. C-2013-2369043
	:	
AQUA PENNSYLVANIA, INC.	:	

AQUA PENNSYLVANIA, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO COMPLAINANT, ARNETTA C. ARCHER MINTO

Pursuant to 52 Pa. Code § 5.349, Aqua Pennsylvania (“Aqua” or the “Company”), propounds the following Request for Production of Documents to Arnetta C. Archer Minto (“Responding Party”).

INSTRUCTIONS AND DEFINITIONS

1. In accordance with 52 Pa. Code § 349(d), the Responding Party shall serve responses to these document requests within twenty (20) days from the date of service, unless otherwise modified by the presiding officer or by agreement. To the extent that the Responding Party objects to any portion of these document requests, any such objections must be served within ten (10) days from the date of service pursuant to 52 Pa. Code §§ 5.342(e) and 5.349(d).

2. The “Responding Party,” “you,” or “your” means the party to which these requests for documents are propounded and/or all attorneys, agents, affiliates, employees, consultants, members, constituents and representatives acting on behalf of the Responding Party.

3. “Commission” means the Pennsylvania Public Utility Commission.

4. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and

- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

5. "Document" means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

6. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

7. Items referred to in the singular include those in the plural and items referred to in the plural include those in the singular.

8. Items referred to in the masculine include those in the feminine and items in the feminine include those in the masculine.

9. In responding to these requests for documents, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the document requests cannot be responded to in full after exercising due diligence to secure the requested document, please so state and respond to the extent possible, specifying the Responding Party's inability to respond to the remainder, and stating whatever information the Responding Party has concerning the unresponsive portions. If the Responding Party's response is qualified in any particular, please set forth the details of such qualification.

10. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 3 and state the basis of the objection.

11. If the Responding Party objects to part of a document request and refuses to produce that part, state the Responding Party's objection and respond to the remaining portion of that request. If the Responding Party objects to the scope or time period of any document request and refuses to respond for that scope or time period, state the Responding Party's objection and response to the request for the scope or time period that the Responding Party believes is appropriate.

12. If, in connection with a request to produce, the Responding Party contends that any documents, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

13. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

DOCUMENTS TO BE PRODUCED

1. Please provide a copy of all proposed exhibits to be introduced at the hearing.
2. Any and all original documents related to water tests for reliability, safety and quality of the water at the Service Location, *i.e.*, 651 Briarcliff Road, Upper Darby, PA.
3. All written statements (signed or unsigned), descriptions of statements and records and written accounts of investigation which refer, relate or pertain to the allegations in the Complaint.
4. All other statements which are recorded or otherwise memorialized which refer, relate or pertain to the allegations in the Complaint.
5. All original photographs or negatives, videotapes, drawings, maps, charts and diagrams of any person, place or thing which is directly or indirectly related to the allegations in the Complaint.
6. Any and all pleadings related to any lawsuits to which you have been a party.
7. The *curriculum vitae* for all expert witnesses expected to testify at the hearing.
8. Any and all reports, notes and other documents prepared by each expert witness whom Responding Party expects to call as a witness at the time of the trial.

9. All documents and tangible items reviewed, examined or considered by each expert witness in connection with this case.

10. Any and all documents, including all correspondence, sent or provided to any and all expert witnesses in connection with this case.

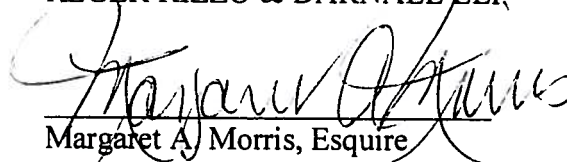
11. All documents relied upon by Responding Party or anyone else in response to the Company's Interrogatories.

12. All documents identified in Responding Party's Answers to the Company's Interrogatories.

These requests are deemed to be continuing in that any documents, photographs, statements, reports, or other tangible things secured subsequent to the date herein for production of same are to be provided to Margaret A. Morris, Esquire, the Company's counsel.

Very truly yours,

REGER RIZZO & DARNALL LLP



Margaret A. Morris, Esquire

Attorney I.D. # 75048

Cira Centre, 13th Floor

2929 Arch Street

Philadelphia, PA 19104

(215) 495-6524 (voice)

(215) 495-6600 (fax)

mmorris@regerlaw.com

Dated: October 24, 2013

Counsel for Aqua Pennsylvania, Inc.

Re: Docket No. C-2013-2369043
Arnetta Archer Minto v. Aqua PA

Attachment 2

***Complainant's Partial Response to the
Discovery Request
(Response)***

GERARD K. SCHROM, Esq. *

OF COUNSEL

NEIL E. BOTEL, Esq.
ERIC SHORE, D.O., M.B.A., Esq. †
TIMOTHY SHAFFER, Esq. **
FREDERICK D. HEIKEN, Esq. ***
*ALSO ADMITTED TO N.J. BAR
**ADMITTED TO FL. BAR ONLY
***ADMITTED TO N.Y. & D.C. BARS ONLY
† FELLOW OF THE AMERICAN
COLLEGE OF LEGAL MEDICINE



4 WEST FRONT STREET
MEDIA, PENNSYLVANIA 19063-3306
610-565-6060
FAX 610-565-2980

PHILADELPHIA
401 CITY LINE AVENUE
SUITE 122
BALA CYNWYD, PA 19004

CHESTER COUNTY
EXTON OFFICE COURT
300-F N. POTTSTOWN PIKE
EXTON, PA 19341

PLEASE RESPOND TO
MEDIA OFFICE

OSCHROM@SCHROMANDSHAFFER.COM

WRITER'S DIRECT NUMBER
610-565-5050

FACSIMILE

THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS SUBJECT TO THE ATTORNEY/CLIENT PRIVILEGE AND IS INTENDED ONLY FOR THE USE OF THE RECIPIENT DESIGNATED BELOW. IF THE PERSON RECEIVING THIS TRANSMISSION IS NOT THE INTENDED RECIPIENT, PLEASE NOTE THAT ANY DISSEMINATION, DISTRIBUTION OR PUBLICATION OF THIS COMMUNICATION IS PROHIBITED.

DATE: November 12, 2013
TO: Margaret A. Morris, Esq. FAX: 215-495-6600
FROM: Gerard K. Schrom, Esq. FAX: 610-565-2980
RE: Archer-Minto v. Aqua Pennsylvania, Inc.
In Re: C-2013-12369043

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 8

Message or Instructions

Attached, please find:

- 1. Letter of June 5, 2013 from Thomas J. Judge, Jr. To Arnetta Archer
- 2. Doctor's Note and Report re: Arnetta Archer Minto (2 pages)
- 3. Photographs of basin water at resident of Arnetta Archer-Minto
- 4. Proposed Issues and Requests for Relief to the PUC

HARD COPY TO FOLLOW-UP IN MAIL: YES _____ NO X

IF YOU HAVE NOT RECEIVED ALL PAGES OF THIS FAX TRANSMISSION, PLEASE CALL (610) 565-5050 OR 6060 IMMEDIATELY.

**PROPOSED ISSUES AND PROPOSED RELIEF TO BE
PRESENTED AT HEARING**

ARNETTA ARCHER-MINTO)	
)	FUC DOCKET No.: C-2013-23369043
Complainant,)	
)	
AQUA PENNSYLVANIA, INC.)	
)	
Respondent.)	

PROPOSED ALLEGED VIOLATIONS OF CODE

1. All of the following are proposed violations of Pa. Code related to 651 Briarcliff Street, Upper Darby Pa 19082 (the "property") between January 1, 2009 and November 7, 2013:

2. IN VIOLATION OF 52 Pa. Code § 3.501(a)(3)(iii) AQUA failed with reasonable diligence to formulate a plan to "demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands" as to 651 Briarcliff Street, Upper Darby Pa 19082 (the "property") between January 1, 2009 and November 7, 2013

3. IN VIOLATION OF 52 Pa. Code § 65.2. (b)(2) AQUA failed with reasonable diligence to "submit a report of a reportable accident involving the facilities or operations of the public utility in this Commonwealth concerning reports of injuries sustained" as a result of tainted water supplied to 651 Briarcliff Street, Upper Darby Pa 19082 (the "property") between January 1, 2009 and November 7, 2013 upon complaint of resident that she had suffered infections requiring her to seek treatment at a hospital emergency room.

4. IN VIOLATION OF 52 Pa. Code § 109.708. AQUA failed, at all times between January 1, 2009 and November 7, 2013 to give reasonable notice to the Petitioner prior to a planned service interruption affecting quantity or quality of the water delivered to the Petitioner

5. IN VIOLATION OF 52 Pa. Code § 109.708. AQUA failed, at all times between January 1, 2009 and November 7, 2013 to notify the Department of Environmental Protection of the interruption of service to the property that exceeded 8 hours and affected 15 or more service connections to the water supply of properties subject to the same interruption.

6. IN VIOLATION OF 52 Pa. Code § 109.701(a) AQUA failed to comply with the reporting requirements for reporting to the Department of Environmental Protection results of tests conducted to determine water quality on the property.

7. IN VIOLATION OF 52 Pa. Code § 109.707(a)(6) AQUA failed with reasonable diligence to develop and/or to implement a community plan for the provision of safe and adequate drinking water under emergency circumstances.

8. IN VIOLATION OF 52 Pa. Code § 109.407 (a)(6) AQUA failed to give public notice of the occurrence of a waterborne disease outbreak, that adversely affects the quality or quantity of finished water and had a significant potential to have serious adverse effects on human health as a result of short-term exposure.

PROPOSED RELIEF FOR THE ABOVE ALLEGED VIOLATIONS OF CODE

1. Order AQUA to provide adequate and reasonable advance notice to Petitioner of:
 - a. All work or work events to occur or to be performed by AQUA and/or its contractors, agents and/or servant upon water delivery services and facilities;

- b. All "interruptions" (as defined in 52 Pa. Code § 65.5, but for any length of time rather than for a "prolonged" period of time as used in that section of Code) in water delivery services and facilities.
 2. Order AQUA to provide the following services to her during all times she may continue to reside at the property:
 - a. Where there is prima facie evidence (indicated by discoloration of water; foul or malodorous smell; unusual residue created, containing or accumulating in water-containing vessels or appliances on the property) that water delivered to the property associated with an interruption in service or work event is not potable, provide a source of potable water to the property during all such times as required by law or regulation;
 - b. Where there is prima facie evidence that water delivered to the property, submit water samples to be tested to determine potability of water delivered to the property in compliance with the United States Environmental Protection Agency and/or Pennsylvania Department of Environmental Protection standards
 3. Order AQUA to Report to the Commission all instances of prima facie evidence that water delivered to the property is not potable.
 4. Order AQUA to provide to the Pennsylvania Department of Environmental Protection the results of all past and future tests conducted by AQUA of water samples collected within or on the property
 5. Such other relief as the Commission deems fair and equitable.

Gerard K. Schrom, Esquire
Attorney for Complainant
Arnetta Archer-Minto

UPPER DARBY TOWNSHIP

MUNICIPAL BUILDING
100 GARRETT ROAD
UPPER DARBY, PA 19082-3135

Mayor
Thomas N. Micozzie

Chief Administrative Officer
Thomas J. Judge, Jr.

E-mail address:
tjudge@upperdarby.org



Administrator's Office
610-734-7622

Township Facsimile (FAX)
610-734-7709

June 5, 2013

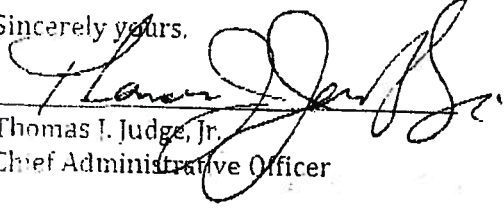
Ms Arnetta Archer
651 Briarcliffe Road
Upper Darby, PA 19082

Dear Arnetta:

This correspondence will acknowledge that you have approached the administration about a water quality problem at your residence. I want to confirm that the assistant director of the health department, Matt Verdi, has spoken with you this morning about this matter and that you received a letter dated March 21, 2013 from Aqua with regard to the water quality at your residence.

Frankly, I am not sure exactly what you expect the township to do as this is a civil matter between yourself and Aqua. In an effort to accommodate your request, I am sending a letter to Aqua asking them to review the current situation. I will ask that Aqua correspond with you directly with a copy to me.

Sincerely yours,


Thomas J. Judge, Jr.
Chief Administrative Officer

TJJ,jr.:bn

A HOME RULE COMMUNITY
www.upperdarby.org

Tom Judge

From: Tom Judge <tjudge@upperdarby.org>
Sent: Thursday, June 06, 2013 4:05 PM
To: ..
Cc: ..; Mayor Tom Micozzie (mayor@upperdarby.org); dlutz@upperdarby.org; Richard Nolan (rnolan@upperdarby.org); Verdi Matt (mverdi@upperdarby.org);
Subject: 651 Briarcliffe Road-- complaint Water Quality issue
Attachments: 06052013 651 Briarcliffe Road Water Issue.pdf

Bill Miller
Aqua America

Bill,

Attached is paperwork related to a complaint that my office received from an Upper Darby Township resident who live at the above named address. Ms. Arnetta Archer is complaining that her water quality is bad, water is brown and that she along with others in the general area have been made sick by the water quality. Ms. Archer has provided me with names of individuals that live in the area that she claims are sick or who have died, all because of water quality. I am also including a copy of a March 21, 2013 letter from Deirdre Kennedy Supervisor, Technical Services to Ms. Archer outlining steps that Aqua has taken to address Ms. Archer concerns.

Ms. Archer does not feel that Aqua has addressed her concerns; she has asked the Township to review the matter. She has advised us that she is also going to file a complaint with the Penna. Public Utility commission.

I do not know what action the Township can take, other than to communicate with Aqua, to address Ms. Archer's concerns. I ask that you or someone on the Aqua staff review the matter and advise if any additional action by Aqua would be appropriate.

Tom Judge

Copy to: Deirdre Kennedy
William Tyson

Thomas J. Judge Jr.
Chief Administrative Officer
Upper Darby Township
100 Garrett Road
Upper Darby, Pa 19082
Phone - 610.734.7622
Fax - 610.734.7709
tjudge@upperdarby.org

To: Arnetta Archer
From: Thomas J. Judge Jr.
Date: 6-6-13

For your information



Denis Boyle Jr., M.D.
111 LONG LANE
UPPER DARBY, PA 19082

Phone: 610-352-7816

Fax: 610-352-1423

March 14th, 2013

RE: Minto, Arnetta
DOB: 03/24/1963

TO WHOM IT MAY CONCERN:

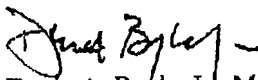
HISTORY OF PRESENT ILLNESS:

Arnetta Minto is a 49 year old woman who is presently our patient. She has a history of helicobacter pylori.

IMPRESSION:

- 1. Helicobacter pylori (041.86)

Sincerely,


Denis A. Boyle, Jr., M.D.

