

June 24, 2015

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-2014-2450732
Frank Nellom v. Aqua Pennsylvania Inc.
Opposition of Aqua to Proposed Exhibit C-2 Revised**

Dear Secretary Chiavetta:

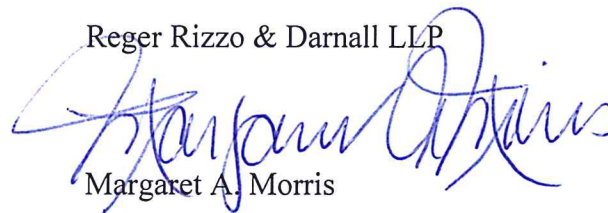
Attached for filing is the Opposition of Respondent, Aqua Pennsylvania, Inc. (Aqua), to Proposed Exhibit C-2 Revised submitted by Frank Nellom (Complainant).

A copy of the Opposition has been forwarded 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/lm

cc: The Honorable Darlene Heep, OALJ, PA PUC [w/enc]
Fran Orth, Esq., Aqua PA, Inc. [w/enc]
Frank Nellom [w/enc]

**Re: Docket No. C-2014-2450732
Frank Nellom v. Aqua Pennsylvania Inc.
Opposition of Aqua to Proposed Exhibit C-2 Revised**

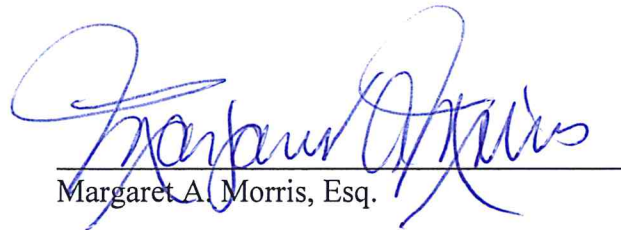
CERTIFICATE OF SERVICE

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

Via Electronic Mail

Frank Nellom
520 Keystone Avenue
Darby, PA 19023
franknellom@gmail.com

Dated: June 24, 2015



Margaret A. Morris, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK NELLOM	:	
	:	
v.	:	Docket No. C-2014-2450732
	:	
AQUA PENNSYLVANIA, INC.	:	

**OPPOSITION OF AQUA PENNSYLVANIA, INC.
TO COMPLAINANT’S PROPOSED EXHIBIT C-2 REVISED**

Aqua Pennsylvania, Inc. (Aqua or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to the directive of presiding Administrative Law Judge Darlene Heep, hereby submits its opposition to proposed Exhibit C-2 Revised, submitted by Frank Nellom (Complainant) on June 19, 2015. The proposed revised exhibit is not reliable, probative or substantial evidence. Furthermore, the probative value of the proposed exhibit is outweighed by the potential confusion of the issues; the document is not supported by the Complainant’s direct testimony. In support of its position, Aqua avers as follows:

1. At the duly noticed hearing held on June 10, 2015, the Complainant introduced several proposed exhibits during his direct testimony. In particular, proposed Exhibit C-2 was offered in support of the Complainant’s direct testimony that on December 18, 2013, he sent an email to Aqua employee John Kennedy posing a question

regarding the termination of service when a medical condition exists at the service location.¹

2. Aqua objected on the record to the admission of proposed Exhibit C-2 because the document could not be authenticated (there was no heading on the email as to who or when it was sent) and the document had been redacted (select text was “hidden”). A copy of proposed Exhibit C-2 presented at hearing is provided as Attachment A.

3. Judge Heep permitted the Complainant ten days to submit the entire email (including the intended recipient, the date and time it was sent) that was contained in proposed Exhibit C-2.

4. On June 19, 2015, the Complainant filed a document labeled “Brief for Petitioner” and attached, *inter alia*, “Appendix-II, emails between Petitioner and Respondent from September 26, 2013 to December 18, 2013.” The email purportedly contained in proposed Exhibit C-2 appears at the bottom of page 10 and top of page 11 of Appendix II. A copy of proposed Exhibit C-2 Revised is provided as Attachment 2.

5. The Complainant argues in his Brief that the text of the email contained in proposed Exhibit C-2 Revised was sent on December 18, 2013 and after receiving this email, Aqua restored his service. Nellom Brief at 5.

¹ There are no transcript references; the transcript has not been submitted by the court reporter at the time of filing.

6. Aqua opposes the admission of proposed Exhibit C-2 Revised reflected on pages 10 and 11 of Appendix II.² Proposed Exhibit C-2 Revised is not reliable evidence; the document has not been authenticated and conflicts with the Complainant's direct testimony. The probative value of proposed Exhibit C-2 Revised is outweighed by the potential confusion of the issues and would potentially waste the scarce resources of the Commission and Aqua.

7. The Pennsylvania Public Utility Code³ and Commission regulations⁴ require that a litigant must provide the PUC with evidence that is reliable, probative and substantial.

8. Proposed Exhibit C-2 Revised does not meet that standard. The text of the proposed revised exhibit appears at the top of page 11 of Appendix II; the header for that sent email appears at the bottom of page 10 of Appendix II. The text contained in proposed Exhibit C-2 Revised differs substantially from the exhibit submitted at hearing. The header for the email states it was sent on November 14, 2013 at 4:39 PM, not December 18, 2013, as the Complainant testified and that the email was purportedly sent to Aqua's automated customer service email address not John Kennedy, as the Complainant testified.

9. Proposed Exhibit C-2 Revised is irrelevant to the proceedings. Evidence is relevant if it tends to make a fact at issue more or less probable. *Martin v. Soblotney*,

² Aqua will address Attachment II in its Reply Brief due on July 21, 2015.

³ 66 Pa. C.S. § 332(b).

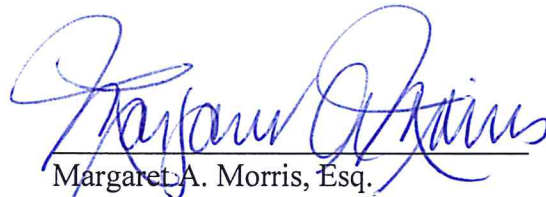
⁴ 52 Pa. Code § 5.401.

466 A.2d 1022 (1983). Proposed Exhibit C-2 Revised does not logically establish a material fact or support a reasonable inference regarding a material fact; the proposed exhibit does not support the testimony of the Complainant; the proposed exhibit reflects the email was NOT sent to John Kennedy and was NOT sent on December 18, 2013.

10. Commission regulations⁵ authorize the presiding judge to exclude irrelevant evidence.

WHEREFORE, Respondent, Aqua Pennsylvania, Inc., requests that proposed Exhibit C-2 Revised submitted by Frank Nellom on June 19, 2015 not be admitted as an exhibit in this proceeding.

Respectfully submitted,



Margaret A. Morris, Esq.
Attorney ID No. 75048
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Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Counsel for Aqua Pennsylvania, Inc.

Date: June 24, 2015

⁵ 52 Pa. Code § 5.483.

Docket No. C-2014-2450732
Frank Nellom v. Aqua Pennsylvania Inc.

Attachment 1

Proposed Exhibit C-2
Submitted at hearing

Subject: [illegible]

• Making clear if a person files a dispute the dispute must be resolve before service is terminated
QUESTION

Does Aqua recognize that it is illegal to terminate service of home owners with the condition raising a two year old? After receiving the above stated complaint and information request?

A copy of this email will be forwarded to PUC Rep Kevin Ford by email @ [illegible] Please see attached information

[Quoted text hidden]

➔ Exhibits A-C to Donna Alston.PDF
309K

Aqua America CustServReply Auto Reply <custservreply-noreply@aquaamerica.com>
To Frank Nellom <franknellom@gmail.com>

Wed, Dec 18, 2013 at 1 12 PM

Thank you for contacting Aqua America. We have received your request and will usually respond within 2 business days.

If you are experiencing a water emergency or if your service has been disconnected, please contact us immediately at 877.WTR.AQUA or 877.987.2782.

Please note:

This message was sent from an unmonitored mailbox Please **do not reply** to this message and visit our website at www.aquaamerica.com and click on contacts

Thank you.

Aqua America, Inc

762 West Lancaster Avenue
Bryn Mawr, PA 19010

Customer Service Hours:
Monday - Friday, 7:30 a.m. - 5 p.m. Eastern Standard Time
877 WTR.AQUA or 877 987 2782

Exhibit I

From: Frank Nellom [mailto:franknellom@gmail.com]

Docket No. C-2014-2450732
Frank Nellom v. Aqua Pennsylvania Inc.

Attachment 2

Proposed Exhibit C-2 Revised
Submitted on June 19, 2015

contacts

Thank you,

Aqua America, Inc.

762 West Lancaster Avenue
Bryn Mawr, PA 19010

Customer Service Hours:
Monday - Friday, 7:30 a.m. - 5 p.m. Eastern Standard Time
877.WTRAQUA or [877.987.2782](tel:877.987.2782)

From: Frank Nellom [mailto:franknellom@gmail.com]
Sent: Thursday, November 14, 2013 5:39 PM

[Quoted text hidden]

[Quoted text hidden]

custservreply <custservreply@aquaamerica.com>
To: Frank Nellom <franknellom@gmail.com>

Fri, Nov 15, 2013 at 12:22 PM

Frank,

I have put this request in for a complete account summary. Please allow up to 30 days to receive.

PLEASE DO NOT REPLY TO THIS EMAIL. IT WAS SENT BY AN UNMONITORED EMAIL ACCOUNT. PLEASE USE THE LINK BELOW.

Replies to this email should be sent to: custservreply@aquaamerica.com

Thank you,

Aqua America, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Customer Service Hours:
Monday - Friday, 7:30 a.m. - 5 p.m. Eastern Standard Time 877.WTRAQUA or [877.987.2782](tel:877.987.2782)

Please visit us at www.aquaamerica.com to register online today. Click Enter online here!

For water quality reports / fluoride content

Please use this link [Aqua America Water Quality Reports](#)

Zip Check Application

Zip Check

Zip Check is a convenient direct payment plan that automatically deducts the exact amount of your bill from your checking account on the due date. Participants receive a bill detailing your usage, the amount that will be withdrawn, and the date which the amount will be withdrawn.

Print a Zip Check application, attach a voided check and send both to Aqua Pennsylvania Zip Check Department, 762 W. Lancaster Avenue, Bryn Mawr, PA 19010-3489.

Go Green, Go Paperless (Can make payments at this site)

From: Frank Nellom [mailto:franknellom@gmail.com]
Sent: Thursday, November 14, 2013 4:39 PM

[Quoted text hidden]

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To: custservreply <custservreply@aquaaamerica.com>

Aqua records will show on November 12, 2013 Aqua accepted the dispute, and request for information on November 14, 2013 regarding the dispute.

Aqua prior to even providing the information requested Terminated Service December 12, 2013. In violation of the following law:

52 Pa.Code § 56.92. Notice when dispute pending. A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void. Authority The provisions of this § 56.92 amended under Chapter 14 of the Public Utility Code, 66 Pa.C.S. Chapter 14.

Making clear, if a person files a dispute, the dispute must be resolve before service is terminated.

QUESTION

Does Aqua recognize that it is illegal to terminate service of home owners with medical condition raising a two year old? After receiving the above stated complaint, and information request?

A copy of this email will be forwarded to PUC Rep Kevin Ford by email @ keford@pa.gov. Please see attached information.

[Quoted text hidden]

Exhibits A-C to Donna Alston.PDF
309K

Aqua America CustServReply Auto Reply <custservreply-noreply@aquaaamerica.com>
To: Frank Nellom <franknellom@gmail.com>

Wed, Dec 18, 2013 at 1:12 PM

Thank you for contacting Aqua America. We have received your request and will usually respond within 2 business days.

If you are experiencing a water emergency or if your service has been disconnected, please contact us immediately at **877.WTR.AQUA** or **877.987.2782**.

Please note:

This message was sent from an unmonitored mailbox. Please **do not reply** to this message and visit our website at www.aquaaamerica.com and click on contacts

Thank you,

Aqua America, Inc.

762 West Lancaster Avenue
Bryn Mawr, PA 19010

Customer Service Hours:
Monday - Friday, 7:30 a.m - 5 p.m. Eastern Standard Time
877.WTR.AQUA or [877.987.2782](tel:8779872782)

From: Frank Nellom [mailto:franknellom@gmail.com]
Sent: Wednesday, December 18, 2013 1:12 PM

[Quoted text hidden]

[Quoted text hidden]

Frank Nellom <franknellom@gmail.com>
To: keford@pa.gov

Wed, Dec 18, 2013 at 1:14 PM

[Quoted text hidden]

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