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April 28, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Robert Wasneuski v. Borough of Ephrata; Docket No. C-2016-2522689


Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Borough of Ephrata's Reply Exceptions in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to these proceedings are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Vasiliki Karandrikas

Counsel to the Borough of Ephrata

VK/sar

Enclosures

c: Administrative Law Judge Susan D. Colwell (via E-mail and First-Class Mail)
Office of Special Assistants (ra-OSA@pa.gov)
Certificate of Service

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CERTIFICATE OF SERVICE

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

VIA FIRST CLASS MAIL

Robert Wasneuski
338 Vista Drive
Ephrata, PA 17522



Vasiliki Karandrikas

Counsel to the Borough of Ephrata

Dated this 28th day of April, 2016, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Wasneuski,	:	
Complainant	:	Docket No. C-2016-2522689
	:	
v.	:	
	:	
Borough of Ephrata	:	
Respondent.	:	

**REPLY EXCEPTIONS
OF THE BOROUGH OF EPHRATA**

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Dated: April 28, 2016

BACKGROUND

On December 21, 2015, Robert Wasneuski ("Complainant" or "Wasneuski") filed a formal Complaint against the Borough of Ephrata ("Borough" or "Respondent") alleging, among other things, that the Borough was improperly suppressing the Complainant's right to select an electric generation supplier ("EGS"). As relief, the Complainant sought the right to choose an EGS and the same protection provided by the Public Utility Commission's ("PUC" or "Commission") regulations afforded to other Commonwealth citizens. In the alternative, the Complainant sought a credit on his taxes because the Complainant does not receive the regulatory protection of the Commission.

On January 28, 2016, the Borough filed its Answer and Preliminary Objections. The Borough, in seeking dismissal of the Complaint, argued that the Commission lacks jurisdiction because the Borough is neither a public utility nor an EGS. Moreover, Respondent argued the Public Utility Code specifically permits a borough to prohibit EGSs from serving end-use customers within its borough limits, provided that the borough does not provide generation service to end-use customers outside of its borough limits. As a borough that furnishes electricity only to the end-use customers within its limits, Respondent explained that it may lawfully prohibit EGSs from serving its end-use customers. Accordingly, the Borough contended that the Complaint is legally insufficient due to failure to state a claim upon which relief may be granted, and must be dismissed.

On March 21, 2016, Administrative Law Judge ("ALJ") Susan Colwell issued an Initial Decision ("I.D.") granting Respondent's Preliminary Objections and dismissing the Complaint.

In a letter dated April 3, 2016 and received by the Commission on April 10, 2016, the Complainant filed Exceptions, voicing general fairness and equity concerns. Complainant's

Exceptions specifically took issue with the ALJ's legal determination as to Wasneuski's "taxation inequity" argument. In the Initial Decision, the ALJ determined that the Commission is funded through assessments on public utilities under its jurisdiction and not funded through income taxes collected from all citizens of Pennsylvania. *See* I.D. at 7 (citing 66 Pa. C.S. § 510).

The Borough files these Reply Exceptions to Complainant's Exceptions in order to respond to: (1) Complainant's argument concerning "taxation inequity"; and (2) Complainant's general equity arguments about existing laws pertaining to Commission jurisdiction over municipalities and the Electricity Generation and Choice Competition Act ("Competition Act"). Each of the Borough's Reply Exceptions are set forth more fully below.

REPLIES TO EXCEPTIONS

1. ***Reply to Wasneuski Exception No. 1: The Administrative Law Judge Correctly Determined that the Commission is Funded Through Assessments on Public Utilities and Not Through Income Taxes Collected From All Citizens.***

The Complainant filed exceptions to the ALJ's legal determination that the Commission is funded through assessments on public utilities under its jurisdiction and not funded through income taxes collected from all citizens of Pennsylvania. *See* I.D. at 7 (citing 66 Pa. C.S. § 510). The Complainant alleged "taxation inequity" because Borough residents pay the same tax rates as other citizens, but do not receive the services and regulatory protections of the Commission. *See* Exceptions at p. 1. The Complainant acknowledged that he is "aware of the funding mechanism utilized by the PUC," but still desires to voice his equity concerns. *Id.*

The law is clear and the Commission's funding mechanism is well-established. The Commission is funded through assessments on public utilities under its jurisdiction and not funded through income taxes collected from all citizens of Pennsylvania. *See* 66 Pa. C.S. § 510; *see Mercury Trucking v. Pa. PUC*, 55 A.3d 1056, 1059-1063 (Pa. 2012) (describing the assessment

process). The Complainant even acknowledges this funding mechanism. The consumers provided electric service through municipal systems, such as the Borough of Ephrata, do not pay for the PUC's costs. Thus, it is reasonable and equitable for the PUC to provide regulatory oversight for the customers of the utilities that it regulates, while not providing regulatory oversight for the customers of the Borough of Ephrata, which the PUC does not regulate and whose residents do not pay the operating costs of the PUC. Therefore, any averment to the contrary lacks merit and has no basis in law.

Alternatively, the Complainant appears to ask the Commission to sit as a court of equity and consider his argument that he deserves a "tax credit" because he does not receive the "regulatory protections" of the Commission. As a creature of statute and a creation of the Pennsylvania General Assembly, the Commission's powers are limited to the provisions of the Public Utility Code, the PUC's authorizing statute. *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *Pickford v. Pa. PUC*, 4. A.3d 707, 713 (Pa. Cmwlth. 2010) (citing *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945)). Jurisdiction may not be conferred by the parties where none exists. *Id.* (citing *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967)).

The General Assembly has not authorized the Commission to order tax credits pursuant to the Public Utility Code. The Commission's specialized field of expertise is public utilities, not taxation. The Complainant does not point to a provision in the Public Utility Code or any other governing statute that grants the Commission the power, upon its own invocation of equity, to order a tax credit for a citizen who does not receive jurisdictional electric distribution service or electric generation service from a PUC-licensed supplier. Because the Commission's powers are limited to the express provisions of the Public Utility Code (and only those limited powers

necessarily implied by those express provisions or other authorizing statutes), the Commission does not have jurisdiction to hear Complainant's claim for equitable relief. *See Feingold*, 383 A.2d at 794. Therefore, the Commission should deny the Complainant's exception concerning taxation inequity.

2. ***Reply to Wasneuski Exception No. 2: The Administrative Law Judge Correctly Applied the Law and Determined that the Competition Act Permits the Borough to Prohibit Electric Generation Suppliers from Serving Borough Residents***

Beyond that allegation of taxation inequity, the Complainant raised general equity arguments about existing laws pertaining to Commission jurisdiction over municipalities and the Competition Act. Specifically, the Complainant claimed it was unfair that he did not receive his "legislated individual right of electric supplier choice." *See* Exceptions at 1.

As aptly explained by the ALJ in the Initial Decision, the Commission has limited jurisdiction over municipal corporations like the Borough of Ephrata. *See* I.D. at 6. The Commission only has the authority to regulate the rates charged by a municipal corporation for utility service that the municipal corporation provides beyond its corporate limits. 66 Pa. C.S. § 1301. The Commission only has the authority to regulate utility service that the municipal corporation provides beyond its corporate limits. 66 Pa. C.S. § 1501. Here, the Borough is not providing any utility service beyond its corporate limits and, thus, the Borough is not subject to Commission jurisdiction.

Complainant Wasneuski is a resident of the Borough of Ephrata who receives electric supply service from the Borough of Ephrata. I.D. at 3. The Complainant appears to argue that he has, or should have, an absolute "legislated individual right of electric supplier choice." *See* Exceptions at 1. However, the Competition Act expressly permits a borough to prohibit electric generation suppliers from serving end-use customers within its borough limits. *See* 66 Pa. C.S. §

2805(b)(1)(i). Therefore, the Public Utility Code expressly authorizes the Borough of Ephrata to disallow EGSs from serving its residents, including Mr. Wasneuski.

Accordingly, the Commission should deny Complainant's exception concerning his alleged statutory right, as a resident in the Borough of Ephrata, to electric generation supplier choice.

CONCLUSION

WHEREFORE, the Borough of Ephrata respectfully requests that the Pennsylvania Public Utility Commission adopt the findings of fact and well-reasoned conclusions of law set forth in the Initial Decision of Administrative Law Judge Susan Colwell.

Respectfully Submitted,

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