

19 November 2016

To: The Pa Public Utility Commission Secretary
400 North Street
Harrisburg, PA 17120

From: Ross E. Schell
203 Knollwood Drive
Harrisburg, PA 17109-5515
PH# 717-651-0824
Fax# same but call First.

C-2016-2566322, C-2016-2551544, C-2016-2558244, C-2016-
2559741, C-2016-2563040,

To Whom this may Concern

Notice of exceptions Initial Decision 27 October 2016

By Judge Watson

Page 3 ,4,5,7,8

First I would like to know what all the Judgements that Judge Watson Used in his Decision have to do with my complaints. I looked into them and cannot figure them out. Besides most of them were before the PUC Laws of today.

I would like to know why the Judge wrote his paper 27 October 2016 and I did not get the motion papers from the Suez Attorney

until the 14 of November 2016 or the Judges Papers until 18 November 2016. So what is going on here.

I have told Judge Watson in the hearings we had that nowhere on the e file system does it give me a chance to change or alter my complaints. Though I have tried and the secretary has rejected them. She has rejected everything I have filed most documents for the last 2 months. She as claim I am doubling my complaints or she does not feel like processing them under the law 5.22 (D)

Page 3

52 § 5.101

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution. I disagree with this statement

Page 1

50,000 in fines. I explained this to Judge Watson as this was before I new what could be awarded by the PUC. I also explained in a disability statement that was rejected by the secretary that I had a stroke on November 15 2015 and have been having memory problems ever since. I have tried to change my Formally complaints but could not on line. With the E filed it will not let you so I just had to leave them alone. I have told The Judge this, I also tried to e file new ones only to get them rejected by the secretary.

Page 1, 2,3,4,5,6,7,8,9, He had this wrong about C-2016-2566322 I may have the Requested Relief wrong but I told The Judge this in all the hearing we had. And that I was sorry.

Also though the Judge will not take a call from me of and mail from me how am I to do anything about my complaints being wrong of When I do try to change one It gets rejected.

Page 1, 2, 3,4 ,5,6 ,7 ,8,9

With the Hearings I have had with this Judge I think he is on the side of the Utility and not unbiased or not prejudice.

All Pages. Evidently the Judge did not read all the documents I e filed. First the Motion that was 1 day late in the 10 days the secretary gave him. I would like to no how Suez attorney wrote the papers on the 14th Of November 2016 and I got them the same day ? To I have been telling the Judge that people are lying in the Hearings and he does not want to hear it. Or he would have taken the cd with the Video I tried to sent him or the pictures I sent. This has happening in all the Hearing I have had With this Judge. This is not the First time I have said this about the Judge. He evidently did not read the Brief I Filed on the 15 of November 2016.

I have asked for to have another Judge to take care of my complaints yet this gets rejected by the Secretary. And to have

them in Harrisburg so I can see who is lying. Again rejected by the secretary. I do not think she reads what I e filed, Before she rejects it.

Page 3 1-7

I would Like to know how he came up with this.

PRELIMINARY OBJECTIONS

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed

in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

(b) *Notice to plead.* A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.

(c) *General rule.* Preliminary objections shall be raised at one time. The preliminary objections must be set forth in numbered paragraphs, state with specificity the legal and factual grounds relied upon, and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(d) *Time for filing and form.* Preliminary objections shall be filed as a separate document and within the same 20 days provided for in § 5.61 (relating to answers to complaints, petitions, motions and preliminary objections). Except as provided for in subsection (e), the filing of preliminary objections may not eliminate the requirement to file an answer to the complaint or other initiating pleading.

(e) *Preliminary objection regarding insufficient specificity.*

(1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission.

(2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).

(f) *Answer to a preliminary objection.*

(1) *Time for filing.* An answer to a preliminary objection may be filed within 10 days of date of service.

(2) *Form.* The answer must be in writing and in numbered paragraphs to correspond with the preliminary objection, and address the legal and factual grounds relied on in the preliminary objection.

(g) *Decision by presiding officer.* A preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer.

(h) *Amended pleading.* If a preliminary objection is granted, the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

(i) *Supersession.* Subsections (a)—(h) supersede 1 Pa. Code §§ 35.54 and 35.55 (relating to motions as to complaint; and motions as to answer).

52 § 5.101 PUBLIC UTILITY COMMISSION Pt. I

5-26

Authority

The provisions of this § 5.101 amended under the Public Utility Code, 66 Pa.C.S. §§ 309—311, 315, 331—335, 501, 504—506, 523, 701—703, 1101—1103, 1301, 1501 and 1504.

Source

The provisions of this § 5.101 adopted October 12, 1984, effective January 1, 1985, 14 Pa.B. 3819; amended December 2, 1988, effective January 3, 1989, 18 Pa.B. 5451; amended April 28, 2006, effective April 29, 2006, 36 Pa.B. 2097; amended September 20, 2013, effective September 21, 2013, 43 Pa.B. 5593. Immediately preceding text appears at serial pages (319151) to (319153).

If this is right then we was it not rejected by the Secretary like ever thing else rejected. Besides when I e file documents all this is on the secretary to do. I do my job by e fileing them


All Pages

All my completes are not the same C-2016-2566322 are different that the others.

Page 3

 [New Filing](#)

 [Modify Account](#)

 [POR Search](#)

 [eService Directory](#)

 [Subscriptions](#)

 [Technical Assistance](#)

 [eFiling FAQs](#)

 [Log Off](#)

POR Search

Find Parties of Record

The electronic filing system will permit a user to serve documents electronically on parties who have agreed to accept electronic service of documents. You may use the Party of Record search to view the service list for a particular proceeding by using the proceeding's docket number. The service list will contain the names and addresses of parties in a particular proceeding, and the email addresses of parties who have agreed to receive electronic service or notification. The service list will also list parties who do not agree to be served electronically. Those parties must be served in accordance with

applicable Commission rules at 52 Pa. Code §§ 1.51-1.59.

Docket Number:

| Full Name | Title | Company Name | Representing Address | Accepting eService | eService Email Address | POR Type |
|-----------|-------|--------------|----------------------|--------------------|------------------------|----------|
|-----------|-------|--------------|----------------------|--------------------|------------------------|----------|

No Parties of Record exist for the Docket Number you have entered.

C-2016-2559740 Is not correct number here we are again with the wrong number. And I am being hit again for it. I guess I am the only won how can read the numbers right.

Because of this I think the how thing should be thrown out and my completes shout go farther.

Ross E. Schell

Certificate Of Service

I do Herby Certify That I have This Day 19 November 2016 I Have Served a true And correct copy of the Notice of exceptions 19 November 2016 upon The person's and manner Set Forth Below.

Via Fax Notice of exceptions

Thomas T Niesen
Thomas, Niesen & Thomas LLC

212 Locust Street

Suite 600

Harrisburg, PA 17101

The Honorable Jeffery A. Watson will not take anything from me

Piatt Place

Suite 200

301 5th Avenue

Pittsburg, Pa 15222

Ross E. Schell

I would like to know hue wrote this since I cannot think the a
Judge could get the numbers wrong.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------|---|----------------|
| Ross E. Schell | : | C-2016-2551544 |
| | : | C-2016-2558244 |
| | : | C-2016-2559741 |
| v. | : | C-2016-2563040 |
| | : | |
| Suez Water Pennsylvania, Inc. | : | |

**INTERIM ORDER
ADDRESSING RESPONDENT'S REQUEST TO PRECLUDE COMPLAINANT FROM
FILING FURTHER COMPLAINTS**

On or about May 26, 2016, Complainant filed a formal complaint against Suez Water Pennsylvania, Inc. (Respondent, Suez or Company) at C-2016-2551544, concerning reliability, safety or quality of water service. Suez filed an answer to the complaint on July 7, 2016.

Subsequently, Complainant filed a second complaint, on or about July 25, 2016, against Suez at C-2016-2558244 concerning the metering of his water service. Suez filed an answer to the complaint on August 12, 2016.

Subsequently, Complainant filed a third complaint, on or about August 3, 2016, against Suez at C-2016-2559741. The third complaint appears to have been served by the Office of the Secretary on August 4, 2016. Respondent filed an answer on or about August 24, 2016.

By Notice dated August 9, 2016, the Public Utility Commission (Commission) scheduled a Call-In Telephonic Hearing in the first complaint at C-2016-2551544 for September 1, 2016 before the undersigned presiding officer.

Hasler

11/14/2016

US POSTAGE

\$01.36⁹

FIRST-CLASS MAIL



ZIP 17101

011D11623374



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

212 LOCUST STREET
SUITE 600
HARRISBURG, PA 17101

TO:

Ross E. Schell
203 Knollwood Drive
Harrisburg, PA 17109

11/15/2011 10:00 AM
THOMAS, NIESEN & THOMAS, LLC
ATTORNEYS AND COUNSELLORS AT LAW
212 LOCUST STREET
SUITE 600
HARRISBURG, PA 17101
TO:
ROSS E. SCHELL
203 KNOLLWOOD DRIVE
HARRISBURG, PA 17109
FROM:
JAMES M. NIESEN
212 LOCUST STREET
SUITE 600
HARRISBURG, PA 17101
RE: [REDACTED]

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Jeffrey A. Watson, Presiding

| | | |
|------------------------------|---|----------------|
| ROSS E. SCHELL | : | C-2016-2551544 |
| | : | C-2016-2558244 |
| v. | : | C-2016-2559741 |
| | : | C-2016-2563040 |
| SUEZ WATER PENNSYLVANIA INC. | : | |

BRIEF OF SUEZ WATER PENNSYLVANIA INC. IN OPPOSITION TO
PETITION FOR INTERLOCUTORY REVIEW AND
ANSWER TO A MATERIAL QUESTION

Thomas T. Niesen, Esquire
PA Attorney ID # 31379

Attorney for Suez Water Pennsylvania Inc.

THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101

DATED: November 14, 2016

I. INTRODUCTION

Suez Water Pennsylvania Inc. (“Suez” or “Respondent”) submits this Brief pursuant to the Secretarial Letter, dated November 3, 2016, in this consolidated matter. The Secretarial Letter explains that, on or about October 20, 2016, Ross E. Schell (“Complainant”) filed a Petition for Interlocutory Review and Answer to a Material Question (“Petition”). A copy of Complainant’s Petition was provided with the Secretarial Letter. The Secretarial Letter explains that Suez may file a Brief in Opposition to the Petition within ten days.

II. ARGUMENT

Complainant challenges the ruling of Administrative Law Judge Watson which sustained Suez’s objection to Complainant’s attempt to offer certain pictures into the evidentiary record. Judge Watson’s ruling is presented at pages 34 through 37 of the transcript of the call-in telephonic hearing of October 4, 2016.

In anticipation of the call-in telephonic hearing, Judge Watson issued a Prehearing Order, dated August 26, 2016. The Prehearing Order directed the parties to provide copies of any documents or exhibits in advance of the hearing. Ordering Paragraph 2 of the Prehearing Order states as follows:

2. If you intend to present any documents or exhibits for my consideration at the hearing, you must send three (3) copies of each document to me, and one (1) copy of each document to every other party in this case. Your documents or exhibits must be received by me and every other party one (1) week before the scheduled hearing. Be sure that you serve me directly with a copy of any document that you file in this proceeding at the time of its filing. If you send me any correspondence or document, you must also send a copy of that correspondence or document to every other party. For your convenience, a copy of the Commission’s current service list of all parties to this proceeding is enclosed with this Order.

Complainant did not comply with the Prehearing Order. He failed to provide copies of his picture evidence in advance of the telephonic hearing. At transcript page 37, Complainant

acknowledges that he did not send his pictures to Judge Watson. Complainant's claim in his Petition that he provided "pdfs" of the pictures with his Complaint does not relieve him from compliance with the Prehearing Order, nor does it relieve him of his obligation to provide notice of the pictures he intends to offer into evidence along with sufficient copies of the actual pictures for the Judge and Suez and for inclusion in the record.

Rulings by administrative law judges regarding admissibility of evidence or testimony constitute routine evidentiary rulings which do not warrant interlocutory review. *Schell v. PPL Electric Utilities Corporation*, Dockets Nos. C-2016-2535220, *et al.*, Opinion and Order entered November 9, 2016. Interlocutory review is not warranted here.

III. CONCLUSION

Complainant has failed to justify his Petition for Interlocutory Review and Answer to a Material Question and the Public Utility Commission should decline to answer the question or, if it desires to answer the question, affirm the decision of Judge Watson which denied the admission of Complainant's picture evidence into the record.

Respectfully submitted,

By 

Thomas T. Niesen, Esquire
PA Attorney ID # 31379
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101

Attorneys for Suez Water Pennsylvania, Inc.

DATED: November 14, 2016

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|-------------------------------|---|---------------------------|
| ROSS E. SCHELL, | : | Docket No. C-2016-2551544 |
| Complainant | : | Docket No. C-2016-2558244 |
| | : | Docket No. C-2016-2559741 |
| v. | : | Docket No. C-2016-2563040 |
| | : | |
| SUEZ WATER PENNSYLVANIA INC., | : | |
| Respondent | : | |

CERTIFICATE OF SERVICE

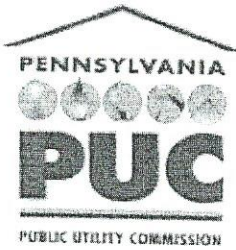
I hereby certify that I have this 14th day of November 2016, served a true and correct copy of the foregoing Brief in Opposition to Petition for Interlocutory Review and Answer to a Material Question, upon the persons and in the manner set forth below:

VIA FIRST CLASS MAIL

Ross E. Schell
203 Knollwood Drive
Harrisburg, PA 17109

The Honorable Jeffrey A. Watson
Piatt Place
Suite 220
301 5th Avenue
Pittsburgh, PA 15222


Thomas T. Niesen (PA ID # 31379)



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

[Log Off eFiling](#) | [Contact Us](#) | [Search](#)

- [My Filings](#)
- [New Filing](#)
- [Modify Account](#)
- [POR Search](#)
- [eService Directory](#)
- [Subscriptions](#)
- [Technical Assistance](#)
- [eFiling FAQs](#)
- [Log Off](#)

eFiling Successfully Transmitted



Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

*If your filing **exceeds 250 pages**, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.*

| eFiling Confirmation | |
|------------------------------|--|
| Docket Number: | C-2016-2551544 |
| Description: | and C-2016-2558244, C-2016-2559741, C-2016-2563040 Ross E. Schell v. Suez Water Pennsylvania Inc. |
| Transmission Date: | 11/14/2016 3:10:39 PM |
| Filed On: | 11/14/2016 3:10:39 PM |
| eFiling Confirmation Number: | 1656971 |

Uploaded File List

| File Name | Document Class | Document Type |
|--|----------------|---------------|
| Suez Brief in Opposition - Petition for Interlocutory Review.pdf | Communication | Briefs |

You can view a record of any previous eFiling, including the one you just made, by clicking the **My Filings** link in the left menu.

If a paper copy is required in accordance with the eFiling Regulations, please print this page and include it with your paper filing.

Customer Hotline 1-800-692-7380 | PUC Webmaster

© PUC All Rights Reserved

[Logout](#)

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROSS E. SCHELL,
Complainant

Docket No. C-2016-2566322

v.

SUEZ WATER PENNSYLVANIA INC.,
Respondent

:
:
:
:
:
:
:

MOTION TO CANCEL HEARING

AND NOW, comes Suez Water Pennsylvania Inc. ("Suez"), by its attorneys, and, pursuant to 52 Pa. Code § 5.103, moves to cancel the hearing presently scheduled for December 9, 2016.

In support of this Motion, Suez presents as follows:

1. This proceeding concerns the Complaint of Ross E. Schell ("Complainant"), filed on or about September 13, 2016. Suez filed (1) an Answer and (2) Preliminary Objections to the Complaint on September 30, 2016.

2. In its Preliminary Objections, Suez asked the Public Utility Commission ("Commission") to dismiss the Complaint due to the pendency of prior proceedings and for lack of Commission jurisdiction.

3. Regulations of the Commission at 52 Pa. Code Section 5.101(g) provide that a preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer.

4. As of the filing of this Motion, Suez is not aware of the assignment of its Preliminary Objections. The Preliminary Objections remain unresolved.

5. A decision sustaining Suez's Preliminary Objections would obviate the need for a hearing in this matter.

6. Suez submits that its Preliminary Objections should be resolved before this matter proceeds to hearing.

WHEREFORE, Suez Water Pennsylvania Inc. requests that the Pennsylvania Public Utility Commission cancel the hearing presently scheduled for December 9, 2016 at C-2016-2566322.

Respectfully submitted,

By 
Thomas T. Niesen, Esq. (PA ID # 31379)
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101
Tel: 717-255-7600

Attorney for Respondent Suez Water Pennsylvania Inc.

DATED: November 14, 2016

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|---|---|---------------------------|
| ROSS E. SCHELL, Complainant | : | Docket No. C-2016-2566322 |
| | : | |
| v. | : | |
| | : | |
| SUEZ WATER PENNSYLVANIA INC., Respondent | : | |
| | : | |

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of November, 2016, served a true and correct copy of the foregoing Motion to Cancel Hearing, upon the persons and in the manner set forth below:

VIA FIRST CLASS MAIL

Ross E. Schell
203 Knollwood Drive
Harrisburg, PA 17109

The Honorable Jeffrey A. Watson
Piatt Place
Suite 220
301 5th Avenue
Pittsburgh, PA 15222



Thomas T. Niesen (PA ID # 31379)



PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

[Log Off eFiling](#) | [Contact Us](#) | [Search](#)

- [My Filings](#)
- [New Filing](#)
- [Modify Account](#)
- [POR Search](#)
- [eService Directory](#)
- [Subscriptions](#)
- [Technical Assistance](#)
- [eFiling FAQs](#)
- [Log Off](#)

eFiling Successfully Transmitted



Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

*If your filing **exceeds 250 pages**, you are required to submit **one** paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.*

| eFiling Confirmation | |
|------------------------------|--|
| Docket Number: | C-2016-2566322 |
| Description: | Ross E. Schell v. Suez Water Pennsylvania Inc. |
| Transmission Date: | 11/14/2016 3:07:44 PM |
| Filed On: | 11/14/2016 3:07:44 PM |
| eFiling Confirmation Number: | 1656965 |

Uploaded File List

| File Name | Document Class | Document Type |
|-----------------------------------|--------------------------|---------------|
| Suez Motion to Cancel Hearing.pdf | Supporting Documentation | Motion |

You can view a record of any previous eFiling, including the one you just made, by clicking the

My Filings link in the left menu.

If a paper copy is required in accordance with the eFiling Regulations, please print this page and include it with your paper filing.

Customer Hotline 1-800-692-7380 | [PUC Webmaster](#)

© PUC All Rights Reserved

[Logout](#)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ross E. Schell

v.

Suez Water Pennsylvania, Inc.

:
:
:
:
:

C-2016-2566322

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This initial decision sustains the preliminary objections filed by Suez Water Pennsylvania, Inc., and dismisses the formal complaint filed by Ross E. Schell.

HISTORY OF PROCEEDING

On September 13, 2016, Ross E. Schell (Complainant or Mr. Schell) filed a formal complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) dated September 9, 2016 against Suez Water Pennsylvania, Inc., (Respondent or Suez). In his complaint, Complainant checked boxes on the formal complaint form indicating there are incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and "other". Complainant attached an additional one-page letter to his complaint wherein he averred that his complaint is about billing and the meter reading his usage. The letter states: "So my complaint is about billing and meter reading my use. As relief, Complainant requests "50,000 Dollars paid to me as fine for this complaint and bill to restart 2 months after this is settled." Complainant attached a copy of a letter to his complaint dated September 9, 2016 and addressed to the Commission's Secretary. Since my water pipe is supposed to be leaking. This is since they installed the new meter in April of this year."

In comparing the complaint in this proceeding with the complaints filed at Docket Nos. C-2016-2558244 and C-2016-2563040, the complaints all allege incorrect charges on the Complainant's bill related to Respondent's meters and meter reading practices. The complaint at Docket No. C-2016-2563040 avers Respondent is threatening to terminate his service; the existence of incorrect charges on his bill; the existence of reliability, safety or quality problems with the utility service and "other". Complainant further averred at Docket No. C-2016-2563040 that his meter was installed too close to the road and is affected by heavy trucks that pass by his residence. Complainant challenged the reliability of the meter readings used by Respondent to calculate Complainant's charges. As relief, Complainant requests that he receive a refund for three years' bills and that Respondent pad or fix the meter.

At Docket No. C-2016-2558244, Complainant alleged Respondent was threatening to terminate his service; the existence of incorrect charges on his bill; and marked "other" on the formal complaint form. Complainant further alleged that Respondent has not checked his meter for at least 12 years and attached a copy of what purports to be 52 Pa.Code Section 56.12 to his complaint, without further explanation. As relief, Complainant requested a refund for five years and that he receive no further bills for a three-year period.

My review of the instant complaint when compared to the two prior complaints indicates that the parties in the cases are the same. Second, while the wording in the complaint in this proceeding differs from the wording in the complaints filed at C-2016-2558244 and C-2016-2563040, the subject matter of the complaints is the same. All of the complaints allege incorrect charges on the Complainant's bill and challenge the reliability of how the meters read water usage. Finally, the relief sought in the instant complaint and the complaint filed at Docket No. C-2016-2558244 is the same. Complainant uses the word "fine" to be paid to him, and requests that he not receive bills for future water service for a period of time until two months have passed after this matter has been resolved. In the complaints filed previously, Complainant requests a "refund" to be paid to him and a request that he not receive additional bills for future water service.

Respondent filed an answer to the complaint and preliminary objections on September 30, 2016. The preliminary objections aver that Complainant has four other complaint proceedings filed at Docket Nos. C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040, which were heard at evidentiary hearings on October 4, 2016. Respondent avers that, in the proceeding at Docket No. C-2016-2558244, Complainant avers there are incorrect charges on his bill and challenges the accuracy of his meter. He also alleges that Suez has not tested his meter. In the proceeding at Docket No. C-2016-2563040, Complainant expresses concern with the accuracy of the outside meter installed by Suez in April of this year.

The preliminary objections assert that the Commission should dismiss the complaint in this proceeding due to the pendency of the complaints filed at Docket Nos. C-2016-2558244 and C-2016-2563040. The preliminary objections further aver that the Commission lacks jurisdiction to direct the payment of a fine to Complainant, which is the relief requested by Complainant in the instant proceeding.

The preliminary objections included a notice to Complainant to file an answer to the preliminary objections within ten days of service on September 30, 2016. A response to the preliminary objections was filed by Complainant on October 3, 2016 which essentially averred that Complainant has been paying for water which does not meet the required quality standards. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Ross E. Schell.
2. The Respondent in this case is Suez Water Pennsylvania, Inc.
3. On September 13, 2016, Complainant filed a formal complaint with the Commission against the Respondent.

4. On September 30, 2016, Respondent filed preliminary objections.
5. Complainant filed a response to Respondent's preliminary objections on October 3, 2016.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

Here, Respondent's preliminary objections assert, *inter alia*, that the Commission should dismiss the formal complaint in this proceeding due to the pendency of the formal complaints at Docket Nos. C-2016-2558244 and C-2016-2559740, pursuant to 52 Pa.Code § 5.101(6). I agree.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v.*

Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa.Code § 5.101(a)(6) permits the filing of a preliminary objection to dismiss a pleading due to the pendency of a prior proceeding. The provision at 52 Pa.Code § 5.101(a)(6) 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. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540

A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

The purposes of recognizing the doctrine of *lis pendens* are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

The three-pronged identity test “requires more than a mere allegation of a pending suit; it requires proof that the prior case is the same, the parties are substantially the same, and the relief requested is the same (citations omitted).” *Hillgartner v. Port Authority of Allegheny Cty.*, 936 A.2d 131, 137 (Pa.Cmwlth. 2007) “[I]t is purely a question of law determinable from an inspection of the records in the two causes.” *Hillgartner*, 936 A.2d at 138 [quoting *Hessenbruch v. Markle*, 194 Pa. 581, 45 A. 669 (1900)].

Viewing the complaint in this proceeding in the light most favorable to the Complainant, Mr. Schell averred there are incorrect charges on his bill; the existence of reliability, safety or quality problems with his service; and “other”. He further explained in his letter that the instant complaint concerns his “billing and meter reading” his use. The additional page attached to his complaint indicates that he is being told that the alleged dirty water is coming from his broken water pipe, and if this is true, the meter reading is wrong because he would be using more water. In addition, Complainant avers he has not seen any increase in his bills that would indicate a leak in his pipes.

As relief, Complainant requests “50,000 Dollars paid to me as fine for this complaint and bill to restart 2 months after this is settled.”

From the face of the instant complaint and the complaint previously filed at Docket No. C-2016-2563040, it is clear that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought are the same. Therefore, Respondent has satisfied the three-pronged test for *lis pendens* and I will sustain the preliminary objections.

In addition, in its preliminary objections, Respondent avers that the complaint seeks, as relief, \$50,000 to be paid to Complainant as a fine. Respondent argues that the Commission has no jurisdiction to direct a civil penalty payment or fine to Complainant. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, provides that civil penalties are paid to the Commonwealth of Pennsylvania. Having concluded that the preliminary objections will be sustained based upon the doctrine of *lis pendens*, an analysis of this issue is not necessary.

The complaint also seeks, as relief, a “restart” of billing, suggesting that Complainant wants to be relieved of paying for his water service. Respondent argues that the Commission has no jurisdiction to relieve Complainant from paying tariff charges for his water service. According to Respondent, Section 1303 of the Public Utility Code, 66 Pa.C.S. § 1303, requires that Suez charge and Complainant pay the tariff rate for service. Under the circumstances, an analysis of this issue is also unnecessary.

Accordingly, Respondent requests that the Commission grant its preliminary objections and dismiss the complaint of Ross E. Schell filed at Docket No. C-2016-2566322.

It is clear that the Commission lacks jurisdiction to award money damages.¹ The Commission may impose civil penalties upon a utility which is found to be in violation of a statute, regulation or order of the Commission.² Although the Commission may impose a civil penalty upon a public utility, Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, provides that civil penalties are paid to the Commonwealth of Pennsylvania. Accordingly, I

¹ See *Elkin v. Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa.Cmwth. 1995).

² 66 Pa.C.S. § 3301.

agree that the Commission lacks the jurisdiction to award Mr. Schell money damages or a “fine” related to the averments set forth in his formal complaint. Complainant’s request for payment of a fine to him directly and to restart his bill constitutes a claim for payment of monetary damages. Under the circumstances, the Commission lacks jurisdiction to award the relief requested by Complainant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S.A. § 701.
2. To support a claim of pendency of a prior proceeding, known as *lis pendens*, the moving party must allege and prove that in both actions, the same parties are involved, the same rights asserted, and the same relief sought.
3. Review of the complaint filed at Docket No. C-2016-2566322 and the two previously filed complaints filed at C-2016-2558244 and C-2016-2563040 show that (1) the case is the same; (2) the parties are the same; and (3) the rights asserted and relief sought are the same.
4. Respondent is obligated to charge rates for Complainant’s usage according to its tariff. 66 Pa.C.S. § 1303.
5. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2016-2566322 be dismissed.
6. The Commission has no jurisdiction to direct a civil penalty payment to Complainant.
7. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, provides that civil penalties are paid to the Commonwealth of Pennsylvania.

