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December 23, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Harrisburg, PA 17105-3265

In re: Docket No. C-2016-2578809  
Ross E. Schell v. Suez Water Pennsylvania Inc.

Dear Secretary Chiavetta:

We are counsel to Suez Water Pennsylvania Inc. in the above referenced matter and are submitting via electronic filing its Preliminary Objections to the Complaint of Ross E. Schell. A copy of the Preliminary Objections is being served upon Mr. Schell by first class mail, postage prepaid, as set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Enclosure

cc: Certificate of Service (w/encl.)  
Judith A. McCoy Jordan (via email, w/encl.)

161223-Chiavetta (Preliminary Objections).wpd

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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<b>ROSS E. SCHELL,</b>	:
<b>Complainant</b>	:
	:
v.	:
	:
<b>SUEZ WATER PENNSYLVANIA INC.,</b>	:
<b>Respondent</b>	:

**Docket No. C-2016-2578809**

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**NOTICE**

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TO: ROSS E. SCHELL  
203 KNOLLWOOD DRIVE  
HARRISBURG, PA 17109

PURSUANT TO 52 PA CODE SECTION 5.101(b), NOTICE IS HEREBY GIVEN THAT AN ANSWER TO THE FOLLOWING PRELIMINARY OBJECTIONS SHALL BE FILED WITHIN 10 DAYS OF THE DATE OF SERVICE.

DATE OF SERVICE: DECEMBER 23, 2016.

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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<b>ROSS E. SCHELL,</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>Docket No. C-2016-2578809</b>
	:	
<b>SUEZ WATER PENNSYLVANIA INC.,</b>	:	
<b>Respondent</b>	:	

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**PERLIMINARY OBJECTIONS OF  
SUEZ WATER PENNSYLVANIA INC.**

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AND NOW comes Suez Water Pennsylvania Inc. (“Suez”), by its attorneys, and, pursuant to 52 Pa. Code § 5.101, files these Preliminary Objections to the Complaint of Ross E. Schell (“Complainant”) at C-2016-2578809:

1. This proceeding concerns the Complaint of Ross E. Schell at Public Utility Commission (“Commission”) Docket No. C-2016-2578809.
2. Service of the Complaint was made by the Commission’s Office of the Secretary on December 7, 2016.
3. Complainant has four other complaints against Suez at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040 presently pending with the Public Utility Commission. A consolidated hearing on the four Complaints was held on October 4, 2016, at which Complainant had a full and fair opportunity to address any and all service and billing matters.
4. Three other Complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 are the subject of pending Initial Decisions of Administrative

Law Judge Watson dismissing the Complaints, without hearing, based on preliminarily objections filed by Suez.

5. Regulations of the Commission at 52 Pa. Code Section 5.101 provide for the filing of preliminary objections in response to a Complaint. Suez submits the following objections to this Complaint.

6. Along with these Preliminary Objections, Suez submits that Complainant is abusing the regulatory process by continuing to complain of the same matters. *See Newberry v. Pennsylvania Electric Company*, Docket No. C-2013-2358544, Final Order entered January 30, 2014.

**Pendency of Prior Proceedings (*Lis Pendens*) – 52 Pa. Code § 5.101(a)(6)**

7. Complainant alleges that Suez has not read his inside meter since September 1999. Complainant raised this same concern with a lack of meter reading in the pending proceeding at C-2016-2558244.

8. The proceeding at C-2016-2558244 was consolidated with Complainant's Complaints at C-2016-2551544, C-2016-2559741 and C-2016-2563040. A formal, consolidated evidentiary hearing was held on the four Complaints on October 4, 2016.

9. Complainant participated in the hearing on October 4 and testified about his claim that Suez has not been reading his meter. Complainant had a full and fair opportunity to address any and all metering issues at the hearing.

10. Three other Complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566323 and C-2016-2566398 are before the Commission for final action based on Initial Decisions of Judge Watson granting Suez Preliminary Objections and dismissing the Complaints without hearing.

11. In the Initial Decision, dated October 27, 2016, Judge Watson granted Suez Preliminary Objections and dismissed the Complaint at C-2016-2566322. In support of its Preliminary Objections, Suez cited Complainant's four pending Complaint proceedings as prior and pending proceedings warranting preliminary dismissal of the Complaint.

12. Judge Watson explained that preliminary dismissal based on a prior and pending proceeding – the doctrine of *lis pendens* – is warranted where the case, parties, rights asserted and relief sought are the same. The doctrine applies even if the wording of the Complaint varies. Applying the doctrine, Judge Watson dismissed the Complaint.

13. Suez submits that the doctrine of *lis pendens* should be applied here in similar fashion to dismiss this repetitive Complaint. The wording of this repetitive Complaint does not vary in any material way from the Complaint at C-2016-2558244. It is, in fact, the very same matters complained of at C-2016-2558244.

14. More importantly, the parties – Mr. Schell and Suez – are the same, as are the rights asserted by Mr. Schell under the Public Utility Code and the relief that he seeks. Complainant asks, again, for a refund on bills to which he is not entitled and the Commission has no jurisdiction to entertain.

**Lack of Commission Jurisdiction – 52 Pa. Code § 5.101(a)(1)**

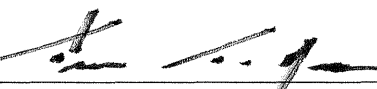
15. The Complaint seeks, as relief, refund of bills for 17 years. We submit that the Commission has no jurisdiction to order a refund of bills for 17 years. The Commission has no jurisdiction to relieve Complainant from paying tariff charges for his water service. Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1303, requires that Suez charge and Complainant pay the tariff rate for service. *See Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-

2566323, Initial Decision Granting Respondent's Preliminary Objections and Dismissing the Complaint dated October 31, 2016.

16. We submit, further, that the Complainant is essentially asking for money damages. The Commission, however, has no jurisdiction to award money damages. 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.Cmwlt. 1995); *Ross E. Schell v. Suez Water Pennsylvania Inc.*, Docket No. C-2016-2566322, Initial Decision dated October 27, 2016.

WHEREFORE, Suez Water Pennsylvania Inc. requests that the Pennsylvania Public Utility Commission grant these Preliminary Objections and dismiss the Complaint of Ross E. Schell at C-2016-2578809.

Respectfully submitted,

By   
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Tel: 717-255-7600

*Attorney for Respondent Suez Water Pennsylvania Inc.*

DATED: December 23, 2016

