

January 31, 2017

Via Electronic Filing

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

In re: Docket No. C-2016-2566323
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 Amended 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.)

160927-Chiavetta (Preliminary Objections-Amend Comp).wpd

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROSS E. SCHELL,	:
Complainant	:
	:
v.	:
	:
SUEZ WATER PENNSYLVANIA INC.,	:
Respondent	:

Docket No. C-2016-2566323

NOTICE

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: JANUARY 31, 2017

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROSS E. SCHELL,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2016-2566323
	:	
SUEZ WATER PENNSYLVANIA INC.,	:	
Respondent	:	

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

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 Amended Complaint of Ross E. Schell (“Complainant”) at C-2016-2566323:

1. This proceeding concerns the Amended Complaint of Ross E. Schell at Public Utility Commission (“Commission”) Docket No. C-2016-2566323.
2. Service of the Amended Complaint was made by the Commission’s Office of the Secretary on or about January 12, 2017.
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-2016-2566398 and C-2016-2576731 are the subject of pending Initial Decisions of Administrative

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

5. In addition to these three other Complaints, the original Complaint in this proceeding is the subject of a pending Initial Decision of Judge Watson, issued December 1, 2016, dismissing it, without hearing, based on preliminary objections filed by Suez. Complainant did not file Exceptions to the Initial Decision.

6. 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 Amended Complaint.

7. 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)

8. Complainant avers that he has a reliability, safety, quality or other problem with his water service. He includes pdf pictures with his Complaint and a copy of Section 1501, and other Sections, of the Public Utility Code.

9. Complainant, as stated above, has four, prior and formal Complaint proceedings pending at C-2016-2551544, C-2016-2558244, C-2016-2559741 and C-2016-2563040. A formal, consolidated evidentiary hearing was held on his four Complaints on October 4, 2016.

10. In the proceeding at C-2016-2551544, Complainant “checked” the “reliability, safety or quality” box and the “other” box of the formal complaint form and complained of “dirty water.”

11. In the proceeding at C-2016-2558244, Complainant “checked” the “utility is threatening to shut off my service” box, the “incorrect charges” box and the “other” box of the formal complaint form and averred that there are incorrect charges on his bill and that Suez has not tested Complainant’s meter.

12. In the proceeding at C-2016-2559741, Complainant “checked” the “reliability, safety or quality” box and the “other” box of the formal complaint form and complained that his water was shut off on August 3, 2016 without notice.

13. In the proceeding at C-2016-2563040, Complainant “checked” the “utility is threatening to shut off my service” box, the “incorrect charges” box, the “reliability, safety or quality” box and the “other” box of the formal complaint form and expressed concern with the accuracy of the outside meter installed by Suez in April of this year.

14. The pendency of the four, prior and pending water quality, billing and meter reading proceedings makes this service proceeding unnecessary. The four Complaint proceedings were consolidated and an evidentiary hearing was held October 4, 2016, in the consolidated proceeding. Complainant attended the hearing and had a full and fair opportunity to address any and all service and billing matters.

15. Three other Complaints filed by Complainant against Suez at C-2016-2566322, C-2016-2566398 and C-2016-2576731 are before the Commission for final action based on Initial Decisions of Judge Watson granting Suez Preliminary Objections and dismissing the Complaints without hearing.

16. In the Initial Decision, dated October 27, 2016, at C-2016-2566322, Judge Watson granted Suez Preliminary Objections and dismissed that Complaint. 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. Judge Watson also dismissed a substantially similar Complaint in his Order issued January 23, 2017 at C-2016-2576731.

17. At C-2016-2566322, 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.

18. Suez submits that the doctrine of *lis pendens* should be applied here in similar fashion to dismiss this Amended Complaint. The wording of this Amended Complaint does not vary in any material way from the four pending Complaints. 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. In all of his Complaints, Mr. Schell is looking for monetary relief 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)

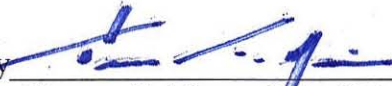
19. The Amended Complaint seeks, as relief, “17 years of bill pay back” or refund. We submit that the Commission has no jurisdiction to order a “bill pay back” or refund for 17 years. The Commission has no jurisdiction to relieve Complainant from paying tariff charges for his water service. Section 1303 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.

20. 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.Cmwlth. 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 Amended Complaint of Ross E. Schell at C-2016-2566323.

Respectfully submitted,

By 

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Attorney for Respondent Suez Water Pennsylvania Inc.

DATED: January 31, 2017

