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File #: 169162

April 17, 2017

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Leonard E. Martz v. The York Water Company**  
**Docket No. C-2017-2595626**

Dear Secretary Chiavetta:

Enclosed for filing are the Preliminary Objections of The York Water Company to the Complaint of Leonard E. Martz in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DR', written over a horizontal line.

Devin Ryan

DTR/jl  
Enclosures

cc: Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA FIRST CLASS MAIL**

Leonard E. Martz  
2594 York Haven Road  
Manchester, PA 17345

Date: April 17, 2017



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leonard E. Martz,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2595626
	:	
The York Water Company,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Devin T. Ryan (ID # 316602)  
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Of Counsel:  
Post & Schell, P.C.

Date: April 17, 2017

Attorneys for The York Water Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leonard E. Martz,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2595626
	:	
The York Water Company,	:	
	:	
Respondent.	:	

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**PRELIMINARY OBJECTIONS OF  
THE YORK WATER COMPANY  
TO THE COMPLAINT OF LEONARD E. MARTZ**

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AND NOW, comes The York Water Company (“York Water” or the “Company”) and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the portion of the Complaint filed by Leonard E. Martz (“Complainant”) requesting monetary damages be dismissed.

In support thereof, York Water states as follows:

**I. BACKGROUND**

1. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission. See 66 Pa. C.S. § 102. York Water provides water service to approximately 66,100 customers throughout its certificated service territory, which includes the City of York and surrounding

municipalities in portions of York and Adams Counties, Pennsylvania. York Water provides wastewater service to approximately 642 customers in portions of York County.

2. By Secretarial Letter dated March 28, 2017, York Water was served with the above-captioned Complaint. The issues raised in the Complaint concern the safety and quality of the Complainant's water service. (Complaint ¶ 4)

3. York Water herein files these Preliminary Objections to the Complaint. For the reasons explained below, York Water respectfully requests that the portion of the Complaint requesting monetary damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because the Complaint includes impertinent matter, *i.e.*, a request for damages. *See* 52 Pa. Code § 5.101(a)(2).

## II. STANDARD OF REVIEW

4. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed* 974 A.2d 941 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

6. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. 1992)).

### **III. PRELIMINARY OBJECTION**

7. York Water incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. In his Complaint, the Complainant raises issues concerning the quality and safety of his water service. As relief, he requests, among other things, that he should receive “monetary compensation.” (Complaint ¶ 5)

9. It is well-established that the Commission does not have the authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

10. Here, the Complainant's request for damages is impertinent matter "in the sense that it is irrelevant to [the] cause of action" because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No. C-2011-2264876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 2012 Pa. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at \*8-9, 12 (Feb. 4, 2011), *adopted by Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

11. Therefore, the Complainant's request for damages is impertinent matter and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

IV. CONCLUSION

WHEREFORE, The York Water Company respectfully requests that the portion of the Complaint requesting monetary damages be dismissed.

Respectfully submitted,



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Of Counsel:

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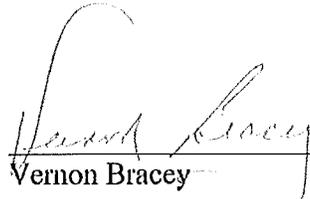
Date: April 17, 2017

Attorneys for The York Water Company

**VERIFICATION**

I, Vernon Bracey, Vice President – Customer Service of The York Water Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 17, 2017

  
Vernon Bracey