

John J. Gallagher

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February 7, 2018

VIA HAND DELIVERY

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

Re:

Docket No. C-2014-2435567

City of Lancaster—Motion to File Answer Nunc Pro Tunc

Dear Secretary Chiavetta:

Enclosed please find an original copy the City of Lancaster's Motion to File an Answer Nunc Pro Tunc in the Complaint captioned above.

Should you have any questions concerning this correspondence please contact me at your convenience. Copies of this correspondence and the City of Lancaster's Motion have been served on the parties listed in the attached Certificate of Service.

Sincerely,



John J. Gallagher

Enclosures

cc: Certificate of Service

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 the manner indicated below, and in accordance with the requirements of § 1.54 (relating to service by a party).

VIA EMAIL & FIRST CLASS MAIL

Mr. Frank D. Kitzmiller
1041 Preston Rd.
Lancaster, PA

Honorable Joel Cheskis
Office of Administrative Law Judge
Pa Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17101-3265



Dated: February 8, 2018

John J. Gallagher, Esquire
711 Forrest Road
Harrisburg, PA 17112
jgallagher@jglawpa.com

Counsel for City of Lancaster

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank D. Kitzmiller	:	
	:	
v.	:	Docket No. C-2014-2435567
	:	
City of Lancaster, Water Department	:	

**MOTION OF CITY OF LANCASTER WATER DEPARTMENT
FOR LEAVE TO FILE AN ANSWER TO A FORMAL COMPLAINT
*NUNC PRO TUNC***

Pursuant to 52 Pa. Code § 5.103, The City of Lancaster, Water Department (“Lancaster Water” or “Respondent”) respectfully submits this Motion for Leave to File an Answer to the Formal Complaint of Frank D. Kitzmiller (“Kitzmiller” or “Complainant”) *Nunc Pro Tunc* ("Motion"). In support of its Motion, Respondent submits the following:

1. On or about July 14, 2014, Mr. Kitzmiller filed a Formal Complaint at the Commission which was docketed at Docket No. C-2014-2435567 (“Complaint”).
2. The Complaint alleged that there were incorrect charges on Mr. Kitzmiller’s water bill from Lancaster Water.
3. On the same date, July 14, 2014, Mr. Kitzmiller filed another Formal Complaint against a rate case by Lancaster Water, which was then pending before the Commission at Docket No. R-2014-2418872 (hereafter, “Rate Complaint”). This complaint also incorporated the complaint docketed at C-2014-2435567
4. The Rate Complaint was docketed at Docket No. C-2014-2435548 which incorporated the Complaint at C-2014-2435567 and was later made part of the rate case.

5. Lancaster Water did not file an answer to either complaint as is permitted by Commission regulations at 52 PA Code §5.61(d) and is the normal procedure followed by all utility's in rate proceedings.

6. Mr. Kitzmiller, as a party to the rate proceeding did not initiate any discovery on any issue raised in either of his complaints

7. On or about January 15, 2015, the Commission issued an Order approving a full settlement of the Lancaster Water rate case and dismissing the complaint docketed at C-2014-2418872 which incorporated the complaint docketed at C-2014-2435567.

8. The Commission's January 15, 2015 Order the Commission ruled that Mr. Kitzmiller's Rate Complaint was deemed satisfied and should be marked closed. Order at p3.

9. Based on the Commission's January 15, 2015 Order, Respondent believed, in good faith, that Mr. Kitzmiller's complaints had been resolved by the Commission's approval of the rate case settlement.

10. Mr. Kitzmiller's Complaint was served upon Respondent on August 4, 2014.

11. Under Section 5.61 of the Commission's regulations, an Answer to the Complaint was due on or about August 24, 2014. Under the rule, an Answer filed after the due date is out of time and may be rejected by the Commission. 52 Pa. Code §5.61.

12. Respondent believed and still believes, in good faith, that both Kitzmiller complaints are related to the rate case, and therefore, Respondent was not required to file answers to either complaint. *See*, 52 Pa. Code §5.61(d).

13. Respondent is now aware that Mr. Kitzmiller's Complaint was not docketed under the 2014 rate case despite having been appended and incorporated into Mr. Kitzmiller's rate case complaint (C-2014-2435548), and that the billing issue raised by Mr. Kitzmiller was not resolved

as part of the rate case settlement even though Mr. Kitzmiller's complaint was clearly rate-related but which Mr. Kitzmiller failed to address.

14. Respondent respectfully requests that the Commission grant leave to Lancaster Water to file an Answer to the Complaint of Mr. Kitzmiller, *nunc pro tunc*, and to respond to the allegations in the Complaint.

15. Pursuant to Section 1.91 of the Commission's regulations, the Commission has the authority to waive or make an exception to any provision in its regulations or requirements that would otherwise lead to the rejection of a pleading, filing or other submittal. 52 Pa. Code § 1.91

16. Lancaster Water respectfully requests that the Commission waive or make an exception to the 20-day answer requirement under Section 5.61 of the Commission's regulations, 52 Pa. Code § 5.61, and allow the Respondent to file an Answer to the Complaint out of time (*nunc pro tunc*).

17. Respondent has prepared an Answer to the Complaint ("Answer"), which Respondent intends to file upon the Commission's grant of this Motion for Leave.

18. In its proposed Answer, Respondent denies the substantive allegations in the Complaint and seeks to dismiss certain claims in the Complaint.

19. Respondent believes, and therefore avers, that granting this Motion would not be prejudicial to the Complainant because the Complaint mistakenly remains pending and continues to be subject to adjudication by the Commission. On the contrary, Respondent avers that the Commission's failure to notify the Respondent that its staff was considering reinstating Mr. Kitzmiller's complaint nearly three (3) years following the close of the record in the rate proceeding was/is extremely prejudicial to its due process rights since Mr. Kitzmiller failed to

exercise his rights to raise and prosecute the issues raised in either of his complaints and therefore waived any consideration of those issues. Respondent further avers that Respondent was given no notice that the Commission had ruled that issues raised in the 2014 rate proceeding or any issue raised by Mr. Kitzmiller during the course of that proceeding would be reconsidered and that proceeding would be reopened.

20. Further, providing an opportunity for Respondent to set forth its position on the issues raised in the Complaint may narrow the issues in dispute, facilitate mediation and encourage the parties to settle the matter prior to hearing.

21. Lastly, granting this Motion would allow the parties to continue to exchange discovery, set forth their positions and seek an amicable settlement.

WHEREFORE, Respondent respectfully requests that the Commission grant this Motion for Leave to File an Answer *Nunc Pro Tunc*, and issue an Order granting the Motion and permitting Respondent to file the proposed Answer attached hereto as Exhibit A.

Respectfully submitted,



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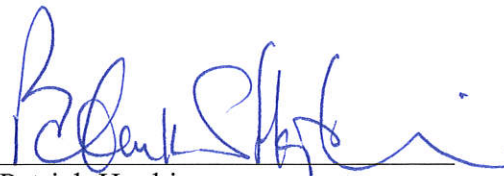
Date: February 8, 2018

Counsel for Respondent
City of Lancaster Water Department

VERIFICATION

I, Patrick Hopkins, Business Administrator for the City of Lancaster, hereby state that the facts set forth in the foregoing Motion and Answer to Complaint 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).



Patrick Hopkins

Date: January 29, 2018