

FRANK D. KITZMILLER
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

FEBRUARY 20, 2018

ROSEMARY CHIAVETTA, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
P.O. BOX 3265
HARRISBURG, PA 17105-3265

RE: FRANK D. KITZMILLER v. CITY OF LANCASTER WATER DEPARTMENT

DOCKET NO. C-2014-2435567; OBJECTION TO MOTION OF CITY OF LANCASTER WATER DEPARTMENT FOR LEAVE TO FILE AN ANSWER TO A FORMAL COMPLAINT NUNC PRO TUNC

DEAR SECRETARY CHIAVETTA:

ENCLOSED FOR FILING WITH THE COMMISSION, ON BEHALF OF COMPLAINANT, FRANK D. KITZMILLER, IS AN ORIGINAL COPY OF AN OBJECTION TO MOTION OF CITY OF LANCASTER WATER DEPARTMENT FOR LEAVE TO FILE AN ANSWER TO A FORMAL COMPLAINT NUNC PRO TUNC IN THE ABOVE REFERENCED MATTER.

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT ME AT MY ABOVE ADDRESS INFORMATION. COPIES OF THIS CORRESPONDENCE AND THE FRANK D. KITZMILLER OBJECTION HAVE BEEN SERVED ON THE PARTIES LISTED IN THE ATTACHED CERTIFICATE OF SERVICE.

VERY TRULY YOURS,

Frank D. Kitzmiller PRO SE

FRANK D. KITZMILLER, COMPLAINANT

C: As per certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK D. KITZMILLER, !
COMPLAINANT, !
V. ! DOCKET NO. C-2014-2435567
CITY OF LANCASTER WATER DEPARTMENT, !
RESPONDENT. !

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

On or around Friday, February 9, 2018, I was reviewing Case Summary for Docket No. C-2014-2435567 (Frank D. Kitzmiller (Complainant) v. City of Lancaster Water Department(Respondent)) to determine if any Motion to Compel Respondent's Responses to certain Set 1 Interrogatories had been approved by Joel Cheskis, Administrative Law Judge (ALJ). I did not notice any such approval for the Motion which was filed on January 29, 2018.

I did however notice that 2 documents were reported under "Daily Actions" related to "Motion to File Answer Nunc Pro Tunc – City of Lancaster Water Department" One of those documents was also included in "Public Documents" and consisted of:

1. Cover letter dated 2/7/18
2. Certificate of Service dated 2/8/18
3. Motion of City of Lancaster Water Department for Leave to File an Answer to Formal Complaint Nunc Pro Tunc ("Motion") dated 2/8/18
4. Verification of Patrick Hopkins dated 1/29/18. There was no Verification included for John J. Gallagher, Legal Counsel for Respondent)

Respondent's Motion was made pursuant to 52 Pa. Code Section 5.103 which in Section 5.103(b) requires the written Motion to contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the Motion. THERE WAS NO SUCH NOTICE CONTAINED IN THE MOTION.

On page 5 of the Motion there was a reference to a "proposed Answer attached hereto as Exhibit A".

This Exhibit A attachment was not included in the data reported in the Public Documents.

The Cover Letter indicated that "this correspondence and City of Lancaster's Motion have been served on the parties listed in the attached Certificate of Service which were Mr. Frank D. Kitzmiller and

Honorable Joel Cheskis. Above the name of Frank D. Kitzmiller was the underscored words "VIA EMAIL & FIRST CLASS MAIL".

Complainant did not receive the hard copy or the Email of the correspondence and on 2/13/18 Complainant Emailed Respondent on this issue after Respondent notified ALJ Cheskis and Complainant that Exhibit A was not attached and will not be forthcoming until the Motion is granted.

Later, on 2/13/18, Respondent Emailed the unreceived correspondence to Complainant and indicated that the hard copy was mailed on 2/9/18 by Respondent's office support group after making a hand delivery of it to ALJ Cheskis on 2/8/18.

On 2/12/18, Respondent hand delivered to ALJ Cheskis an original executed copy of the Verification for the Motion which was inadvertently omitted from the 2/7/18 filing. Complainant received the hard copy of this correspondence on 2/14/18 in an envelope with U.S. postage stamped by a Pitney Bowes postage machine and dated Feb 12, 2018. A review of the correspondence revealed no changes or additions from the correspondence previously received by Email and the Verification was still being made solely by Patrick Hopkins and not John J. Gallagher who appears to have been the source of the facts set forth in the Motion and probably will accompany Patrick Hopkins at a hearing held on this matter.

The following information and conclusions attempts to summarize and clarify Respondent's 21 numbered statements included in the Motion. Based upon this information and conclusions, Respondent's Motion For Leave To File An Answer To Formal Complaint Nunc Pro Tunc should be denied by the Presiding Officer pursuant to 52 Pa. Code Section 5.103.

Items 1, 2, 3, 4, 5, 10, 11, 15, and 16.

On 7/14/14, Complainant, as required by the Pennsylvania Public Utility Commission (PUC), filed 2 separate and distinct Formal Complaints with the PUC against the Respondent City of Lancaster Water Department. Docket No. C-2014-2435567 was assigned by the PUC to the filing on the form with a "Formal Complaint" title at the top of the form and was related to a customer overbilling issue. Docket No. C-2014-2435548 was assigned by the PUC to the filing on the form with a "Formal Complaint to Proposed Rate Increase" title at the top of the form and was related to 2 rate case issues consisting of an adjustment for excess unaccounted for water which could have caused a reduction in the requested rates and the other was for the potential effect of a settlement of the customer overbilling issue for approximately 5,000 customers located outside of the City of Lancaster which could have resulted in an increase in the requested rates. To provide information on the dollar amount of the potential effect of the settlement of the overbilling issue, a copy of the customer overbilling formal complaint was attached to the Formal Complaint to Proposed Rate Increase form.

On 8/4/14, the PUC served upon the Respondent 2 separate Formal Complaint Notices, one with a 20 day answering requirement for Formal Complaint Case Docket No. C-2014-2435567 and one with a 10 day answering requirement for Formal Complaint to Proposed Rate Increase Case Docket No. C-2014-2435548

On 8/4/14, or shortly thereafter, Respondent made a decision to treat both of these separate Formal Complaints, which were designated by the PUC as one customer overbilling case and one rate case, as a

single rate case either by negligence (possibly from not having enough time to fully review such complaints due to overseeing the more important Rate Increase Request case) or to avoid the requirement to either satisfy or answer the customer overbilling formal complaint. As a result of this decision, no satisfaction or answer of Case Docket No. C-2014-2435567 was made within the 20 day answering requirement.

On 8/11/17, Respondent served upon Complainant a Certificate of Satisfaction for the Customer Overbilling Formal Complaint Case Docket No. C-2014-2435567. This Certificate of Satisfaction was filed approximately 3 years after the 8/24/14 20 day filing requirement. Complainant filed an Objection of Certification of Satisfaction with the PUC which apparently resulted in the rejection of the Certificate of Satisfaction and the formal scheduling of an Initial Telephonic Hearing to be held on 10/17/17.

Conclusion: Complainant after a review of the Formal Complaint filings made as described above concludes that they were filed by Complainant in accordance with the rules and regulations of the PUC including the use of the required forms for filing, that they were docketed properly by the PUC as two separate types of cases and that proper Formal Complaint Notices were served on the Respondent for the 2 separate cases. Complainant objects to Respondent's erroneous treatment of Complainant's properly handled filings and attempt to combine all such filings into 1 rate case filing.

Item 6.

Complainant became a party in the rate case on 10/2/14 and after receiving copies of the voluminous documents covering the case action prior to 10/11/14 from Respondent, there was no time available to initiate discovery on any issue raised in either of the 2 separate formal complaints as the scheduled hearing dates of 10/17, 10/18 and 10/19/14, and the preparation required by the parties for such hearings and in the ongoing settlement proceedings accounted for all of these individual's time.

There was no need for discovery to be made on the unaccounted for water issue as that appeared to be a basic mathematical calculation. Discovery for the rate case appears to have been completed in July, 2014 before Complainant became a party. The only discovery that Complainant was interested in in October 2014 was for the separate customer overbilling case, which appeared to be inappropriate as it was not a rate case complaint and also because John J. Gallagher, Respondent's legal counsel, would have been too busy to attend to it.

Conclusion: It was inappropriate to conduct any discovery proceedings related to the customer overbilling complaint because it was not a rate case complaint and would have hindered the progress of the rate case settlement.

Items 7, 8 and 9

The settlement of the rate case was agreed to by the parties on 10/16/14 and the scheduled hearings were cancelled. The Rate Case ALJ, Angela T. Jones, who had recognized the existence of the 2 separate formal complaint cases (Docket No. C-2014-2435567 and Docket No. C-2014-2435548) issued her recommended decision on 12/14/14 and specifically indicated that only Case Docket No. C-2014-2435548 was deemed satisfied and marked closed.

The PUC on 1/15/15 also stated that only Case Docket No. C-2014-2435548 was deemed satisfied and marked closed.

At this point and at the present time, there has been no deemed satisfaction of Case Docket No. C-2014-2435567. This was confirmed in Complainant's Statement of Support of the Joint Petition for Settlement of Rate Investigation which was included in the Rate Case ALJ Recommended Decision and stated –

“Assuming that any action on my part to support the Joint Petition will not have any effect on my unrelated current Formal Complaint with the City of Lancaster Water Bureau (Docket Number C-2014-2435567 relating to an alleged overcharge of the Customer Service Charge portion of my water service bill), I hereby support the proposed Joint Petition and respectfully request that the Administrative Law Judge and the PA Public Utility Commission approve the Joint Petition in its entirety”.

Conclusion: The customer overbilling case Docket No. C-2014-2435567 was neither satisfied or closed.

Items 12 and 13.

Complainant cannot understand how an experienced attorney with expertise in PUC ratemaking proceedings could make a determination that a customer overbilling formal complaint should be treated solely as a rate proceeding formal complaint.

Conclusion: The separately filed and separately docketed customer overbilling formal complaint was not related to the rate case and not part of the rate case.

Items 14, 17, 18, 19, 20 and 21.

Conclusion: It appears that the actions requested by the Respondent can all be included in the Telephonic or other Hearing scheduled for 3/22/18 and that the normal prehearing preparation, including Complainant's numerous unanswered written interrogatories presently subject to a Motion to Compel Responses and other unanswered written interrogatories subject to a proposed Motion to Compel Responses, and settlement discussion can continue without the distraction of this additional Motion issue, which, if granted, would definitely cause the hearing to be continued to a later date in order for Complainant to obtain the requested answers to written interrogatories and including this information in the hearing testimony

Please communicate with the Complainant if you need any additional information on this matter.

Respectfully submitted,
Frank D. Kitzmiller
Frank D. Kitzmiller, Complainant, Pro Se

1041 Preston Rd

Lancaster, PA 17601

Telephone: (717) 569-0132

Email: dkitz@comcast.net

Dated: February 20, 2018

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VERIFICATION

I, Frank D. Kitzmiller, Complainant in the Case Docket No. C-2014-2435567, Frank D. Kitzmiller v. City of Lancaster Water Department, hereby state that the facts set forth in the foregoing Objection To Motion Of City Of Lancaster Water Department For Leave To File An Answer To A Formal Complaint Nunc Pro Tunc 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. Section 4904 (relating to unsworn falsification to authorities).

Date: February 20, 2018

Frank D. Kitzmiller

Frank D. Kitzmiller Kri SE

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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COMPLAINANT, !
V. ! DOCKET NO. C-2014-2435567
CITY OF LANCASTER WATER DEPARTMENT, !
RESPONDENT. !

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Objection To Motion Of City Of Lancaster Water Department For Leave To File An Answer To A Formal Complaint Nunc Pro Tunc upon the participants, listed below, in accordance with the requirements of 52 Pa Code P 1.54 (relating to service by a participant).

FIRST CLASS MAIL

Honorable Joel Cheskis
Office of Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

John J. Gallagher, Esquire
711 Forrest Road
Harrisburg, PA 17112
Counsel for the City of Lancaster Water Department

Frank D. Kitzmiller

Frank D. Kitzmiller, Pro Se
1041 Preston Rd
Lancaster, PA 17601

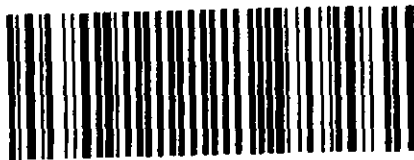
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Dated: February 20, 2018

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CERTIFIED MAIL



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20 FEB '18
PM 11

7017 2400 0000 3251 0712

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