

FRANK D. KITZMILLER  
1041 PRESTON RD.  
LANCASTER, PA 17601  
TELEPHONE (717) 569-0132  
Email: [dkitz@comcast.net](mailto:dkitz@comcast.net)

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MAY 4, 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 AMENDED ANSWER OF CITY OF LANCASTER WATER DEPARTMENT TO MOTION TO COMPEL RESPONSES TO DISCOVERY FRANK D. KITZMILLER SET I

DEAR SECRETARY CHIAVETTA:

ENCLOSED FOR FILING WITH THE COMMISSION, ON BEHALF OF COMPLAINANT, FRANK D. KITZMILLER, IS AN ORIGINAL COPY OF AN OBJECTION TO AMENDED ANSWER OF CITY OF LANCASTER WATER DEPARTMENT TO THE MOTION TO COMPEL RESPONSES TO DISCOVERY OF FRANK D. KITZMILLER SET I 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*

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 AMENDED ANSWER OF CITY OF LANCASTER WATER DEPARTMENT  
TO THE MOTION TO COMPEL RESPONSES TO DISCOVERY OF FRANK D. KITZMILLER SET I

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INTRODUCTION

Frank D. Kitzmiller (Complainant), on 1/29/18, served to The City of Lancaster Water Department (Respondent) a Motion to Compel Respondent's Responses to Certain Set I interrogatories. On 2/9/18, Respondent provided its answer to the Motion to Compel Respondent's Responses to Certain Set I interrogatories. (Note: This formal response by Respondent was omitted from the Background information in Respondent's Amended Answer filed on 4/27/18.) There were no timely filed objections to any of the Set I interrogatories, which consisted of 22 items, which were originally served to Respondent on 9/14/17.

Respondent, on 4/27/18, has served to Complainant an Amended Answer to the Motion to Compel Respondent's Responses to Certain Set I interrogatories (and a similar Amended Answer for Certain Set II interrogatories which is being addressed in a separate objection of Complainant).

Complainant respectfully requests that Judge Joel Cheskis deny this Amended Answer of Respondent to the Motion to Compel Responses to Discovery of Frank D. Kitzmiller Set I. In support of its objection, Complainant sets forth the following:

BACKGROUND

1. The Initial Hearing for this Docket No. C-2014-2435567 proceeding was held on 4/18/18. Complainant was not aware of any direction provided to Respondent or Complainant at the Initial Hearing to allow the Respondent to make an Amended Answer to the Motions to Compel Respondent's Responses to Certain Discovery of Set I and Set II interrogatories which were served to Respondent on 1/29/18 (Set I) and 2/23/18 (Set II).
2. At the Initial Hearing, which was attended by Judge Joel Cheskis, Respondent John Gallagher representing City of Lancaster Water Department and Frank D. Kitzmiller, Complainant, Complainant was given the opportunity to read his prepared testimony which consisted of 14 pages of single spaced typed information plus 11 Exhibits as described on the Appendix to Hearing Testimony For Exhibits.
3. On the third or fourth page of Complainant's written testimony, Judge Cheskis appeared to order a stop to Complainant's testimony to allow the Respondent time for cross examination or Respondent's proposed admission of evidence to the proceedings.
4. Complainant was experiencing difficulty in hearing what was being said by the Judge and the Respondent due to an apparent hearing problem. At any future hearings, Complainant will request the use of headphones which are linked to the microphones of the Judge and Respondent to allow Complainant to fully participate in the proceedings.
5. The proposed evidence consisted of copies of Complainant's 2 separate Formal Complaint Filings Docket No. C-2014-2435567 Formal Complaint for overbilling and Docket No. C-2014-2435568 Formal Complaint for Rate Increase Case Docket No. R-2014-2418872 which were sent to Respondent on 8/4/14 in connection with the 2 Separate Formal Complaint Notices which were sent to Respondent. These 2 Formal Complaint filings were sent to Complainant and Judge Cheskis on Friday, 4/13/18, and received by Complainant on 4/16/18.
6. It appeared that the Judge concluded that no additional testimony would be made by the Complainant at this hearing and the Judge mentioned the possibility of requesting the PUC Bureau of Investigation and Enforcement (BIE) to perform an investigation of this case. Complainant agreed that such an investigation would be approved by the Complainant who requested that a copy of such investigation be available to Complainant for review.
7. In connection with this possible BIE investigation, Complainant provided the Judge with a copy of Complainant's complete 14 page typed testimony including the Appendix to Hearing Testimony for Exhibits. In addition, Complainant provided the Judge with a 2 page summary of "Status of Discovery Requested" and copies of the Set I and Set II written interrogatories for use in the investigation or for the Judge's use in reviewing the status of the case. The Judge had previously requested that the status of the discovery process should be provided to the Judge by the parties at this hearing.
8. The Respondent also received the same abovementioned documents in 7. from the Complainant for use by the Respondent in providing the Judge with information on Respondent's status with respect to discovery proceedings.
9. The Initial Hearing was ended and Judge Cheskis stated that a continuance of the hearing would be held in the future, probably in June, 2018. In a later communication from the Judge, it appeared that the continuance would probably be held in July, 2018.

COMMENTS ON RESPONDENT'S AMENDED ANSWER TO THE MOTION TO COMPEL RESPONSES TO DISCOVERY OF FRANK. D. KITZMILLER SET I

Complainant will respond to specific paragraphs of Respondent's requested Amended Answer to Set I.

1. Complainant agrees that items Nos. 1, 2, 3, 4, 10, 11, 18, 21 and 22 have not been provided by Respondent.
2. a. Complainant agrees that complete responses to items Nos. 5, 6, 7, 8, 9, 12 and 13 have been provided by Respondent, however only partial responses to items Nos. 14-17 have been provided by Respondent.  
b. Complainant disagrees with Respondent's conclusion that items Nos. 18, 19 and 20 are not relevant to the issues presented in this proceeding and therefore should be excluded. A review of the information requested in items Nos. 18 and 20 may provide Complainant information to explain why Respondent agreed to future billings for water service to the affected customers were to be made at the rates provided by Tariff Water – Pa P.U.C. No. 6. Information requested for item No 19 would provide the number of water customers who appear to have been overbilled.
3. a. Complainant does not agree with Respondent's denial that there has been an overbilling of Complainant. Refer to the Formal Overbilling Complaint Docket No. C-2014-2435567 and the written testimony of Complainant provided at the 4/22/18 Hearing for the reasons.  
b. "The Complainant has waived his right to raise these issues since he failed to prosecute these issues in the Commission's 2014 rate proceeding in which the Complainant was a party. (R-2014-2418872)" Complainant disagrees with this statement for the following reasons:

Complainant became a party in the rate case on 10/2/14 as required by the terms of filing a Formal Rate Case Complaint 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 that someone familiar with Rate cases would do in the course of the Rate case proceedings. 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. In addition, when Complainant was asked to provide a Statement of Support of

the Joint Petition for Settlement of Rate Investigation which was included in the rate case ALI Recommended Decision, Complainant 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 No. 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".

4. Complainant, on 2/20/18, objected to Respondent's Motion To Provide An Answer Nunc Pro Tunc which was filed on 2/8/18. Such Motion and Objection thereto is presently under the review of Judge Cheskis.

5. It is unclear why this item is included in the request for Amended Answer. This is an exact copy of Respondent's comment on Statement Item 17 in the Motion to Compel request. A review of this comment indicates that Respondent responded by Email to Set I Interrogatory item 12 on 11/6/17 and 1/3/18, both dates being prior to the 1/18/18 date mentioned by Respondent. Interrogatory item 12 requested the prospectus documents to 8 specific General Obligation Bond and Note issues which were specifically mentioned in the Long-Term Liabilities footnotes to Respondent's audited financial statements for the years ended 12/31/15 and 12/31/16 which were requested on Interrogatory item 13 of the Set I written Interrogatories.

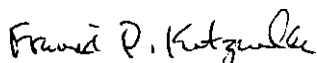
These documents were included in separate binders for each of the requested bond issues. The 8 binders were under the care of Respondent's Business Administrator who was also responsible for compiling the Respondent's annual financial statements and Respondent's bond issuances.

Complainant considered this to be a simple request for 8 items (binders) of information, which although containing "thousands of pages of bond documents" should have been easy to timely provide by Respondent.

CONCLUSION: Based on the foregoing, Complainant respectfully requests that your Honor deny Respondent's Amended Answer to Motion to Compel Kitzmiller Interrogatories Set I.

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

Respectfully submitted,



Frank D. Kitzmiller, Complainant, Pro Se

1041 Preston Rd

Lancaster, PA 17601

Telephone: (717) 569-0132

Dated: May 4, 2018

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 Amended Answer Of City Of Lancaster Water Department To The Motion To Compel Responses To Discovery Of Frank D. Kitzmiller Set I 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: May 4, 2018

Frank D. Kitzmiller

Frank D. Kitzmiller

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