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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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 II

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 II 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 II

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INTRODUCTION

Frank D. Kitzmiller (Complainant), on 2/23/18, served to The City of Lancaster Water Department (Respondent) a Motion to Compel Respondent's Responses to Certain Set II interrogatories. On 3/6/18, Respondent provided its answer to the Motion to Compel Respondent's Responses to Certain Set II 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 3 timely filed objections to the Set II interrogatories, which consisted of 11 items, which were originally served to Respondent on 1/23/18.

Respondent, on 4/27/18, has served to Complainant an Amended Answer to the Motion to Compel Respondent's Responses to Certain Set II interrogatories (and a similar Amended Answer for Certain Set I 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 II. 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 II

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

1. Complainant does not agree that items Nos. 1-5 and Nos. 9-11 are not relevant to Complainant's billing complaint. To support this position, Complainant is providing information on Complainant's overbilling complaint and the source of certain Set II written interrogatories:
  - a. In 2014, Complainant discovered that he was being billed a Customer Charge based on the use of a 1" size water meter rather than the ¾" size water meter that he used as required by Respondent.
  - b. The Customer Charge based on the 1" size water meter is 265% greater than the Customer Charge for a ¾" size water meter and for periods after 3/5/15 this difference amounts to \$109.80 per year.
  - c. Based upon information in the Public Documents section of the PUC Case Summary for Docket No. R-2014-2418872, at 12/31/13, it appears that approximately 5,122 of Respondent's Outside of Lancaster City customers are being billed for the use of a 1" size water meter.
  - d. Based upon information provided to Complainant in connection with a Certificate of Satisfaction filed on 8/11/17, which is located in the Public Documents section of the PUC Case Summary for Docket No. C-2014-2435567, it was stated that Respondent did not have any actual 1" size residential water meters in use.
  - e. Based upon information provided by Respondent on 9/5/14 in connection with a PA Right-To-Know Law request, there were 3,071 Manheim Township water customers being billed for a 1" size water meter despite using only a ¾" size water meter.
  - f. For some unexplained reason, the number of customers being billed for a 1" size water meter appears to have decreased by 2,051 (or 40%) compared to the amount of 3,071 at 9/5/14. It appears that the 3,071 amount is based on information prior to 9/5/14 and possibly before 12/31/13. Trying to determine the source of this difference was the basis for Set II Interrogatories Items 1 and 2. (Note: It appears that the information, provided from 2 different sources, is not comparable. This situation should be reviewed by the BIE in connection with the possible investigation of this overbilling matter).
  - g. Based upon a review of the 3,071 Manheim Township customers being billed for a 1" size water meter at 9/5/14 and the individual customers in my neighborhood of Fox Chase, it appears that some customers are not being billed a Customer Charge based on the 1" size water meter. This would appear to be a violation of 66 Pa. C.S. Section 1304, Discrimination in Rates. This was the basis for Set II Interrogatories Items 3 and 4.
  - h. Complainant feels that it is unreasonable to believe that he is the only customer out of over 5,000 water customers to notice that there was an overbilling situation related to the 1" size water meters. This was the basis for Set II Interrogatory item 5.
  - i. Respondent, in its Certificate of Satisfaction filed on 8/11/17, indicated that the billing for the 1" size water meter was the result of a Manheim Township requirement. This was the basis for the Set II Interrogatory Item 9 and is clearly relevant to Complainant's overbilling complaint.

- j. Set II Interrogatory Item 10 was made to obtain information to determine if there was any discrimination in rates between classes of customers based on 66 Pa. C.S. Section 1304.
- k. Set II Interrogatory Item 11 was made to obtain information to determine if there was compliance to the Tariff rate by Respondent.

Conclusion: All of the abovementioned Set II interrogatories are relevant to Complainant's overbilling complaint.

- 2. a. Complainant disagrees with Respondent's request to deny Complainant's request to Compel responses to Interrogatories Set No. 2 Nos. 1, 2, 3, 4, 5, 9, 10 and 11 on the grounds that as an active party to the prior rate case proceeding at Docket No. R-2014-2418872, Complainant raised the exact billing/rates issue raised in this proceeding.

b. Complainant disagrees with Respondent's claim that Complainant failed to present any discovery in the form presented in the interrogatories listed in the Motion to Compel regarding the issues raised in the prior rate proceeding (R-2014-2418872).

c. Complainant disagrees with Respondent's claim that because Complainant had specifically executed the Joint Petition for Settlement thereby agreeing to all its provisions and its analysis of billings contained in Appendix B., Complainant has specifically waived his right to raise these issues after executing the referenced Joint Settlement Petition.

Complainant disagrees with these statements 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.

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 Complainant's 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”.

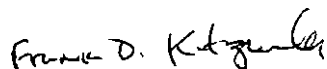
Conclusion: The customer overbilling case Docket No. C-2014-2435567 was neither satisfied or closed.

#### CONCLUSION

Based on the foregoing, Complainant respectfully requests that your Honor deny Respondent's Amended Answer to the Motion to Compel Responses to Discovery of Frank D. Kitzmiller Set II.

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 II 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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SECRETARY'S BUREAU

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 Amended Answer Of City Of Lancaster Water Department To The Motion To Compel Responses To Discovery Of Frank D. Kitzmiller Set II 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  
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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

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Frank D. Kitzmiller

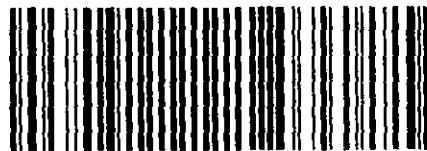
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Dated: May 4, 2018



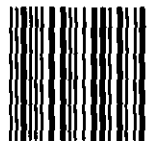
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