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DEC 24 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DECEMBER 24, 2018

ROSEMARY CHIAVETTA, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING – 2nd FLOOR
400 NORTH STREET
HARRISBURG, PA 17120

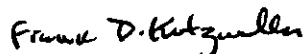
RE: FRANK D. KITZMILLER v. CITY OF LANCASTER, WATER DEPARTMENT- DOCKET NO. C-2014-2435567:
ANSWER OF FRANK D. KITZMILLER TO PRELIMINARY OBJECTIONS AND REPLY TO THE NEW MATTER OF
CITY OF LANCASTER, WATER DEPARTMENT DATED FEBRUARY 12, 2018

DEAR SECRETARY CHIAVETTA:

ENCLOSED ON BEHALF OF COMPLAINANT, FRANK D. KITZMILLER, IS A COPY OF INFORMATION ON THE
ANSWER TO THE PRELIMINARY OBJECTIONS AND REPLY TO THE NEW MATTER IN THE ABOVE
REFERENCED MATTER.

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT ME AT MY ABOVE ADDRESS INFORMATION. COPIES OF
THIS CORRESPONDENCE HAVE BEEN SERVED ON THE PARTICIPANTS LISTED IN THE ATTACHED
CERTIFICATE OF SERVICE.

VERY TRULY YOURS,



FRANK D. KITZMILLER, COMPLAINANT

C: As per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

ANSWER OF FRANK D. KITZMILLER (COMPLAINANT) TO THE PRELIMINARY OBJECTIONS OF
THE CITY OF LANCASTER, WATER DEPARTMENT (RESPONDENT) DATED FEBRUARY 12, 2018

AND

REPLY OF FRANK D. KITZMILLER (COMPLAINANT) TO THE NEW MATTER OF
THE CITY OF LANCASTER, WATER DEPARTMENT (RESPONDENT) DATED FEBRUARY 12, 2018

Background

General

On 7/10/14 (Recorded as 8/4/14 by the PUC), Complainant filed a Formal Complaint with the Pa Public Utility Commission (PUC) related to Respondent's overbilling of Complainant by using the Tariff Water Pa. No. 6 rate for a 1" water meter as the basis for the billing of the customer charge rather than the actual 3/4" water meter that Respondent required Complainant to use. A copy of this Formal Complaint is included in Exhibit Lancaster 1 presented at the 12/19/18 hearing.

On 8/4/14, the PUC served a Formal Complaint Notice to Respondent requiring a response by 8/24/14. Respondent did not respond to this Formal Request notice, but on 8/11/17, filed a Certificate of Satisfaction and on 2/8/18 attempted to answer the Complaint by means of a Nunc Pro Tunc motion.

On 10/2/14, Complainant was admitted as an active participant of the rate case at Docket No. R-2014-2418872 as a result of filing a Formal Rate Case Complaint on 7/10/14 at Docket No. C-2014-2435548 to make the PUC aware (if they were not already aware) of an alleged excess amount of unaccounted-for water which could affect the rate case. Complainant was notified by the rate case ALJ that "he takes the case as he finds it". As the rate case discovery proceedings had ended prior to Complainant becoming a party and after Complainant's completion of the review of the rate case documents for actions taken by

the other parties prior to admittance as a party, Complainant did not have any new information to offer to the proceedings other than what information was in the Formal Complaint. Complainant does not know if the unaccounted-for water issue was known by the parties before Complainant filled the Formal Rate Case Complaint or had any effect in the rate settlement process but Complainant did know that it was mentioned in the closing remarks of the PUC Bureau of Investigation and Enforcement and was mentioned in the settlement document as something to consider in the future by Respondent. Complainant was satisfied with that result and felt that I had provided some useful information to the proceeding. On 10/11/14, Respondent provided Complainant with a significant amount of data from the Rate Case proceedings. At the time (10/13/14) the parties to the proceeding were engaged in the settlement proceedings which ended on 10/17/14.

On 9/7/17, a Prehearing Order was issued by ALJ Cheskis and on 9/14/17 discovery proceedings began.

On 2/8/18, a Motion To File An Answer To The Formal Complaint Nunc Pro Tunc was filed with the PUC. Additional information on this matter and the objection to it and the reply to the New Matter will be provided later in this answer.

There were numerous Hearing cancellations and continuances prior to the initial hearing on 4/18/18 mainly caused by delays in providing responses to discovery requests. The Final Hearing was held on 12/19/18

Background

Motion to File an Answer to Formal Complaint Nunc Pro Tunc

This motion was filed with the PUC by Respondent on 2/8/18 with the Certificate of Service indicating that a copy of the motion would be provided "Via Email & First Class Mail" to ALJ Cheskis and Complainant.

On Sunday, 2/11/18, Complainant was reviewing the Case Summary for Docket No. C-2014-2435567 to determine if any Motion to Compel Set 1 discovery items had been approved by ALJ Cheskis and noticed that a document "Motion to File Answer Nunc Pro Tunc – City of Lancaster Water Department" was listed. In an Email, Complainant notified Respondent that it was not received and requested that it be provided to Complainant. On 2/13/18, Complainant received an Email from Respondent to ALJ Cheskis (who received the Motion by hand delivery) relating to a correction in the wording to exclude a statement that the proposed Answer was attached to the motion. Respondent stated that "Such answer will only be forthcoming if the Motion is actually granted." Complainant Emailed Respondent shortly after reading this to inform that no such Motion had been received. Respondent Emailed Complainant a copy of the Motion shortly thereafter.

At the Hearing on 12/19/18, Respondent provided for admission into evidence a document named "Answer and New Matter of the City of Lancaster, Water Department". Complainant had never seen this document but as noted above it was going to be provided only if the Motion to File Answer Nunc Pro Tunc was granted (by the PUC). Complainant thinks that ALJ Cheskis then cleared up the confusion by stating that he granted the Motion at the last hearing on 4/18/18 and stated that this was included in the transcript of that hearing. Complainant had extreme difficulty in hearing the other parties during that hearing and had not requested any hearing aid (loudspeaker) as Complainant requested at the 12/19/18 hearing which worked well when the other parties spoke into their microphones. ALJ Cheskis

provided Complainant with the instructions on gaining access to the transcripts and Complainant read the section on page 53 beginning on line 16 which stated "Number 1. I think the Answer Nunc Pro Tunc is going to be granted; So there's no reason to..I will grant this right now. There's no reason for an order to be written on that." This unheard 15 second communication was a devastating ruling on Complainant's case as it removed approximately \$4,000.00 of guaranteed settlement, as determined by PUC rules, from Complainant's grasp and provided no formal notice or explanation on why Complainant's worthy objection to this very unusual type of motion was not successful.

It appears that the presentment of the document "Answer and New Matter of the City of Lancaster, Water Department" was also considered to be the filing of such document with the PUC (and to the Complainant and to ALJ Cheskis). As such, the Answer by Respondent would be considered to be a "Preliminary Objection" with a 10 day reply limitation (5.61 a. 2.) and the New Matter would be considered to be a "Motion" with a 20 day reply limitation (5.61 a. 1.), both limitations beginning on 12/19/18 and not on the 2/6/18 date on the document. Complainant was fortunate that ALJ Cheskis answered my inquiry related to the nature of this document and alerted me that it was more than just evidence – it was a document with information which was required to be answered within time limitations with dire consequences to Complainant if not filed on time. ALJ Cheskis allowed Complainant to file a reply to these 2 documents within 10 days.

Information on the above events is available in either the Case Summary (When posted by the PUC) or in the documents presented for admission at the 4/18/18 and 12/19/18 hearings and consists of the following items identified in the 12/19/18 hearing.

1. Kitzmiller Item A – Main Brief filed on 3/15/18 for 3/22/18 hearing.
2. Kitzmiller Item B – Main Brief Appendix and Exhibits filed on 3/15/18 for 3/22/18 hearing (Note items A and B were superceded by the written testimony documents for 4/18/18 hearing)
3. Kitzmiller Item C – Written Testimony at Hearing filed on 4/18/18 consisting of 14 pages of testimony and additional pages of exhibits.
4. Kitzmiller Item D – Addendum to Written Testimony for scheduled hearing on 9/20/18 consisting of 2 pages of testimony update and additional pages of exhibits.
5. Lancaster Item 1 – Copies of 2 separate Formal Complaint filings (C-2014-2435567 – Overbilling Case) and (C-2014-2435548 - Rate Case.)
6. Lancaster Item 2 – (Lancaster-Hopkins-PH-1) Answer and New Matter of City of Lancaster, Water Department to Formal Complaint Docket No. C-2014-2435567 consisting of 6 pages.
7. Lancaster Item 3 – (Lancaster-Hopkins-PH-2) This was identified as Manheim Township Amendments to the 2003 International Residential Code and International Plumbing Codes to insert 1" in place of ¾" for the size of water service mains. (More information on these amendments can be found in the provisions of Manheim Township Ordinance 2004-08, effective 6/14/04 which was the effective date of Manheim Township's "OPT-IN" to the Uniform Construction Code Administration and Enforcement Regulations. Prior to 6/14/04, Manheim Township had no ordinance requiring 1" water service pipes. The full text of Ordinance 2004-8 is available on the manheimtownship.org website.) (The provider of this document who is an employee of Respondent, while qualified and proven as an excellent Business Administrator, does not appear to have the Civil/Mechanical engineering background to provide expert testimony on matters of ordinances relating to pipe dimensions and water pressure.)

ANSWER OF COMPLAINANT TO THE PRELIMINARY OBJECTIONS (ANSWER) OF RESPONDENT

Item 4, Denied. Respondent lacks sufficient information to ascertain the veracity of Complainant's allegations in Paragraph 4. As such, the allegations are denied and proof of the allegations is demanded at time of hearing in this matter.

Answer: Paragraph 4, "Reason for Complaint" did not include the statement "See Attached Statement of Facts of Complaint" which was included at the end of item 5, Requested Relief. This statement applied to both Item 4 and Item 5. The attached Statement of Facts of Complaint should also have had a title beginning with "Items 4 and 5 rather than just item 5. The information included on the "Items 4 and 5 Statement of Facts of Complaint" and the copy of Complainant's recent water bill provides the specific information requested in Items 4 and 5 of the Formal Complaint form. I apologize for the confusion and blame it on the fact that this was one of my first uses of "WORD" software and the first use of software provided by the PUC to fill out the Formal Complaint forms online and print them out for filing purposes.

Item 5, Denied. Respondent lacks sufficient information to ascertain the veracity of Complainant's allegations in Paragraph 5. As such, the allegations are denied and proof of the allegations is demanded at time of hearing in this matter.

Answer: The Requested Relief is clearly indicated in the last 2 paragraphs of the Statement of Facts of Complaint attached to the Formal Complaint and attached Exhibit 1. The amount of overcharge calculated for "1 customer" is the amount applicable to Frank D. Kitzmiller, Complainant.

Item 6, Denied. Respondent lacks sufficient information to ascertain the veracity of Complainant's allegations in Paragraph 6. As such, the allegations are denied and proof of the allegations is demanded at time of hearing in this matter.

Answer: The answer to item 6 was clearly marked "No" which required no further confirmation.

REQUESTED RELIEF

Therefore, for all of the foregoing reasons, Frank D. Kitzmiller, Complainant, respectfully requests that the claims set forth in the Formal Complaint be admitted.

COMPLAINANT REPLIES TO RESPONDENT'S NEW MATTER (MOTION)

Item 1, The Complaint does not set forth facts sufficient to establish a cause of action for violation of the Public Utility Code or any Commission regulation or order.

Answer: OBJECTION. Respondent made an overcharge of the Customer Service Charge portion of the water service billing by billing based on a 1" meter instead of a ¾" meter actually required to be used by

Complainant. Subsequent to the filing of the Formal Complaint, Respondent admitted on 8/11/17 in connection with the filing of a Certificate of Satisfaction that Respondent had no actual 1" size residential water meters in use. The Customer Service Charge per Tariff Water No. 6 applicable for a 1" meter is 265% higher than the Customer Service Charge for a 3/4" meter.

Attachments to the Formal Complaint setting forth the facts to establish a cause of action for violation of Public Utility Code or any Commission Regulations or order include

- a. Complainant's customer water bill for period 2/24/14 to 5/29/14
- b. Item (4 and) 5 Statement of Facts of Complaint Exhibit 1

Attachments to Testimony at Hearing (4/18/18)

- a. Exhibit EXH FDK 1, Schedule of Rates to Tariff Water Pa. P.U.C. No. 6 25th Revised Page No. 4
- b. Exhibit EXH FDK 8 Certificate of Satisfaction indicating in second paragraph that "The City does not have 1" residential meters".

Item 2, The Complaint does not set forth sufficient facts such that the Lancaster Water would be able to ascertain whether the Complainant is entitled to the relief requested.

Answer: OBJECTION. Complainant has set forth sufficient facts such that Lancaster Water would be able to ascertain whether Complainant is entitled to relief requested by its filings with the PA Public Utility Commission on 12/19/18 of documents "Testimony at Hearing 4/18/18" and "Addendum to Hearing Testimony at 9/20/18 Hearing" which have been provided to Respondent.

Item 3, Lancaster Water is in compliance with the Commission's billing regulations.

Answer: OBJECTION. Lancaster Water appears to be in compliance with the Commission's billing regulations 52 Pa Code section 56.15 Billing Information with the exception of items 11, 12 and 13. In addition, although not required by the Commission's billing regulations, Complainant suggests that an explanation that the total billed amount includes the sum of Customer Service Charges and Consumption Charges specified on the Tariff Water Pa. No.6 and, if not included on the bill, the actual size of the customer's water meter.

Item 4, Lancaster Water is in compliance with all applicable Commission regulations relating to water service.

Answer: OBJECTION. Complainant cannot determine the accuracy of the statement and, accordingly, objects to that claim. If Complainant's further review of this statement is required, please provide Complainant with a written, signed and verified statement to that effect from the Lancaster Water official responsible for such compliance together with a similar statement from Lancaster Water legal counsel. Also include a listing of all of the applicable Commission regulations.

Item 5, Lancaster Water is in compliance with its Commission-approved tariff.

Answer: OBJECTION WITH COMMENT. Lancaster Water appears to be in compliance with its Commission-approved tariff for page No. 4 but could improve it by using the wording as shown on the PUC Tariff example which is attached to the Addendum to Hearing Testimony at 9/20/18 Hearing as Exhibit EXH FDK 12 which:

In the Consumption Charge(s) area states "In addition to the customer charge, the following water consumption charges will apply"

Following the Consumption Charges rate information, the sentence "The minimum charge shall be the customer charge" should be eliminated as it is confusing.

Complainant did not review the other pages of the Commission-approved Tariff and, accordingly, would have to object on whether those pages are in compliance.

Item 6, At no time did Lancaster Water issue incorrect bills to the Complainant.

Answer: OBJECTION. Complainant has always used the required $\frac{3}{4}$ " size water meter provided by Lancaster Water which was to be the basis for determining the Customer Charge portion of Complainant's water bills based upon the provisions of Tariff Water Pa P.U.C. No. 6. Any Customer Charge amounts based on other than the $\frac{3}{4}$ " size water meter resulted in incorrect bills.

Item 7, Complainant should have raised his billing issues in the course of his participation in Lancaster Water's 2014 rate case.

Answer: OBJECTION. Complainant's overbilling issue was a separate Formal Complaint for Lancaster Water's overbilling Complainant by calculating the Customer Charge portion of the water bills by use of a 1" size water meter rate rather than at the $\frac{3}{4}$ " size water meter which Complainant was required to use by Lancaster Water.

Complainant's participation in Lancaster Water's 2014 rate case was solely for the purpose of informing the PUC that Lancaster Water's unaccounted-for water exceeded 20% and has been considered by the Commission to be excessive (66 Pa. CS Section 65.20). The presence of excessive unaccounted-for water could result in reductions in the allowable electric and chemicals expenses for rate making purposes.

Complainant discovered this excess unaccounted-for water situation while reviewing the 1,766 pages of documents relating to the 2014 rate case which were available on Lancaster Water's website.

Complainant has reviewed many similar rate cases of Lancaster Water and other water utilities and has never seen any reference to a customer's overbilling Formal Complaint being investigated and resolved by a rate case proceeding.

The reason why I never saw any reference to settlements of non-rate cases in the course of rate cases was that there were probably none. The rate case proceedings would be slowed down by the process of requesting discovery responses and providing discovery answers, filing Motions to Compel and answering Motions to Compel and filing other motions. The overbilling case that this New Matter relates

to, began the hearing/prehearing stage in September 2017 and is still not completed in December 2018, about 15 months later, due primarily to Respondent not providing discovery responses on a timely basis. The parties to a rate case would not tolerate the delays of the rate case conclusion caused by the presence of a non-rate case.

Item 8, Complainant's failure to raise his billing issues in the course of his participation in Lancaster Water's 2014 rate case is grounds for dismissal of his billing complaint.

Answer: OBJECTION. The information provided in the Objection of New Matter Item 7 applies equally to New Matter Item 8. †

Complainant's overbilling issue was a separate Formal Complaint for Lancaster Water's overbilling Complainant by calculating the Customer Charge portion of the water bills by use of a 1" size water meter rate rather than at the ¾" size water meter which was required to be used by Lancaster Water.

Complainant's active participation (or active non-participation) in the 2014 rate case was limited because the case information to be provided to Complainant consisting of all of the pre-served testimony dated before 10/1/14 and other materials was available only around 10/10/14. The case activity shifted into the settlement stage phase on 10/13/14 (or earlier) which would have left little time to begin any active participation even if I had ever considered getting more active. None of the other participants in the rate case, including ALJ Jones, ever mentioned the possibility of raising the issues of the separate overbilling Formal Complaint case while in active participation in the rate case. I was completely unaware of this possibility and as mentioned in the Objection to New Matter Item 7, I would not have thought it was a reasonable idea to mix Formal Complaint overbilling activities within a rate increase case.

Respectfully submitted,

Frank D. Kitzmiller

December 24, 2018

Frank D. Kitzmiller, Complainant, Pro Se

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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 Answer to Preliminary Objections and Reply to the New Matter dated February 12, 2018 are true and correct to the best of my knowledge, information and belief.

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: December 24, 2018

Frank D. Kitzmiller

Frank D. Kitzmiller

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FRANK D. KITZMILLER, |
COMPLAINANT, |
V. |
CITY OF LANCASTER WATER DEPARTMENT, |
RESPONDENT. |

PA PUBLIC UTILITY COMMISSION
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DOCKET NO. C-2014-2435567

CERTIFICATE OF SERVICE

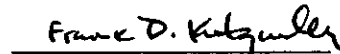
I hereby certify that I have this day served a true copy of the foregoing Brief in the manner listed below, upon the parties listed below, in accordance with the requirements of 52 Pa Code Section 1.54 (relating to service by a party).

FIRST CLASS MAIL

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Office of Administrative Law Judge
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John J. Gallagher, Esquire
711 Forrest Road
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Counsel for the City of Lancaster

Dated this 24th day of December, 2018



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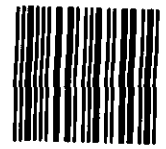
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