

John J. Gallagher

Attorney at Law

711 Forrest Road, Harrisburg, PA 17112

Tel. (717) 599-5839

✉ jgallagher@jglawpa.com

April 18, 2019

VIA ELECTRONIC AND HAND DELIVERY

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

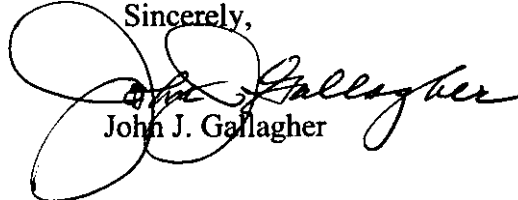
RECEIVED
2019 APR 18 PM 2:11
PA PUC
SECRETARY'S BUREAU
FRONT DESK

**Re: Docket No. C-2014-2435567
Kitzmiller v. City of Lancaster
Reply to Exceptions**

Dear Secretary Chiavetta:

On behalf of the City of Lancaster ("City" or "Lancaster") please find enclosed a copy of the City's Reply Exceptions in the above-captioned matter.

Copies of these Reply Exceptions have been served on the parties listed in the enclosed Certificate of service.

Sincerely,

John J. Gallagher

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank D. Kitzmiller,

Complainant

V.

**City of Lancaster Water
Department,**

Respondent

DOCKET NO. C-2014-2435567

**REPLY
OF
THE CITY OF LANCASTER
TO EXCEPTIONS OF
FRANK D. KITZMILLER**

RECEIVED
2019 APR 18 PM 2:11
**PA PUC
SECRETARY'S BUREAU
FRONT DESK**

**John J. Gallagher, Esquire
711 Forrest Road
Harrisburg, PA 17112**

TABLE OF CONTENTS

	Page(s)
I INTRODUCTION.....	1
II ARGUMENT.....	1
A. COMPLAINANT'S EXCEPTIONS FAIL TO REFUTE THE INITIAL DECISION.....	1
1. The City of Lancaster has met its burden of going forward with evidence to rebut the Complainants evidence.	1
2. Complainant failed to make any objection to The City of Lancaster's evidentiary presentation at the hearing.	2
3. The City of Lancaster has presented clear evidence showing that the Complainant has a 1" service line for which a Commission approved rate is charged.	3
4. The Complainant failed to present substantial record evidence in support of its billing complaint.	4
III CONCLUSION.....	5

I INTRODUCTION

The City of Lancaster accepts the ALJ's recitation of the procedural history of this matter.

II. ARGUMENT

A. THE COMPLAINANTS EXCEPTIONS FAIL TO REFUTE THE INITIAL DECISION

The sole issue in dispute is whether it was reasonable for the City of Lancaster to base its customer charge on the size of the customers service line, and 2) whether the Complainant failed to present substantial record evidence in support of its Complaint.

In light of the Initial Decisions' conclusions, which are supported by the record evidence and the applicable law, the Commission should reject the Complainant's Exceptions.

1. The City of Lancaster has met its Burden of Going Forward with Evidence to Rebut the Complainants evidence.

Complainant contends that the City's exhibit PH-2 which was not provided to the Complainant in an earlier discovery request which imposed an unfair detriment on the

Complainant's case. Complainant's claim is unwarranted and should be dismissed for several of the following reasons:

1). The Complainant was aware of the Township's Ordinance and admitted to the City's Counsel that he had previously reviewed it; 2) The Complainant failed to comprehend that the issue of billing by the City was predicated on the fact that the Complainant was/ is being served by a 1" service line. TR-80. As the City's witness stated the City charges its demand charge for residential customers based upon the size of the customers service line. Tr. P.78, L 12-18 The Complainant admitted his service line is a one inch line. Tr. P. 86, L 21; 3) The ALJ clearly states that "Mr. Kitzmiller's averment that there are incorrect charges on his bill because Lancaster charged him a customer charge based on a 1" meter when he only has a ¾" meter will be rejected because the evidence presented by Mr. Kitzmiller is outweighed by the evidence presented in response by Lancaster. ID at 17.

2. Complainant failed to make any objection to The City of Lancaster's evidentiary presentation at the hearing.

Complainant contends that the City's testimony was elicited as the result of leading questions, the lack of specific knowledge of the subject matter and the overstatement of the City's witness's role in the City's rate matters. The Complainant's exceptions in this regard are clearly without merit as the Complainant failed to make any objection at the hearing to the qualifications of

Mr. Hopkins or the form of questions presented by Counsel for the City. As such, the Complainant has waived his right to raise such objections at this juncture.

3. The City of Lancaster has presented clear evidence showing that the Complainant has a 1" service line for which a Commission approved rate is charged.

Complainant excepts to the Initial Decision wherein the ALJ states that the Complainant has an adaptor to convert the 1 inch service line to the $\frac{3}{4}$ inch meter. If the Complainant had raised this new issue at the hearing the City would have been able to clarify that the $\frac{3}{4}$ inch meter is connected through a 1 inch port to allow water flow to the meter from the 1 inch service line. The City' witness has presented clear evidence that the Complainant has a 1inch service line and is charged the appropriate rate regardless of the $\frac{3}{4}$ inch meter with a 1 inch port. TR 40. Complainant concludes, without independent corroboration, that an estimated 5,000 customers would not object to the replacement of their 1 inch service lines with $\frac{3}{4}$ inch lines in order to receive a lower demand charge. Such off the record statements are reflective of the willful magical thinking exhibited by the Complainant in this matter. The ALJ has correctly instructed Mr. Kitzmiller that he

has an objection to the 1inch service line that he should contact the Township which is the appropriate authority for such issues and not the Commission.

4. The Complainant failed to present substantial record evidence in support of its billing complaint.

Finally, the Complainant alleges that the City of Lancaster's website is confusing together with the City's tariff. The City requests that the Complainants Exception No. 4 be summarily dismissed as failing to identify the precise points of the Initial Decision to which the Exception references as required by the Commission's Rules (52 PA Code §5.533). In addition, the Complainants attempts to present additional testimony and facts at this late date following the close of the record should be also be summarily dismissed.

III. CONCLUSION

For the reasons set forth above, it is clear that the primary issue in this proceeding is whether the Complainant was charged an appropriate residential rate for a 1" service line. The City supports the Initial Decision finding that the City's charges are reasonable. The City of Lancaster requests that the Complainant's Exceptions be rejected and that the Initial Decision be adopted in its entirety and without modification.

Respectfully submitted,


John J. Gallagher, Esquire

711 Forrest Road

Harrisburg, PA 17109

Tel: (717) 599-5839

jgallagher@jglawpa.com

Date: April 18, 2019

Counsel for the City of Lancaster

RECEIVED

APR 18 2019

PA PUC
SECRETARY'S BUREAU
FRONT DESK

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Reply Exceptions 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).

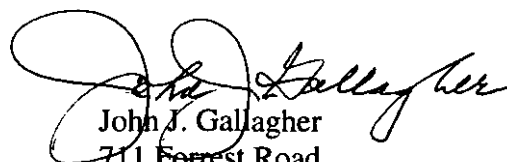
VIA ELECTRONIC & FIRST CLASS MAIL

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

Mr Frank D. Kitzmiller
1041 Preston Rd.
Lancaster PA 17601

RECEIVED
2019 APR 18 PM 2:12
PA PUC
SECRETARY'S BUREAU
FRONT DESK

Dated: April 18, 2019


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

Counsel for the City of Lancaster