

May 8, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building—2 North  
P.O. Box 3265  
Harrisburg, PA 17105

**Re: Docket No. C-2020-3019143  
Ben Mroz III v. Aqua Pennsylvania, Inc.  
Motion of Aqua for Judgement on the Pleadings**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Motion of Aqua Pennsylvania, Inc. for Judgement on the Pleadings in the above-captioned proceeding.

As indicated on the certificate of service, a copy of the Motion has been provided to the Complainant in the manner indicated.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP

*Margaret A. Morris*

Margaret A. Morris, Esquire

MAM/co  
Enclosures

cc: The Hon. Benjamin Myers, PA PUC  
Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/encl]  
Ben Mroz III [w/encl]

**Re: Docket No. C-2020-3019143  
Ben Mroz III v. Aqua Pennsylvania, Inc.  
Motion of Aqua for Judgement on the Pleadings**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**Via Electronic Mail**

Ben Mroz III  
[benmroz@gmail.com](mailto:benmroz@gmail.com)

Dated: May 8, 2020

*Margaret A. Morris*  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**BEN MROZ III**

v.

**AQUA PENNSYLVANIA, INC.**

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:  
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**Docket No. C-2020-3019143**

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.63, you are hereby notified that if you do not file a written response answering the enclosed Motion for Judgement on the Pleadings of Aqua Pennsylvania, Inc. within twenty (20) days from service of this notice, the facts set forth by Aqua Pennsylvania, Inc. in the Motion may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania, Inc., Margaret A. Morris, Esq., and where applicable the Administrative Law Judge presiding over the issue.

**File with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building – 2 North  
P.O. Box 3265  
Harrisburg, PA 17105

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Date: May 8, 2020

*Margaret A. Morris*

Margaret A. Morris, Esquire  
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*Counsel for Aqua Pennsylvania, Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BEN MROZ III	:	
	:	
v.	:	Docket No. C-2020-3019143
	:	
AQUA PENNSYLVANIA, INC	:	

**MOTION OF AQUA PENNSYLVANIA, INC.  
FOR  
JUDGMENT ON THE PLEADINGS**

Aqua Pennsylvania, Inc. (Aqua or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.102, hereby submits its Motion for Judgment on the Pleadings to the present Formal Complaint (2020 Formal) filed by Ben Mroz III (Complainant). Aqua avers and represents as follows:

**Procedural Background**

1. Aqua provides wastewater service in the Complainant’s name to 107 Sir Bradford Road, Pocono Lake, Pennsylvania (Service Location) under Account No. 0023719431437124 (Account). The Service Location, located in Tobyhanna Township, is billed pursuant to the Company’s Rate Zone 4 Tariff.

2. On November 8, 2018, the Company requested, *inter alia*, an increase in rates billed under Rate Zone 4 which was docketed at R-2018-3003561 (2018 Rate Application).

3. The Complainant filed a Formal Complaint against the 2018 Rate Application docketed at C-2018-3004563 (Rate Case Complaint) contending that the proposed rate increase was not fair. The Commission consolidated the Rate Case Complaint with the 2018 Rate Application proceeding.

4. A Joint Petition for Settlement (Settlement) was proposed by several of the parties to resolve the 2018 Rate Application proceeding. As a party to the 2018 Rate Application, the Complainant filed Objections<sup>1</sup> to the proposed Settlement arguing the agreed upon proposed rate increase was not fair and he could not afford an increase in sewer rates.

5. By Order, entered May 9, 2019, the Commission, *inter alia*, approved the rate change for Rate Zone 4 from \$200 per quarter per EDU to \$100 per month per EDU and dismissed the Complainant's Objections and his Rate Case Complaint (*2019 Rate Order*). The Complainant did not appeal the *2019 Rate Order*. The Company filed its Compliance Tariff on May 23, 2019 which was accepted by the Commission (2019 Rate Tariff).

6. The rate change for Rate Zone 4, reflected in the 2019 Rate Tariff, was effective January 1, 2020.

7. On February 18, 2020, the Complainant filed the 2020 Formal re-arguing the same objection to the rate change which was raised and dismissed in the *2019 Rate Order*.

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<sup>1</sup> The Complainant's Objections were filed on February 14, 2019.

8. Aqua filed its Answer and New Matter on March 30, 2020, denying all allegations. In its New Matter, the Company asserted that the Complainant was properly billed consistent with the Commission-approved 2019 Tariff and that the Code and Commission precedent bars the Complainant from re-litigating his objection to the rate change approved in the *2019 Rate Order*.

9. On or about April 13, 2020, the Complainant filed a Reply to Aqua's New Matter again regurgitating the same objection to the rates authorized in the *2019 Rate Order*. He has not alleged that the Account was not properly billed.

### **Legal Standard**

10. In accordance with the Commission's regulations, after the pleadings are closed but within such time as to not delay a hearing, a party may move for judgment on the pleadings. 52 Pa. Code § 5.102(a).

11. A presiding officer should grant a motion for judgment on the pleadings "if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issues as to a material fact and that the moving participant is entitled to judgment as a matter of law." 52 Pa. Code § 5.102 (d)(1). *Hammerstein v. Lindsay*, M.D., 655 A.2d 597 (Pa. Super. 1995).

12. When deciding whether a motion for judgment on the pleadings should be granted

the court must examine the record in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

13. The Commission's regulations related to a motion for judgment on the pleadings serves judicial economy where no factual dispute exists. If no factual dispute exists, a hearing is wholly unnecessary. 66 Pa.C.S. § 703(b). *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 557 (Pa. Cmwlth. 1989).

14. Section 5.102 of the Commission regulations provides for the granting of a Motion where there is no genuine issue as to a material fact and Respondent is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102.

### **Argument**

15. Consistent with its Commission-approved *2019 Tariff*, the Complainant is billed monthly a flat fee of \$100.00 for wastewater service.

16. The Respondent's Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa.C.S. § 1301; *DiSanto, supra*; *Brockway Glass, supra*.

17. It is well settled that a party is precluded from re-litigating a prior final order of the Commission. Section 316 of the Code<sup>2</sup> expressly establishes the finality of Commission action and states in relevant part:

Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

(Emphasis added).

18. The Commission's findings of fact in prior complaints "are conclusive on the parties." *Warren v. Equitable Gas Co.*, Docket No. C-2014-2426795 (Order entered September 15, 2014) at 4, 2014 WL 4060039. Further, the legal doctrines of both *res judicata* and collateral estoppel apply to preclude collateral attack of final orders rendered in proceedings brought before the Commission. *O'Toole v. Bell Telephone Company of Pennsylvania, Inc.*, 77 Pa. PUC 98 (1992).

19. The Company avers that the doctrine of *res judicata*, also known as claim preclusion, divests jurisdiction for a subsequent cause of action arising between the same parties on the same cause of action, after a court of competent jurisdiction has rendered a final judgment on the merits. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. 1994). For the doctrine to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity legal status of the parties suing or sued. *See Volkswagenwerk*, 464 A.2d at 1316-17; *see also Duquesne Slag Products Co. v. Lench*, 415 A.2d 53, 55 (Pa. 1980).

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<sup>2</sup> 66 Pa.C.S. § 316.

20. Like Section 316 of the Code, the doctrine of *res judicata* is designed to promote certainty, finality and judicial economy. *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853 (Order entered April 29, 2016). They reflect the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction to curtail the waste of resources of both the agency and the parties by re-litigating issues that already have been adjudicated. *Canon v. Verizon Pennsylvania Inc.*, Docket No. C-2013-2353818 (Order entered March 6, 2014).

21. Generally, the doctrine of finality of administrative decisions is recognized in the Commonwealth to preclude a party who has not appealed from an order of an administrative agency from raising a later collateral challenge to the factual or legal basis for that order. See, *Commonwealth v. Derry Township*, 466 Pa. 31, 351 A.2d 606 (1976) and *Department of Environmental Resources v. Wheeling-Pittsburgh Steel Corporation*, 22 Pa. Commonwealth Ct. 280, 348 A.2d 765 (1975), *aff'd and remanded*, 473 Pa. 432, 375 A.2d 320, *cert. denied*, 434 U.S. 969 (1977). The principle of “administrative finality” focuses on the failure of the party aggrieved by agency action to pursue available administrative remedies and/or appeal rights at the first opportunity to do so. *See generally, Id.*

22. In applying the doctrine of *res judicata* and Section 316 of the Code, the 2020 Formal is an attempt to re-litigate the issues raised in the Complainant’s Rate Case Complaint and his Objection previously dismissed by the Commission in the *2019 Rate Order*. The present Formal Complaint is barred by *res judicata* because there is identity of issues, identity of causes of action, identity of persons and parties to the action, and identity of the quality and capacity of

the parties suing or sued between the consolidated 2018 Rate Application proceeding and the 2020 Formal.

**Conclusion**

There is no allegation that the Complainant is not being billed consistent with its Commission-approved Tariff. The sole issue raised in the 2020 Formal is the Complainant's identical objection to the Commission authorized rate change. The Code and Commission precedent precludes him from re-litigating the issues raised and dismissed in the *2019 Rate Order*. A hearing is not required. Aqua is entitled to judgment as a matter of law.

**WHEREFORE**, Respondent, Aqua Pennsylvania, Inc., requests that the Commission grant this Motion for Judgment on the Pleadings and dismiss, with prejudice, the Formal Complaint of Ben Mroz III against Aqua Pennsylvania, Inc., in its entirety.

Respectfully submitted,

Date: May 8, 2020

*Margaret A. Morris*

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