

December 3, 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 Nos. C-2020-3022148 and C-2020-3022150  
Adam Anders 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 (Motion) in the above-captioned proceedings.

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, Esquire

MAM/co  
Enclosures

cc: The Hon. Eranda Vero, PA Public Utility Commission [w/enc.]  
Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/enc.]  
Adam Anders [w/enc.]

**Re: Docket Nos. C-2020-3022148 and C-2020-3022150  
Adam Anders v. Aqua Pennsylvania, Inc.  
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**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**

Adam Anders  
[adamanders101@gmail.com](mailto:adamanders101@gmail.com)

Dated: December 3, 2020

  
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Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ADAM ANDERS :  
v. : **Docket No. C-2020-3022148**  
AQUA PENNSYLVANIA, INC. :  
  
ADAM ANDERS :  
v. : **Docket No. C-2020-3022150**  
AQUA PENNSYLVANIA, INC. (WASTEWATER) :

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.102, you are hereby notified that if you do not file a written response answering the enclosed Motion for Judgement on the Pleadings (Motion) of Aqua Pennsylvania, Inc. **within five (5) 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 an Answer to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with an electronic copy served to counsel for Aqua Pennsylvania, Inc., Margaret A. Morris, Esq., and The Honorable Eranda Vero who is presiding over the proceedings.**

**File with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
[rchiavetta@pa.gov](mailto:rchiavetta@pa.gov)

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

The Honorable Eranda Vero  
Office of the Administrative Law Judges  
[evero@pa.gov](mailto:evero@pa.gov)



Date: December 3, 2020

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*Counsel for Aqua Pennsylvania, Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADAM ANDERS :  
v. : Docket No. C-2020-3022148  
AQUA PENNSYLVANIA, INC. :

ADAM ANDERS :  
v. : Docket No. C-2020-3022150  
AQUA PENNSYLVANIA, INC. (WASTEWATER) :

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

Pursuant to 52 Pa. Code § 5.102, Aqua Pennsylvania, Inc. (Respondent or Aqua), hereby submits its Motion for Judgment on the Pleadings to the Formal Complaint filed by Adam Anders (Complainant) in the above-referenced dockets. Respondent avers and represents as follows:

**I. Procedural Background**

1. On September 25, 2020, Respondent was served the Formal Complaint (Complaint) of the Complainant by the Pennsylvania Public Utility Commission (Commission). The Complainant alleges that the rates charged by Aqua are too high. By way of relief, Complainant requests that the PUC “force AQUA to lower our sewer and water rates, especially sewer” and to “force AQUA to be fair and charge a reasonable rate like every other sewer and water provider around us.” (Complaint at ¶5).

2. The Complainant admits in his Complaint that he agrees the Aqua's rates are legal but the issue is "a matter of fairness." Complaint at ¶ 4.

3. On October 15, 2020, Aqua filed an Answer and New Matter specifically denying the material allegations and raised in New Matter that the Complainant is lawfully billed consistent with Aqua's Commission-approved rate as set forth in its Commission-approved Tariff which has the force and effect of law.

4. The Complainant did not respond to the New Matter and therefore the averments in the New Matter are deemed admitted. 52 Pa. Code § 5.63(b).

5. By Hearing Notice, dated November 9, 2020, the Commission assigned this matter to the Honorable Eranda Vero (Judge Vero), scheduling this matter for an initial call-in telephonic hearing on Tuesday, December 15, 2020.

## **II. Standard for Motion for Judgment on the Pleadings**

6. 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).

7. 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).

8. 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).

9. 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).

10. 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 Aqua is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102.

11. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Code, 66 Pa.C.S. §§ 101, *et seq.*

12. Section 701 of the Code, 66 Pa.C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation,

or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code § 5.21(a).

13. A 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 v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super 1981); *Brockway Glass v. Pa. PUC*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

14. The Complainant admits that the water and sewer rates charged by Aqua are legal.

15. The Complainant has not alleged that Aqua has violated the Code, Commission regulation/order or its Commission-approved tariffs.

16. There is no factual dispute raised in the complaints. The Complainant admits that Aqua's charges are legal and has made no allegation that Aqua is not charging its Commission approved water and sewer rates consistent with its Commission-approved tariffs.

### **III. Conclusion**

There is no disputed factual issue. The Complainant admits that the water and sewer rates charged by Aqua are legal. The Complaint does not allege that Aqua has violated the Code, Commission regulation/order or its Commission-approved tariffs. A

hearing is neither necessary nor in the public interest. The Respondent is entitled to judgment as a matter of law; judgment on the pleadings is appropriate.

**WHEREFORE**, Respondent, Aqua Pennsylvania, Inc., respectfully requests that the Honorable Judge Eranda Vero and the Commission grant this Motion for Judgment on the Pleadings and dismiss with prejudice the Complaint of Adam Anders against Aqua Pennsylvania, Inc. in Dockets Nos. C-2020-3022148 and C-2020-3022150 in their entirety.

Respectfully submitted,



Date: December 3, 2020

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*Counsel for Aqua Pennsylvania, Inc.*