

May 3, 2021

**Via Electronic Filing**

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

**Re: Docket No. C-2021-3023999  
Kevin C. Spearing v. Aqua Pennsylvania, Inc.  
Motion to Dismiss of Aqua PA**

Dear Secretary Chiavetta:

Attached for filing is the Motion of Aqua Pennsylvania, Inc. to Dismiss the Formal Complaint of Kevin C. Spearing (Complainant).

A copy of the Motion has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co  
Enclosures

cc: The Hon. Marta Guhl, PA Public Utility Commission [w/enc.]  
Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/encl]  
Kevin C. Spearing [w/enc.]

**Re: Docket No. C-2021-3023999  
Kevin C. Spearing v. Aqua Pennsylvania, Inc.  
Motion to Dismiss of Aqua PA**

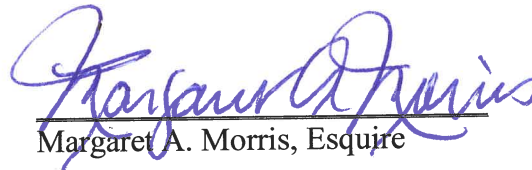
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via Electronic Mail**

Kevin C. Spearing  
[kevinumtwp@hotmail.com](mailto:kevinumtwp@hotmail.com)

Dated: May 3, 2021

  
Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KEVIN C. SPEARING

v.

AQUA PENNSYLVANIA, INC.

:  
:  
:  
:  
:

Docket No. C-2021-3023999

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.102, you are hereby notified that if you do not file a written response to the enclosed Motion to Dismiss of Aqua Pennsylvania, Inc., within twenty (20) days from service of this Notice, the facts set forth by Aqua Pennsylvania, Inc. in the Motion to Dismiss may be granted. All pleadings, such as a Answer to the Motion to Dismiss, 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 the Honorable Marta Guhl presiding over this proceeding.

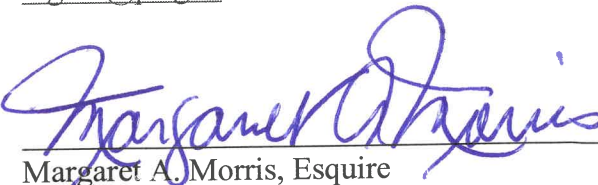
**File with:**

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 Hon. Marta Guhl  
[mguhl@pa.gov](mailto:mguhl@pa.gov)



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[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Date: May 3, 2021

*Counsel for Aqua Pennsylvania, Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KEVIN C. SPEARING	:	
	:	
v.	:	Docket No. C-2021-3023999
	:	
AQUA PENNSYLVANIA, INC.	:	

**MOTION OF AQUA PENNSYLVANIA, INC.  
TO DISMISS THE COMPLAINT OF KEVIN C. SPEARING**

Aqua Pennsylvania, Inc. (Aqua or Respondent), by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to 52 Pa. Code §§ 5.103, hereby moves the Honorable Marta Guhl (Judge Guhl) of the Pennsylvania Public Utility Commission (Commission) for an order dismissing the Formal Complaint (Complaint) of Kevin C. Spearing (Complainant) against Aqua, in the above captioned proceeding, for failure to comply with the Interim Order Granting Preliminary Objection In Part (*Interim Order*). As Complainant has evidenced no good faith effort to pursue his Complaint by failing to comply with the *Interim Order* issued by Judge Guhl, Aqua respectfully requests that the Complaint be dismissed with prejudice.

In support thereof, Aqua avers as follows:

**I. Relevant Procedural History and Timeline**

1. On January 28, 2021, the Complainant filed his Complaint alleging that there was a quality of service issue related to water quality. Specifically, the Complainant alleged that Aqua refused to place a sampling station in a location that the Township requested.

2. On February 24, 2021, Aqua filed an Answer and New Matter denying any violation of the Pennsylvania Public Utility Code (Code) or rules and regulations of the Commission. The Respondent simultaneously filed a Preliminary Objection (PO) that avers that the Commission lacks the jurisdiction to deal with water quality issues because the Pennsylvania Department of Environmental Protection has the purview of water quality in the Commonwealth.

3. The Complainant filed a Response to the PO on March 9, 2021.

4. On March 16, 2021, the Commission issued a Motion Judge Assignment Notice and the matter was assigned to Judge Guhl.

5. On April 15, 2021, the *Interim Order* finding that the Complaint was too vague to be able to determine whether there is a service issue. The Complainant was directed “to file an Amended Complaint within ten (10) days of the date of this order with the Secretary’s Bureau, which specifies the service issues and requested relief.” *Interim Order* at 5.

6. The Complainant has not filed an amended complaint.

## **II. Legal Standard**

7. It is well established that the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

8. The formal complaint must set forth “the act or thing done or omitted to be done” by a public utility “in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(4). The Commission's regulations require that a complaint contain a clear statement of the relief sought. 52 Pa. Code § 5.22(a)(5).

## **III. Argument**

9. In the *Interim Order*, Judge Guhl found that the Complaint is too vague to be able to determine whether there is a service issue. While the Complaint indicates that there are issues with the way that Aqua is spending consumer monies, it is not clear the specific issue that the Complainant is raising in this matter. As such, Judge Guhl required that the Complainant file an amended complaint within ten (10) days of the date of the *Interim Order*.

10. Since the Complainant failed to comply with these standards, Aqua does not know what allegations it is defending itself against which is a clear denial of due process of law.

11. A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978 (Order entered March 3, 2003); *Snyderville Community Development Corp. v. PGW*, Docket No. C-20055032 (Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

12. The Complainant was afforded every opportunity to amend his Complaint so as to make clear the legal basis for the Complaint but choose not to do so.

13. Commission precedent is well settled and supports dismissal of the Complaint with prejudice for failure to comply with Judge Guhl's *Interim Order. Weisenberger, et al v PECO*, Docket No. C-2010-2182281, (Final Order entered December 22, 2011).

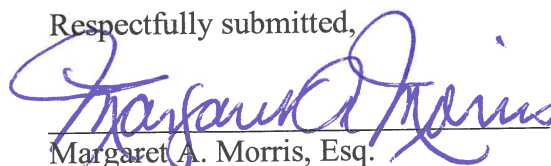
#### IV. Conclusion

The Complainant has refused to articulate a clear and concise statement of the allegations against Aqua. Due process requires that the Respondent be advised of the allegations before hearing so it can prepare for and present a defense at hearing. The Complainant's utter refusal to comply with Judge Guhl's *Interim Order* supports dismissal of the Complaint without a hearing pursuant to 52 Pa. Code § 5.372(a) (3).

**WHEREFORE**, Respondent, Aqua Pennsylvania, Inc., requests that the Honorable Marta Guhl grant this Motion to Dismiss the Complaint of Kevin C. Spearing with prejudice.

Dated: May 3, 2021

Respectfully submitted,



Margaret A. Morris, Esq.

PA ID No. 75048

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*Counsel for Aqua Pennsylvania, Inc.*