

October 26, 2021

Via Electronic Filing

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

**Re: Docket No. C-2021-3028959
Sheila Weaver t/d/b/a Enterprise 22, LLC v. Aqua Pennsylvania Wastewater, Inc.
Preliminary Objections of Aqua**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objections of Aqua Pennsylvania Wastewater, Inc. (Respondent) to the Complaint of Sheila Weaver t/d/b/a Enterprise 22, LLC (Complainant) in the above-captioned proceeding.

A copy of the Preliminary Objections has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

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

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris

MAM/co
Enclosures

cc: Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/encl.]
Sheila Weaver [w/encl.]
John G. Dean, Esquire [w/encl.]
Kristyn R. Giarratano, Esquire [w/encl.]

**Re: Docket No. C-2021-3028959
Sheila Weaver t/d/b/a Enterprise 22, LLC v. Aqua Pennsylvania Wastewater, Inc.
Preliminary Objections of Aqua**

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

Sheila Weaver
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White Haven, PA 18661
sheila@pa.metrocast.net

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Dated: October 26, 2021


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHEILA WEAVER
t/d/b/a ENTERPRISE 22 LLC

v.

AQUA PENNSYLVANIA WASTEWATER, INC.

Docket No. C-2021-3028959

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 Preliminary Objections of Aqua Pennsylvania Wastewater, Inc. within ten (10) days from service of this notice, the facts set forth by Aqua Pennsylvania Wastewater, Inc. in the Preliminary Objections may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania Wastewater, Inc., Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

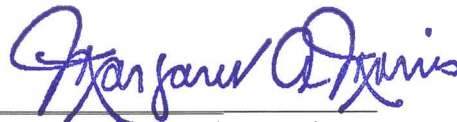
File by Mail or e-filing with:

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

With a copy to:

Margaret A. Morris, Esquire
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mmorris@regerlaw.com

Date: October 26, 2021



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Counsel for Aqua Pennsylvania Wastewater, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SHEILA WEAVER	:	
t/d/b/a ENTERPRISE 22 LLC	:	
	:	Docket No. C-2021-3028959
v.	:	
	:	
AQUA PENNSYLVANIA WASTEWATER, INC.	:	

**PRELIMINARY OBJECTIONS OF AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE COMPLAINT OF SHEILA WEAVER, t/d/b/a ENTERPRISE 22 LLC**

Aqua Pennsylvania Wastewater, Inc. (Aqua or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objections to the Formal Complaint of Sheila Weaver (Complainant) on behalf of Enterprise 22 LLC filed in the above-captioned proceeding.

Aqua avers the subject of the Formal Complaint is beyond the jurisdiction of the Pennsylvania Public Utility Commission (Commission) who is without authorization to grant the Complainant’s request for “immediate utilization” of the abandoned Woodhaven Force Main, or in the alternative for damages. The Formal Complaint includes impertinent matters in its requested relief. Therefore, Aqua requests that these Preliminary Objections be granted and that the Commission: (1) grant its Preliminary Objections and find that the Commission lacks jurisdiction to order Aqua to connect its system when there is no valid Planning Module issued by the Pennsylvania Department of Environmental Protection (DEP); (2) grant its Preliminary Objections and strike the Complainant’s request for monetary damages; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

In support of its preliminary objections, Aqua states as follows:

I. Procedural Background

1. Aqua is a wastewater company certificated by the Commission to provide wastewater services in White Haven, Pennsylvania. The Complainant is the owner¹ of a parcel of land which she represents will be developed as a residential subdivision.² The DEP application was filed by Charles E. Weaver as owner of Weaver Subdivision. The Planning Module reflects that, as of October 29, 2002, the new land development known as Weaver Subdivision would utilize the Company's Woodhaven Force Main³ as the existing wastewater interceptor and the Company's White Haven Sewage Treatment Plant. The Company represented to DEP that as of October 29, 2002, connections to its system were available, utilizing the Company's Woodhaven Force Main⁴ as the existing wastewater interceptor and the Company's White Haven Sewage Treatment Plant. DEP approved the Planning Module by letter, dated September 26, 2003 (2002 Planning Module).

2. The Complainant filed a Formal Complaint seeking immediate utilization of the abandoned Woodhaven Force Main and, in the alternative, monetary damages. A copy of the 2002 Planning Module and the correspondence issued by DEP was attached to the Formal Complaint.

¹ Charles E. Weaver was the original developer; the Complainant is the widow and has taken over the Project.

² To date, no houses have been built.

³ The Company changed the name of the facility to Powerhouse Force Main but will be referred to as Woodhaven Force Main in this pleading.

⁴ The Company changed the name of the facility to Powerhouse Force Main but will be referred to as Woodhaven Force Main in this pleading.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Aqua averred that the Woodhaven Force Main, which never served any customers, was abandoned in 2008 so that Aqua could provide wastewater service to Forster Township. In its New Matter, Aqua averred that the 2002 Planning Module, issued by DEP is no longer valid. A new DEP planning module is required as admitted by Complainant's counsel. A copy of Complainant's Counsel's Letter, dated January 11, 2021, is provided as Attachment 1.

4. Pursuant to 52. Pa. Code § 5.101, Aqua objects to the requested relief on the grounds that the Commission lacks jurisdiction to direct a connection without a valid DEP approved Planning Module or to award monetary damages.

II. Argument

5. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

6. Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

7. In the instant Formal Complaint, the Complainant requests immediate use of the abandoned Woodhaven Force Main or in the alternative, indemnification by Aqua for alleged monetary damages.

A. Impertinent Matters

8. The Commission's procedural regulations allow a party to object to pleadings that fail to comply with the rules of administrative practice or that include scandalous or impertinent matters. *See* 52 Pa. Code § 5.102(a)(2).

9. The purpose of the DEP sewage facilities program is to implement the Pennsylvania Sewage Facilities Act (Act 537) in order to help address existing sewage disposal needs, and to help prevent future problems through the proper planning, permitting, and design of all types of sewage facilities.

10. Aqua is not permitted to connect any new service unless DEP has approved a Planning Module. As admitted by Complainant's counsel, there is no valid DEP Planning Module for the Complainant's planned subdivision.

11. A prayer for immediate utilization of the abandoned Woodhaven Force Main which is not legally recoverable in the cause of action, is an “impertinent matter” in the sense that the Complainant is requesting that the Commission direct a connection without a current valid DEP Planning Module.

12. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); see *Nagy v. Bell Tel. Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

13. In *Feingold*, the Pennsylvania Supreme Court explained:

. . . the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

Feingold, 383 A.2d at 794.

14. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra*.

15. A prayer for damages, which are not legally recoverable in the cause of action, is an “impertinent matter” in the sense that it is irrelevant to that cause of action and is correctly challenged through a motion to strike the requested relief as impertinent matter. *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286

(Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

16. The Complainant's requested relief of damages is irrelevant to the instant cause of action and therefore an "impertinent matter."

III. Conclusion

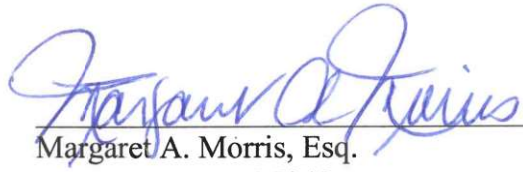
17. Consistent with Pennsylvania law, the Commission does not have subject matter jurisdiction to direct a connection for sewer service without a valid Planning Module which DEP has exclusive jurisdiction under Act 537 to approve. The Complainant's request that Aqua be directed to connect the Complainant's facilities to its system is an impertinent matter that must be stricken within the use and meaning of Commission regulation at 52 Pa. Code § 5.101(a)(2).

18. Consistent with Pennsylvania law, the Commission does not have subject matter jurisdiction to award monetary damages and the Complainant's request for indemnification by Aqua for alleged monetary damages is an impertinent matter that must be stricken within the use and meaning of Commission regulation at 52 Pa. Code § 5.101(a)(2).

WHEREFORE, Respondent, Aqua Pennsylvania Wastewater, Inc., requests that the Complainant's request that Aqua Pennsylvania Wastewater, Inc., be directed to connect the Complainant's facilities to its system be stricken from the Formal Complaint filed by Sheila Weaver, t/d/b/a Enterprise 22 LLC, for lack of subject matter jurisdiction. Aqua Pennsylvania Wastewater, Inc., also requests that the Complainant's alternative relief for damages be stricken from the Formal Complaint filed by Sheila Weaver, t/d/b/a Enterprise 22 LLC, for lack of subject matter jurisdiction.

Respectfully submitted,

Date: October 26, 2021



Margaret A. Morris, Esq.

Attorney ID No. 75048

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