

November 24, 2021

**Via E-Mail**

Mr. Frank D. Kitzmiller  
1041 Preston Road  
Lancaster, PA 17601  
[dkitz@comcast.net](mailto:dkitz@comcast.net)

**Re: Pa. Public Utility Commission v. City of Lancaster, Bureau of Water  
Commission Docket No. R-2021-3026682  
City of Lancaster, Bureau of Water's Objections to "Set 1 Interrogatories"**

Dear Mr. Kitzmiller:

We are in receipt of your "Set 1 of Interrogatories" which were served via e-mail on Saturday, November 20, 2021. For your reference, I enclose a copy of the objectionable interrogatories. Please accept this correspondence as notification that, on behalf of the City of Lancaster, Bureau of Water ("City"), we object to each of these interrogatories as irrelevant and improper. The Set 1 Interrogatories contain four (4) questions. Each of the four questions concerns the use of and billing related to 1" (1 inch) water meters in connection with your contention, raised in your Formal Complaint, that certain customers – including you – are being incorrectly billed on the basis of 3/4" water meters as opposed to a 1" meter.

However, these exact issues were fully litigated in a prior case before the Commission, docket no. C-2014-2435567, *Frank D. Kitzmiller v. City of Lancaster Water Department*. In that proceeding, your claims against the City relating to the same issues raised by your discovery requests were dismissed upon a finding that you were "properly charged based on a one-inch meter because [your] 3/4-inch meter is connected to a one-inch service line that is required by [your] township via an adapter." I enclose this decision for your reference. It is therefore the City's position that claims you are asserting in this matter concerning the alleged discrepancy between 3/4" and 1" meter billings are barred by the doctrine of *res judicata*. *Res judicata*, or "claim preclusion" bars any cause of action that was raised or that could have been raised in a prior action. *Tobias v. Halifax Tp.*, 28 A.3d 223, 227 (Pa. Cmwlth. Ct. 2011). The Public Utility Commission has recognized the applicability of this doctrine in proceedings before it, *O'Toole v. Bell Telephone Co. of Pa.*, 77 Pa. PUC 98 (1992), and Pennsylvania courts have upheld the Commission's application of the doctrine within rate proceeding such as this one. *Philadelphia Electric Co. v. Pa. Pub. Util. Comm'n*, 433 A.2d 620 (Pa. Cmwlth. Ct. 1981). Additionally, pursuant to 66 Pa.

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C.S. § 316, “[w]henver 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.”

Accordingly, responses to your Set 1 Interrogatories will not be forthcoming. Thank you.

Sincerely,

*Shane P. Simon*

Shane P. Simon

SPS/cg

Enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The City of Lancaster  
Docket No. R-2021-3026682**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the *Objections to Frank D.*

*Kitzmiller's Set I Interrogatories*, was served upon the persons *Via Electronic Mail*:

**Via Efile Only**

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DATED: November 24, 2021