

September 5, 2023

**Via Electronic Filing**

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

**Re: Docket No. C-2023-3038201  
Michael Hillman v. Aqua Pennsylvania, Inc  
Memorandum of Aqua**

Dear Secretary Chiavetta:

Pursuant to the *Order*, issued August 29, 2023, attached for filing is the Memorandum of Aqua Pennsylvania, Inc.

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

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co  
Enclosures

cc: The Hon. Darlene Heep, PA Public Utility Commission [w/encls.]  
Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/encls.]  
Michael Hillman [w/encls.]

**Re: Docket No. C-2023-3038201  
Michael Hillman v. Aqua Pennsylvania, Inc  
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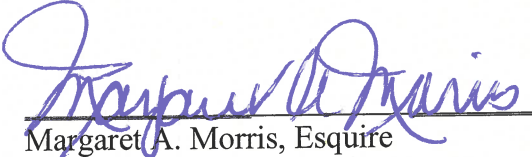
**CERTIFICATE OF SERVICE**

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

**Via First-Class Mail**

Michael Hillman  
P.O. Box 27757  
Philadelphia, PA 19118-0757

Dated: September 5, 2023

  
Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL HILLMAN	:	
	:	
v.	:	Docket No. C-2023-3038201
	:	
AQUA PENNSYLVANIA, INC	:	

**MEMORANDUM OF AQUA PENNSYLVANIA, INC.**

Pursuant to the *Order* of the Honorable Darlene D. Heep, issued August 29, 2023, and Commission regulations at 52 Pa. Code § 5.222, Aqua Pennsylvania, Inc. (Aqua) submits its Memorandum of Law on the issue of “a paralegal serving as custodian of business documents for purposes of introduction and admission of evidence.”

The law in Pennsylvania is well settled on this issue. The Pennsylvania Supreme Court in *Bayview Loan Servicing LLC v Wicker*, 651 Pa. 545 (2019) stated that the business records exception to the hearsay rule was incorporated into Pennsylvania law through the Uniform Business Records as Evidence Act (Act) and Pa. Rules of Evidence 803(6). Both the Act and Rule 803(6) substantially overlap in that both generally require that a custodian or other qualified witness testify that the record was made at or near the time of the event recorded and that the record was kept in the regular course of business. Moreover both provide for the trial court to make a determination in regard to whether the circumstances surrounding the record justify its admission or indicate a lack of trustworthiness.

The foundation for admissibility of business information is that a) the record was made and kept in the course of regular business activity; b) the record was made by, or from information provided by, a person who had knowledge of the information recorded; and c) the record was made at or near the time of the recorded act, event, or condition. A witness testifying to the foundational elements of business records is not required to have personal knowledge of the circumstances surrounding each and every entry made in the business records. Rather, the witness

must have knowledge about how the records are created and maintained in the ordinary course of business. A testifying witness need not have personal knowledge of the facts reported in the business records for the records to be admissible. It is the business purpose of the record, rather than the employee status of the source, which renders such hearsay evidence especially reliable. See *Keystone Dedicated Logistics, LLC v JGB Enterprises, Inc.*, 2013 Pa. Super 225, 77 A.3d 1 (Pa. Super. 2013).

The question of whether documents should be admitted under the business records exception to the hearsay rule, is within the discretionary power of a trial court provided such discretion is exercised within the Act. It is not essential under the Act to produce either the person who made the entries or the custodian of records at the time the entries were made. Moreover, the law does not require that a witness qualifying business records even have a personal knowledge of the facts reported in the business record. As long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the record to justify a presumption of trustworthiness for the business records of a company, a sufficient basis is provided to offset the hearsay character of the evidence. Regarding the admission of business records, the term “qualified witness” is to be given the broadest interpretation and only requires that the witness understands the system he/she is describing. *Keystone, supra*.

Commission precedent is also well settled. The Honorable Debra Paist, in the matter of *The Big Apple Dinner Theater, Inc. v The Bell Telephone Company of PA*, Docket No. C-00934818, set forth the requirements for the hearsay exception for business records:

“to qualify for the business records exception, the records in question must, among other things, be of the type maintained as a regular business practice to advance the businesses customary operations have purposes. *Newman v Pittsburgh Railroad Company*, 392 PA 640, 141 A.2d 581 (1958); *Ganster v Western Pennsylvania Water Company*, 349 PA Superior Court 561, 504 A.2d 186 (1985). The integrity and reliability of the records must be demonstrated by showing that the records were not influenced by the litigation in which they are being offered.”

Ms. Heather S.D. Harrison, a paralegal in Aqua's Legal Department, propounded written testimony as directed on August 25, 2023. In her testimony, Ms. Harrison stated she is authorized to testify on behalf of Aqua as well as her familiarity as to how Aqua creates and maintains its business records. See Aqua Statement No. 1, Page 4-5. Her written testimony and the Proposed Exhibits she sponsored are clearly an exception to the hearsay rule as a business record. The Proposed Exhibits should be admitted into the record and the testimony be placed upon the record.

Respectfully submitted,



Dated: September 5, 2023

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*Counsel for Aqua Pennsylvania, Inc.*