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File # 204823

May 3, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, et al. v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2024-3047822, et al.**

**Steven Boyanowski v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.
Docket No. C-2024-3048622**

Dear Secretary Chiavetta:

Attached for filing are the Preliminary Objections of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. to the Complaint of Steven Boyanowski in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Michael W. Hassell

MWH/dmc
Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

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

VIA E-MAIL

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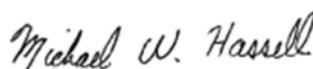
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VIA E-MAIL AND FIRST-CLASS MAIL

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Dallas, PA 18612
judybccd@gmail.com

Date: May 3, 2024



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steven Boyanowski	:	
	:	
v.	:	Docket Nos. C-2024-3048622 <i>et al.</i>
	:	
Aqua Pennsylvania, Inc. and Aqua	:	
Pennsylvania Wastewater, Inc.	:	

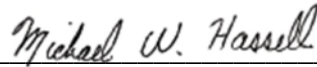
NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Dated: May 3, 2024



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Counsel for Aqua Pennsylvania, Inc. and Aqua
Pennsylvania Wastewater, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steven Boyanowski	:	
	:	
v.	:	Docket Nos. C-2024-3048622, <i>et al.</i>
	:	
Aqua Pennsylvania, Inc. and Aqua	:	
Pennsylvania Wastewater, Inc.	:	

**PRELIMINARY OBJECTIONS OF
AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE COMPLAINT OF STEVEN BOYANOWSKI**

AND NOW, comes Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, “AP” or “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Complaint filed by Steven Boyanowski (“Complainant”) be dismissed in its entirety as against AP. In support thereof, AP states as follows:

I. BACKGROUND

1. AP is a “public utility” as that term is defined under the Public Utility Code, 66 Pa. C.S. § 102, subject to the regulatory jurisdiction of the Commission.
2. AP provides water service to approximately 450,000 customers, located primarily in eastern Pennsylvania.
3. AP provides wastewater service to approximately 62,000 customers, located primarily in eastern Pennsylvania.
4. On April 23, 2024, AP was served with the above-captioned Complaint at Docket Nos. R-2024-3047822 and C-2024-3048622. The Complaint is identified as a complaint against

proposed rates. The Complainant further states that “[his] current rates are excessive” and requests that the Commission “reduce our current water rates...” (See Complaint ¶ 5.)

5. AP herein files these Preliminary Objections to the Complaint. For the reasons explained below, AP respectfully requests that the Complaint be dismissed in its entirety and without prejudice as against AP for: (1) lack of standing pursuant to Section 5.101(a)(7) of the Commission’s regulations, 52 Pa. Code § 5.101(a)(7); and (2) legal insufficiency pursuant to Section 5.101(a)(4) of the Commission’s regulations, 52 Pa. Code § 5.101(a)(4).

II. STANDARD OF REVIEW

6. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

7. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlt.*, 910 A.2d 775, 781 (Pa. Cmwlt. 2006) (citing *Dep’t of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlt. 2005)); accord *Complaint of Nat’l Fuel Gas Distrib. Corp. and*

Petition for an Order to Show Cause, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

8. In addition, the Presiding Officer must determine whether, based on the factual pleadings, recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

9. Where a respondent's right to prevail at a hearing is clear, continuing to an evidentiary hearing would be a fruitless exercise, which warrants granting of a preliminary objection(s). *Blasko v. PECO Energy Co.*, 2014 Pa. PUC LEXIS 558, Docket No. C-2014-2426779 (Order entered Sept. 26, 2014).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 - THE COMPLAINANT LACKS STANDING TO PURSUE THE COMPLAINT BECAUSE THERE IS NO CURRENT CASE OR CONTROVERSY

10. AP incorporates by reference Paragraphs 1 through 9 as if set forth fully herein.

11. The Complaint should be dismissed because the Complainant has no standing to pursue a Complaint related to an unfiled base rate proceeding.

12. In order to bring a complaint before a tribunal, a complainant must first demonstrate that they have standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983).

13. Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc. et al. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975).

14. A substantial interest is an “interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.” *George v. Pa. PUC*, 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999). *See also, South Whitehall Twp. Police Service v. South Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989) (citations omitted); *Bergdoll, et al. v. Kane, et al.*, 731 A.2d 1261, 1268 (Pa. 1999).

15. The Complainant cannot have an “substantial interest” in an unfiled and hypothetical base rate case as there is no active case or controversy. Indeed, the Complainant makes no allegations related to either the amount of the alleged base rate increase, or the timing of the alleged base rate increase. The reason for this is simple. AP has not filed a base rate case in 2024. Thus, the Complaint is premature, unripe, and the Complainant cannot have standing in a controversy that does not yet exist.

16. If and when Aqua filed a base rate case pursuant to Section 1308(d) of the Public Utility Code (“Code”), 66 Pa. C.S. § 1308(d), the Complainant may file a Complaint to dispute the same.

17. As such, the Company submits that the Commission should dismiss the Complaint without prejudice because the Complainant does not have standing to pursue the Complaint at this time.

B. PRELIMINARY OBJECTION NO. 2 - THE COMPLAINT IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED WITHOUT PREJUDICE BECAUSE IT DOES NOT ALLEGE ANY ACT OR THING OMITTED BY AP THAT WOULD WARRANT RELIEF

18. AP incorporates by reference Paragraphs 1 through 17 as if fully set forth herein.

19. The Complaint is legally insufficient and should be dismissed without prejudice because AP cannot be held liable for an alleged act – or a hypothetical base rate case – that has not yet occurred or been filed.

20. Indeed, the Complaint makes no specific reference to any alleged rate increase purportedly filed by AP because no such filing exists.

21. Moreover, to the extent that the Complainant is disputing AP's current rates, the Complaint is still legally insufficient because AP cannot be held liable for adhering to its Commission-approved tariff.

22. As a matter of law, the 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 Pa. PUC LEXIS 19, at *8 (Order entered Feb. 8, 1990) (citing *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976)).

23. When “the Complaint fails to state a claim against the named respondent upon which the Commission may grant relief,” the Complaint is “insufficient as to substance,” and the “Respondent is entitled to judgment as a matter of law.” *Stabley v. Phila. Gas Works*, Docket No. F-2010-2186368, 2010 Pa. PUC LEXIS 231, at *6 (July 29, 2010) (Initial Decision), *adopted without modification*, (Order entered Oct. 1, 2010); *see Coggins v. UGI Cent. Penn Gas Inc.*,

Docket No. C-2012-2312796, 2012 Pa. PUC LEXIS 1497 (Sept. 10, 2012) (Initial Decision), *adopted without modification*, (Order entered Nov. 9, 2012).

24. Additionally, under Section 3303(a) of the Public Utility Code, “No public utility, nor any officer, agent or employee thereof, shall be liable for any penalty or forfeiture, or be subject to any prosecution, on account of demanding, collecting, or receiving any rate for any service, or for enforcing any regulation, or practice when such rate, regulation, or practice is contained in a tariff properly filed with the commission, and posted or published as herein provided, and is applicable by the terms thereof at the time to such service although such rate, regulation, method or practice may be found by the commission to be unjust or unreasonable.” 66 Pa. C.S. § 3303(a) (emphasis added).

25. The Complainant does not allege that AP has incorrectly applied its rates inconsistent with its Commission-approved tariff.

26. As noted previously, AP cannot be held liable for complying with its Commission-approved tariff. *See* 66 Pa. C.S. § 3303(a).

27. In addition, AP’s currently-effective rates are Commission-made rates, established pursuant to the Commission’s Order entered May 12, 2022, at Docket Nos. R-2021-3027385, *et al.* The Complainant makes no assertion that such rates are in violation of that Order, or otherwise are unjust or unreasonable.

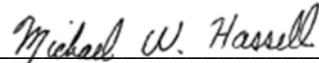
28. Therefore, the Complainant has failed to state a claim against AP upon which the Commission may grant relief. *See Rok*, 527 A.2d at 214; *Stilp*, 910 A.2d at 781.

29. Accordingly, the Complaint should be dismissed in its entirety and with prejudice as against AP.

IV. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully requests that the above-captioned Formal Complaint filed by Steven Boyanowski be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4) and (7).

Respectfully submitted,



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Dated: May 3, 2024

Counsel for Aqua Pennsylvania, Inc. and Aqua
Pennsylvania Wastewater, Inc.

VERIFICATION

I, William C. Packer, Vice President, Regulatory Accounting and Regional Controller at Aqua Pennsylvania, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: May 3, 2024



William C. Packer