

June 7, 2024

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.
Reply Exceptions of Aqua**

Dear Secretary Chiavetta:

Attached for filing is the Reply of Aqua Pennsylvania, Inc. to the Exceptions filed by Michael Hillman (Complainant) in the above referenced proceeding.

A copy of the Reply Exceptions 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: The Hon. Darlene Heep, PA Public Utility Commission [w/encls.]
Office of Special Assistants, PA Public Utility Commission [w/encls.]
Heather S. D. Harrison, Aqua Pennsylvania, Inc. [w/encls.]
Michael Hillman [w/encls.]

**Re: Docket No. C-2023-3038201
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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: June 7, 2024



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL HILLMAN

v.

AQUA PENNSYLVANIA, INC

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Docket No. C-2023-3038201

**REPLY EXCPETIONS OF AQUA PENNSYLVANIA, INC.
TO EXCEPTIONS OF MICHAEL HILLMAN**

Margaret A. Morris, Esq.
REGER RIZZO & DARNALL LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: June 7, 2024

Counsel for Aqua Pennsylvania, Inc.

I. Introduction

In accordance with Section 5.535 of Commission’s regulations,¹ and the *Secretarial Letter*, dated May 7, 2024, Aqua Pennsylvania, Inc. (Aqua or the Company) files its Reply to the Exceptions of Michael Hillman (Complainant or Mr. Hillman) which support the adoption of the Initial Decision (ID) of the Honorable Darlene D. Heep (Judge Heep) without modification. The Commission should affirm the well-reasoned ID in its entirety and dismiss the Formal Complaint with prejudice for Complainant’s failure to carry his burden of proof that Aqua violated the Public Utility Code (Code), Commission regulations or order or its Commission-approved tariff.

II. Summary of the position of the parties

The Complainant disputes his responsibility for charges alleging that there is a continuing foreign load situation at the service address. On December 9, 2022, he had contacted Aqua to advise that he no longer resided at the service address and to terminate billing. He contends that the statute of limitations should be tolled and questioned various aspects of the 2020 decision.

Aqua contends that the alleged foreign load was the subject of the Formal Complaint filed against Aqua at Docket No. F-2020-3019026 which was dismissed, with prejudice. Judge Heep limited the scope of the present proceeding and dismissed any claims pertaining to the foreign load addressed in the 2020 proceedings and any claims that arose more than three years prior to February 2, 2023, the date the instant complaint was filed. The remaining issues would proceed to a decision.

The ID was issued on May 7, 2024. The Complainant filed Exceptions, dated May 23, 2024, which were served on the Company *via* First Class Mail on May 29, 2024.

III. Initial Decision

Judge Heep found that the “opinions of Mr. Hillman and Mrs. Hillman that there was foreign load were carefully considered; however, they provided no details or other evidence in support of their opinions, which alone will not support a finding on behalf of the Complainant.”

¹ 52 Pa. Code § 5.535.

Opinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission. *Norman v Phila. Gas Works*, Docket No. C-2018-2640719 at 30 (Opinion and Order entered Oct. 7, 2021). ID at 10-11.

Judge Heep made the following ruling in dismissing the present Formal Complaint:

- Most of the evidence presented and testimony of the Hillmans pertained to events that occurred more than three years prior to the filing of the present Formal Complaint, particularly in 2019. ID at 9.
- The Commission does not have jurisdiction over compliance with municipal codes. The Complainant presented no evidence suggesting or supporting a finding that Aqua provided or allowed unsafe service in violation of 66 Pa. C.S. § 1501. ID at 11.
- The service provided was not unreasonable and does not rise to the level of a violation. ID at 12.
- Mr. Hillman moved out of the service address when he contacted Aqua in December 2022 and therefore it was not unreasonable that Aqua did not further reinvestigate a more than 3-year old foreign load claim that Aqua had investigated in December 2018 and March 2019. ID at 12.
- Aqua did not act unreasonably when it submitted its report to the Commission's Bureau of Consumer Services rather than to the Complainant, on January 6, 2023, within the 30-day period. ID at 12.
- Absent in the record is substantial evidence to support a finding that Aqua's service to Mr. Hillman was discriminatory or that he was treated differently or unfairly. ID at 13.

IV. Exceptions and Reply

The Complainant filed 30 numbered Exceptions which are addressed below. With one exception, the Exceptions fail to present a legally sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision. Some assertions appear to be a mere regurgitation of the Complainant's poorly supported claims presented at the hearing and in pleadings.

Exceptions # 1-11, 13, and 18 address the Complainant's disagreement with the characterization of the filings in the history of proceedings and not dispositive of issues at

hearing and dismissed by Judge Heep. The pleadings and orders in this docket speak for themselves.² Exceptions # 1-11, 13, and 18 are without merit and should be denied.

Exceptions #12, 17, 20-28 simply recite case holdings and cites without any discussion as to the applicability to the record evidence. Exceptions #12, 17, 20-28 are without merit and should be denied.

Exception #13 recites the Complainant history of civil actions filed by the Complainant and his contention that 2 years would be added to the 3-year limitation from the December 9, 2022, leading back to December 2017. Consistent with Section 316 of the Code,³ Judge Heep correctly dismissed any claims that arose more than 3 years prior to February 2, 2023, the date the instant complaint was filed. ID at 4. Exception #13 is without merit and should be denied.

Exception #15 alleges that the Commission failed to investigate his claim based on race. Consistent with Commission regulations at 52 Pa. Code § 1.4(e) authorizes the striking of scandalous comments. Exception #15 is without merit and should be denied.

Exception #19 reargues the Complainant's unsupported position that his gas and water services were tied together. Other than the Complainant's opinion, there is no record evidence to support this allegation. Exception #15 is without merit and should be denied.

Exception #29 raises 3 non-substantive typos in the ID. The Complainant's written testimony was dated September 29, 2023 but not filed until October 2, 2023, not October 20, 2023 as stated in the ID at 5. The hearing convened on January 16, 2024, not 2023 as stated in the ID at 5. The transcript was received on February 8, 2023, not 2024 as stated in the ID at 6. Exception #29 should be granted.

² Exception #11 states "suddenly there was an emergency continuance request which continued the November 13, 2023 scheduled hearing." The hearing was continued due to the unavailability of Aqua's witness Harrison whose husband suddenly and unexpectedly passed away.

³ 66 Pa. C.S. § 316.

Exception #30 alleges there are 2 errors in the ID. Neither alleged misstatement is dispositive to the Formal Complaint. Exception # 30 is without merit and should be denied.

V. Conclusion

The Exceptions, either raising irrelevant points, or repeating positions that Judge Heep soundly rejected based on the record evidence, are without merit. The substantial record evidence shows that the Complainant failed to carry his burden of proof that Aqua violated the Code, Commission regulations or order. The findings of facts and conclusions of law in the ID are based on substantial record evidence.

WHEREFORE, for the reasons set forth in these Reply to Exceptions, Aqua Pennsylvania, Inc. respectfully requests that the Commission deny the Exceptions of the Complainant, adopt the Initial Decision of the Honorable Darlene D. Heep without modification and dismiss, with prejudice, the Formal Complaint of Michael Hillman.

Respectfully submitted,



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Dated: June 7, 2024

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