

March 2, 2026

**Via Electronic Filing**

Mathew Homsher, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2026-3060344  
Kenneth A Kepple v. Aqua Pennsylvania, Inc.  
Preliminary Objections of Aqua**

Dear Secretary Homsher:

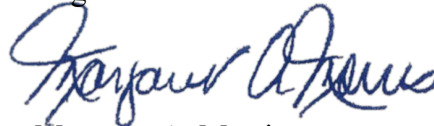
Attached for filing is the Preliminary Objections of Aqua Pennsylvania, Inc. to the Complaint filed by Kenneth A Kepple (Complainant) in the above-referenced proceeding.

A copy of the Preliminary Objections has been provided to Complainant's Counsel 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: Heather S.D. Harrison, Aqua Pennsylvania, Inc. [w/encls.]  
David Hopkins, Esquire [w/encls.]

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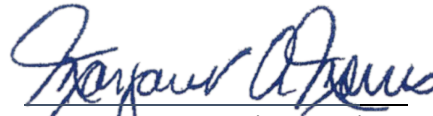
**CERTIFICATE OF SERVICE**

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 Electronic and First-Class Mail**

David Hopkins, Esquire  
Hopkins Heltzel LLP  
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DuBois, PA 15801  
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Dated: March 2, 2026

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH A. KEPPLER	:	
	:	
v.	:	Docket No. C-2026-3060344
	:	
AQUA PENNSYLVANIA, INC.	:	

**PRELIMINARY OBJECTION OF AQUA PENNSYLVANIA INC. TO THE  
COMPLAINT OF KENNETH A. KEPPLER**

Aqua Pennsylvania, Inc. (Aqua, Respondent or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objection to the Formal Complaint of Kenneth A. Kepple (Complainant) filed in the above-captioned proceeding.

The Respondent avers that 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 damages or to entertain a Complaint that is outside the 3-year period to bring a complaint. The Formal Complaint includes an impertinent matter in its requested relief. Therefore, Aqua requests that this Preliminary Objection be granted and that the Commission: (1) grant its Preliminary Objections and strike the Complainant’s requests for monetary damages; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; and (3) grant Aqua such other relief as may be just and reasonable under the circumstances.

In support of its preliminary objection, the Respondent states as follows:

## **I. Procedural Background**

1. Aqua is a water and wastewater company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides domestic water and wastewater services in the Complainant's name to 133 Captain Jack Court, DuBois, Pennsylvania (Service Address) under Account No. 2032445-1344674 (Account).

2. On February 9, 2026, the Complainant filed a Formal Complaint alleging that the Company "built a pump house on my property, rerouting the water from their property to mine with a 5-foot diameter pipe and ruining my property." Complaint at ¶ 4.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Aqua denied the material allegations and alleged that the actions complained of occurred in 2019. The Respondent avers that the Formal Complaint is barred by Section 3314(a) of the Code<sup>1</sup> and the Commission lacks the authority to grant the relief request.

4. Pursuant to 52. Pa. Code § 5.101, the Company objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks relief in one of two forms; the Company can either "(1) buy the waterfront front [sic] property at full price" or "(2) completely remove pumphouse and road and reroute the water to drain off their property as it was originally." Complaint at ¶ 5.

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<sup>1</sup> 66 Pa. C.S. § 3314(a).

## 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 that the Company "buy the waterfront front [sic] property at full price." Complaint at ¶ 5.

8. Clearly, that requested relief sought through the Formal Complaint is an award of monetary damages from the Company.

A. Impertinent Matter

9. 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).

10. 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).

11. 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.

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

13. A prayer for damages, which are not legally recoverable in the cause of action, is “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)).

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

15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages and the Complainant's request for money 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, Inc., respectfully requests that the relief for monetary damages be stricken from the Formal Complaint filed by Kenneth A. Kepple lack of subject matter jurisdiction.

Respectfully submitted,



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Dated: March 2, 2026

*Counsel for Aqua Pennsylvania, Inc.*