

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth A. Kepple	:	
	:	
v.	:	C-2026-3060344
	:	
Aqua Pennsylvania, Inc.	:	

**INTERIM ORDER**  
**GRANTING RESPONDENT’S PRELIMINARY OBJECTION**  
**TO COMPLAINANT’S REQUEST FOR DAMAGES**

On February 6, 2026, Kenneth Kepple (Mr. Kepple or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), using the Formal Complaint form. Regarding the reason for the Complaint, Mr. Kepple checked the “other” box, indicating Aqua Pennsylvania, Inc. (Aqua or Respondent) “built a pump house on my property, rerouting the water from their property to mine with a 5-foot diameter pipe completely flooding and ruining my property.” Complaint ¶ 4. Complainant indicated that he wanted the Complaint to be resolved by Responding buying his property at “full price” or removing the pump house and road and re-routing the water. *Id.* ¶ 5. Mr. Kepple asserted in his Complaint that he wanted to be served by the Commission via e-filing. *Id.* ¶ 9.

On March 2, 2026, Respondent filed an Answer and New Matter (Answer). In its Answer, Respondent denied it constructed facilities on Complainant’s property, and denies it is responsible for any damage to Complainant’s property. Answer ¶ 4. Respondent requested that the Complaint be dismissed with prejudice. Respondent’s Answer included a Notice to Plead.

Also on March 2, 2026, Respondent filed a Preliminary Objection. In its Preliminary Objection, Respondent averred Complainant seeks impermissible monetary damages in his request that Respondent buy the property in question at “full price.” Preliminary Objection ¶ 7. Respondent also argues the Complaint is outside the 3-year period to bring a complaint and

is therefore beyond the jurisdiction of the Commission. Respondent requested that the Commission strike the request for monetary damages.

On April 9, 2026, an Initial Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on June 5, 2026, at 1:00 p.m. and the case was assigned to me.

On April 9, 2026, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing.

Upon review, the undersigned found Respondent's Preliminary Objection was not accompanied by a Notice to Plead as required by 52 Pa.Code § 5.101 (a). Therefore, on April 28, 2026, an Interim Order was issued providing for notice to Complainant, such that he was permitted to file a written response to the Preliminary Objection no later than May 8, 2026. The April 28, 2026 Interim Order further indicated that Complainant was to cause any counsel who represents him in the instant matter to file an entry of appearance by May 8, 2026.

Complainant did not file a response to the Preliminary Objection, and no counsel has entered an appearance on Complainant's behalf in this case.

It is now appropriate to rule on the Preliminary Objection.

### Discussion

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide as follows:

**§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of Complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105, 1108 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705, 707 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312, 1314 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, Respondent asserts that the Commission lacks jurisdiction over Complainant's request for monetary damages. 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., Co. of Pa. PA.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1978) (*Feingold*); see *Nagy v. Bell Tel Co. of PA.*, 436 A.2d 701, 704 (Pa. Super. 1981).

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 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.

Complainant requested relief includes a request that Respondent "buy the waterfront ... property at full price." Complainant described said property as "completely ruined." Complainant's request essentially amounts to a request for compensation or monetary damages. Based on the foregoing, Respondent's Preliminary Objection is granted with regard to Complainant's request for monetary damages. Complainant's request for monetary damages is struck from the Complaint.

Respondent also asserts Complainant's Complaint is barred by the statute of limitations. Respondent is correct that Pennsylvania law generally provides that no action for recovery of penalties or forfeitures or prosecution shall be maintained unless brought within three years from the date the liability arose. 66 Pa.C.S. § 3314. Complainant, who is apparently

pro se, did not specify in his Complaint when the pump house was built, although Respondent avers this occurred in 2019.

This issue will be addressed at the hearing. The parties must be prepared to address specifically when the issues in the Complaint arose. As the Complainant, Mr. Kepple has the burden to establish he is entitled to relief under the Commission's rules and regulations, which includes the burden to show his Complaint was filed within the statute of limitations set forth in Section 3314(a).

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Aqua Pennsylvania, Inc. is granted, insofar as the requests for monetary damages in the Formal Complaint filed by Kenneth Kepple at Docket Number C-2026-3060344 are struck from the Complaint.
2. That the scheduled June 5, 2026 hearing will be held in relation to the remainder of the Complaint.

Date: May 21, 2026

\_\_\_\_\_/s/  
Ann Quimby  
Administrative Law Judge

**C-2026-3060344 - KENNETH KEPPLER v. AQUA PENNSYLVANIA, INC.**

KENNETH KEPPLER  
850 TREASURE LAKE  
DUBOIS PA 15801

**814.771.1977**

[kepplekenneth@yahoo.com](mailto:kepplekenneth@yahoo.com)

Served via eService – **Served 5/21/2026**

DAVID HOPKINS, ESQUIRE  
HOPKINS HELTZEL LLP  
100 MEADOW LANE, SUITE 5  
DUBOIS, PA 15801

[david@hopkinsheltzel.com](mailto:david@hopkinsheltzel.com)

Served via email – **Served 5/21/2026**

*Counsel for Complainant*

MARGARET MORRIS ESQUIRE  
REGER RIZZO & DARNALL  
CIRA CENTRE 13TH FL  
2929 ARCH STREET  
PHILADELPHIA PA 19104

**215.495.6524**

**215.870.5785**

[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Served via eService – **Served 5/21/2026**

*(Counsel for Aqua Pennsylvania Inc)*