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September 30, 2010

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105

**Re: Docket No. C-2009-2137247
Jerry Cordisco v. Aqua Pennsylvania, Inc.
Main Brief of Aqua Pennsylvania, Inc.**

Dear Secretary Chiavetta:

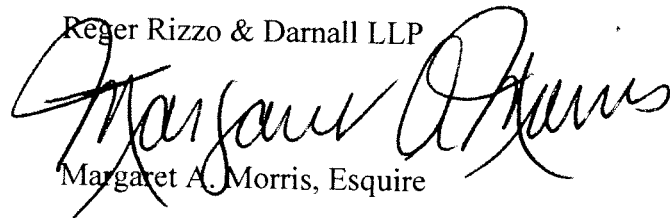
Enclosed for filing is the original Main Brief of Aqua Pennsylvania, Inc. in the above-captioned matter.

As indicated on the Certificate of Service, a copy of the Main Brief of Aqua Pennsylvania, Inc. has been provided to the Complainant in the matter indicated.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris, Esquire

Enclosure

cc: Honorable Angela T. Jones [w/enc.]
Jerry Cordisco [w/enc.]

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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 on the attached service list, in the manner indicated, in accordance with the requirements of §1.54 (relating to service by a participant).

Via First Class Mail

Mr. Jerry Cordisco
870 Weber Dr.
Yardley, PA 19067

Dated: September 30, 2010

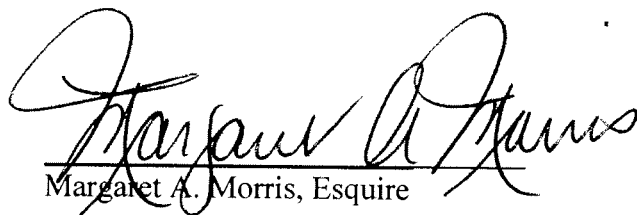

Margaret A. Morris, Esquire

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Introduction

This matter comes before the Commission as a Formal Complaint filed by Jerry Cordisco (“Complainant”) against Aqua Pennsylvania, Inc. (“Aqua” or “Respondent”). The Complainant alleges that Aqua’s enforcement of its Cross-Connection Control Program pursuant to its Commission-approved Tariff is arbitrary and capricious. Aqua submits this Main Brief in support of its position that the Complainant has not met his burden of proof and that the Complaint should be dismissed in its entirety.

History of the Proceedings

On October 1, 2009, the Complainant filed his Formal Complaint alleging that Aqua was requiring commercial accounts to install backflow devices and annual testing. The Complainant requests that Aqua’s program should only be required at hazardous locations. Complaint ¶ 4A.

On November 16, 2009, Aqua filed its Answer which denied the allegations of the Complaint and explained that its Commission-approved tariff for its Cross Connection Control Program sets forth the circumstances under which the mandatory installation and annual testing of the backflow device is required to comply with both Federal and State Safe Drinking Water Act and regulations.

The Honorable Angela T. Jones issued a Prehearing Order dated June 10, 2010, directing the parties of the hearing requirements and scheduling the In-person Hearing for July 13, 2010 at 10 A.M.

Both parties participated in the hearing and introduced exhibits into the record. The hearing produced a transcript of eighty-seven (87) pages.

By Order dated July 27, 2010, Judge Jones established the schedule for the simultaneous filing of Main and Reply Briefs.

Positions of the Parties

Complainant's Position

The Complainant alleges that Aqua's Cross Connection Control Program should not be applicable for commercial accounts which "only have an office and powder room 'as mine'". Complaint ¶ 4A. He opines that the Department of Environmental Protection ("DEP") does not require a testable backflow device and requests that Aqua's Cross Connection Control Program only be required at hazardous locations.

During the hearing, the Complainant agreed that that the DEP's mandate that systems be in place to prevent a cross-connection to the public water supply was rational and "good". TR 7-8. He clarified that he objects to Aqua's classification of his building, which only houses residential units, as a commercial account thereby requiring a testable backflow device. TR 42-45.

The Respondent's Position

Aqua's Cross Connection Control Program requires the installation and annual testing of backflow devices for all commercial accounts. The mandatory installation and annual inspection of the backflow devices is required to comply with Federal and State Safe Drinking Water Act regulations. 42 U. S. C. §§ 330j-9 to 330j-10; 36 P. S. §§ 721.1-721.7

Aqua's Commission-approved Tariff, Rule 54, Aqua Exhibit 1, outlines its Cross Connection Control Program as applicable to new and existing customers who connect to its water distribution system. Aqua's Cross Connection Control Program is consistent with both federal and state law and regulations which require a public water provider, such as Aqua, to provide reasonable protection of its potable water supply system against **potential** contamination and/or pollution resulting from backflow through uncontrolled plumbing connections and/or cross connection at any of its customer premises. TR 53-55.

Consistent with its Commission-approved Tariff, a commercial account is defined as an office or apartment building with more than two dwelling units. Aqua Exhibit 1, p. 1; TR 52. The Complainant's premise at issue in this proceeding has always had more than two dwelling units and is properly classified as a commercial account. TR 52-53. Therefore a testable backflow device is required. TR 52.

Record Evidence

The Complainant's evidence

The Complainant testified and introduced one exhibit (a partial copy of DEP's Public Water Supply Manual) which was admitted into evidence. He possesses no expertise in the area of cross connections or the Safe Drinking Water Act. TR 24. The Complainant agrees with and understands why DEP wants backflow prevention equipment in certain situations. TR 20. However, the Complainant does not believe that a residential property poses any hazardous condition and objects to Aqua classifying residential units (regardless of the number) as a commercial account. TR 21, 39, 44.

The Complainant is the owner of the premise at 1414 Farragut Street, Bristol, PA., ("1414") which is the subject of the Complaint. He also owns the property next door at 1416 Farragut Street ("1416"). At the time of the filing of his Complaint, the premise at 1414 consisted of four residential units and a store front office with a powder room. TR 8, 14, 36; the premise at 1416 consisted of two apartments and a store front office. TR 36.

Since the filing of the Complaint, 1414 and 1416 has been renovated so that the six (6) apartments are served by the meter located at 1414. TR 36. The premise at 1414 is the property at issue in this complaint proceeding. The store fronts of 1414 and 1416 have been reconfigured and consist of a beauty shop which is served by the meter located at 1416. TR 36. The Complainant wants the residential units served by meter located at 1414 to be classified as a residential account which would not require a testable backflow device. TR 44. The Complainant agrees that the beauty shop served by the meter located at 1416 is properly classified as a commercial account, TR 44, and is in the process of installing the required backflow device. TR 36-37. The property at 1416 is not at issue in this complaint proceeding.

The Respondent's evidence

Aqua offered the testimony of one expert witness, Matthew Fasbinder, Manager of Customer Field Services. Mr. Fasbinder sponsored five exhibits, all which were admitted into evidence:

Exhibit number

Description of exhibit

1

Aqua's Tariffs

	Supp #67, 5th Revised #22, eff: 6/23/06
	Supp # 86, 4 th Revised #24, eff. 7/31/08
	Supp #86, 4 th Revised #25, eff. 7/31/08
	Supp #86, 7 th Revised # 37, eff. 7/31/08
2	Photos of Premise
3	DEP Manual of Cross Connection Control
4	Condensed version of Aqua's Cross-Connection Control Program
5	Aqua Manual of Cross-Connection Control

Aqua's expert witness Fasbinder, holds an Associate Degree in Construction Technology from Williamson's Trade School, a Bachelor of Science in Civil Engineering Degree from Drexel University and is also certified for cross connection and backflow testing. TR 47-48. He is also an approved proctor for the American Society of Civil Engineering ("ASSE") for backflow testing. TR 48. He has been employed by Aqua since 1979 and his job responsibilities include overseeing the installation and testing of backflow devices as a part of Aqua's Cross Connection Control Program. TR 47-48. Aqua witness Fasbinder personally drafted the condensed version of Aqua's Cross Connection Control Program indicating the law, regulations and type of device required. Aqua Exhibit 4, TR 50, 61-62.

Aqua acquired the system from Bristol Borough which serves the premise at 1414. TR 58. Aqua notified the former customers of Bristol Borough regarding its Cross Connection Control and Testing Program by concentrating first on those customers with the highest degree of hazard. TR 58-59. Aqua has a detailed program/process for notifying customers that a backflow device needs to be installed and the testing requirements. TR 59-61. Aqua does not perform the testing of the backflow devices but does provide customers an approved list of persons who have been certified from the New England Water Works or ASSC. TR 60-1

Aqua's Tariff defines a cross connection as being created when a customer connects to the Aqua's distribution system. Exhibit 1, TR 54. Aqua has a containment program which means for every service tap in its system, Aqua requires its customers to have a backflow device to prevent anything from coming back into its water supply. TR 54-55. Aqua's Cross Connection Control Program is designed to protect the public water supply against **potential** hazards in its water system and is to comply with applicable federal and state laws and regulations. TR 53. The degree of hazard determines the type of device that is required. TR 56. DEP has used the term "degree of hazard" in its Manual. Aqua Exhibit 3, TR 56.

DEP has published a comprehensive manual designed to provide necessary, useful information to public water suppliers concerning the state's Safe Drinking Water program.

Aqua Exhibit 3, TR-62-66. The DEP Manual does not depict every scenario that may exist. TR 63. The DEP Manual states that “where a cross connection is to be maintained” that a backflow device is required. Aqua Exhibit 3, TR-63-64. Aqua utilized the DEP Manual to formulate its Cross Connection Manual which is consistent with the DEP Manual. Aqua Exhibit 4; TR 64. The usage at the property and the degree of hazard is what determines the type of backflow device which is required. TR 57-58. Consistent with its Commission approved Tariff, all commercial accounts are required to have a testable backflow device to protect against **potential** hazards. TR 67-68.

The DEP Manual is a partial list and is not intended to supplant any ordinances or standards developed by the water company. Aqua Exhibit 3, TR 80. There is no situation where DEP says that there is no degree of hazard. TR 82. The DEP Manual is a guideline for companies to evaluate and determine what is appropriate for their respective system. Aqua Exhibit 3, TR 82.

Aqua’s Commission approved Tariff states that a customer with an existing connection to its distribution system will furnish, install and maintain a company approved backflow prevention, cross connection, or other special device at the company’s request. Aqua Exhibit 1, TR 65-66. Furthermore, its Cross Connection Manual contains the requirements for new and existing customers for type of back flow prevention device. Specifically, a testable backflow device is mandatory for all commercial accounts.

After Aqua acquires a system, it will review customer accounts to determine what correct devices are required to protect its water supply. TR 66. Aqua does not grandfather safety. TR 66-67. The lack of compliance with Aqua’s Cross Connection Control Program increases the potential risk to the general public and potable water supply. TR 69. It is in the public interest that Aqua has a Cross Connection Control Program to ensure that there is a supply of clean, good, safe water for all of its customers. TR 68-69. There is a direct cost to Aqua when there is a contamination situation which is spread over all classes of customers. TR 69. Aqua’s policy is to prevent all contamination rather than risk a potential situation. TR 69.

Aqua’s Commission-approved Tariff defines how accounts are classified. Aqua Exhibit 1, TR 82. A commercial account is defined, *inter alia*, as including a building consisting of more than two dwelling units. Aqua Exhibit 1, TR 52. Once a dwelling unit exceeds two units, it is classified as a commercial account regardless of the end use. Aqua does not make

an exception with its classification of accounts which would permit a customer with more than two residential units to be classified as a residential account. TR 67. As witness Fasbinder testified, Aqua is not always notified when a customer changes the usage of the particular property. TR 67-68. As the Complainant testified, he reconfigured the premise at 1414 so that 6 units are now served off one meter. Finally, it should be noted that an apartment building is specifically stated in the definition of a commercial account. Aqua Exhibit 1, TR 53. Clearly, the premise at 1414, has always consisted of more than 2 residential units, has been properly classified as a commercial account.

Witness Fasbinder has participated in studies that reviewed information and rationale for the classification of residential and commercial accounts. One reason for the classification¹ is based on the degree of risks. TR 67. As the number of residential units expand, the degree of hazard increases. TR 68. The more units in a building increase the potential that there will be a change of usage from a residence to a beauty salon or a residence to a dental office. TR 74-75. Every cross connection on the Aqua system requires a backflow device and the type of device hinges on the degree of hazard. TR 78.

The premise at 1414 has at all times had more than two residential units and is properly classified as a commercial account. TR 52.

Legal Burden

The party filing the complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, a complainant must show that the utility is responsible or accountable for the problem described in the complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa.C.S. § 701.

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990);

¹ There are other ratemaking reasons for the classification of accounts.

Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 134 Pa. Cmwlth. 218, 221-222, 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Commonwealth, PA Public Utility Comm'n*, 67 Pa. Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 154 Pa. Cmwlth. 21, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

Under these principles the Complainant, as the party seeking relief, has the burden of proof. In this case, the Complainant has the burden of proving, by a preponderance of the evidence, that the Respondent is responsible or accountable for the problem described in his complaint. *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976).

Discussion

The issue in this proceeding is whether the Complainant sufficiently satisfied his burden of proof that the account for 1414 has been improperly classified as a commercial account which requires a testable backflow device.

Section 1501 of the Public Utility Code states, in part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such Service and facilities shall be in conformity with the regulations and orders of the commission.

Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules

and regulations governing the conditions under which it shall be required to render service.

In the present proceedings, Aqua's Cross Connection Control Program is in place to satisfy its absolute obligation to provide safe and reasonable service to the general public. The requirement that a customer have a backflow device is set forth in its Commission-approved Tariff and is applicable to all customers without exception. A utility's approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v Bell Telephone Co. of PA*, 32 Pa. Cmwlth. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v Pa. PUC*, 63 Pa. Cmwlth., 238, 437 A.2d 1067 (1981); *Penelec v Pa PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995) Aqua does work with customers to provide more time if there is a financial hardship to install or test the backflow device, TR 70. However, Aqua does not grandfather safety nor does Aqua waive its requirements that all commercial accounts must install, maintain and test the required backflow device. TR 66-67. The Commission has reviewed the issue of the testing requirement and has concluded that utilities have included the testing requirement in their tariff to comply with DEP mandates. *Polites v. Aqua Pennsylvania, Inc.*, Docket No. C-20055157 (Order entered November 13, 2006).

The Complainant asserts that residential units, regardless of the number of units, should be classified as a residential account and not a commercial account. As witness Fasbinder testified:

- A. I think this is the whole crux of the issue here. His definition that he wants for a commercial account and his definition for a residential account, he has a different definition from the PUC's definition. The definition for residential property is if you have two properties or less, this is residential.

Judge Jones: Two units?

The Witness:

- A. Two dwelling units or less, it is classified as a residential unit. That is what the risks are based on. There has [sic] been studies which I have been a part of, collecting information for classifying different commercial and residential accounts and we had to go around each of the classification and Public Utility gathers this information and determined that any residence-more than two residence, if it is one meter, acts like a commercial account and as such they have different rates for it. So it is not our definition. It is what the studies have come up with and what the Utilities has [sic] put a line on and say this is the definition. It could be one house or it could be an apartment building. Under his definition,

that apartment building with a hundred units or two hundred units, he is saying has the same degree of hazard. Number one it doesn't and the other segregation here is, if you have more than two units, it is more of a tendency to have other usage for that water, like putting in a hair salon; putting in a dentist office. That usage changes and we don't get notified, so if you are out there a commercial property and you put up a testable device in, that way we are protected against the potential hazards.

TR 67-68.

The Complainant has only offered his unsubstantiated opinion of how Aqua should classify the account for the premise at 1414 since, in his opinion, the end use is residential in nature. Aqua does not make an exception with its classification of accounts which would permit a customer with more than two residential units to be classified as a residential account.

Aqua has applied its Cross Connection Control Program consistent with its Commission-approved Tariffs. No exceptions have been granted which would permit a commercial account to continue receiving water service without the installation and testing of a backflow device. The requirements for its Cross Connection Control Program, set forth in its Commission-approved Tariffs, are reasonable and are not applied in an arbitrary or capricious manner. The Complainant has not introduced any evidence that supports his Complaint.

Mere opinion regardless of how strenuously held is not record evidence. While the Complainant downplays the potential for a cross connection problem, Aqua has the absolute duty to protect the public water supply. The Complainant has failed to carry his burden of proof and his Complaint should be dismissed.

Proposed Findings of Fact

1. The Complainant is a general contractor with no other certifications. TR 23, 37.
2. The Complainant and his wife own the property at 1414 Farragut Street ("1414") and 1416 Farragut Street ("1416"), Bristol, PA. TR 34.
3. Prior to the filing of the Complaint, the premise at 1414 consisted of four residential units and a store front office which were all served by one meter. TR 36
4. Prior to the filing of the Complaint, the premise at 1416 consisted of two residential units and a store front office which were all served by one meter. TR 36
5. After the filing of the Complaint, the Complainant reconfigured the space so that the meter attached to 1414 serves six residential units. TR 36.

6. After the filing of the Complaint, the Complainant reconfigured the space so that the meter attached to 1416 serves the two store front offices which have been rented as a beauty shop. TR 36.
7. The Complainant was currently installing a backflow device for the beauty shop located at 1416. TR 37.
8. Matthew Fasbinder is the Field Service Manager for Aqua and oversees the Cross-Connection Control Programs in both testing and installations. TR 47-48.
9. Matthew Fasbinder holds an Associate Degree in Construction Technology from Williamson's Trade School and a Bachelor of Science in Civil Engineering Degree from Drexel University. TR 47.
10. Matthew Fasbinder holds a certificate for testing Backflow Preventers from both the New England Water Works Association and the American Society of Sanitary Engineering, as well as being a proctor for administering the testing certificates. TR 48.
11. Matthew Fasbinder personally prepared the condensed version of Aqua's Cross Connection Control Manual. TR 50.
12. Aqua's Tariff classifies an account as commercial when more than two residential units are served off of one meter. TR 52, Aqua Exhibit 1, page 1.
13. Aqua's Cross Connection Control Program is designed to protect the public water supply against potential hazards in its water system. TR 53.
14. Aqua's Tariff defines a cross connection as created when a customer connects to the Aqua's distribution system. TR 54. Aqua Exhibit 1, p. 1
15. Aqua has a containment program which means for every service tap in its system, Aqua requires the customer to have a mechanical device which is a backflow preventer to satisfy the cross connection to keep anything from coming back in the water supply. TR 54-55.
16. Aqua's policy for new construction, whether residential, commercial or industrial is to require a backflow device before water is delivered to the property. TR 56.
17. The degree of hazard determines the type of device that is required. TR 56.
18. DEP uses the term "degree of hazard" in its Manual. Aqua Exhibit 3, TR 56.
19. DEP suggests that a residential double-check valve is adequate for the degree of hazard for a residential unit or less than two residential units. TR 57.
20. A testable double check valve is required for a residential unit if that unit has a lawn sprinkler or irrigation system. TR 57.
21. The usage at the property and the degree of hazard is what determines what type of backflow device is required. TR 57-58.

22. Whether a backflow device is testable yearly depends on the usage and the degree of hazard. TR 57.
23. Aqua acquired the system which serves the premise at 1414 Farragut Street from Bristol Borough. TR 58.
24. Aqua notified the former customers of Bristol Borough regarding its Cross Connection Control and Testing program by concentrating first on those customers with the highest degree of hazard. TR 58-59.
25. Aqua has a detailed program/process for notifying customers (regardless of the class of customer) that a backflow device needed to be installed. TR 59-61.
26. Aqua does not perform the testing of the backflow devices but does send an approved list to customers who have been certified from the New England Water Works or ASSC. TR 60-1
27. Aqua witness Fasbinder personally drafted the condensed version of Aqua's Cross Connection Program indicating the law, regulations and type of device required. Aqua Exhibit 4, TR 50, 61-62.
28. DEP has published a comprehensive manual designed to provide necessary, useful information to public water suppliers concerning the state's Safe Drinking Water program. Aqua Exhibit 3, TR 62-66.
29. The DEP Manual does not depict every scenario that may exist. TR 63.
30. The DEP Manual states that where a cross connection is to be maintained that a backflow device is required. Aqua Exhibit 3, TR 63-64.
31. Aqua utilized the DEP Manual to formulate its Cross Connection Manual and is consistent with the DEP Manual. Aqua Exhibit 4, TR 64.
32. Aqua's Tariff states that a customer with an existing connection to its distribution system will furnish, install and maintain a company approved backflow prevention, cross connection, or other special device at the company's request. Aqua Exhibit 1, TR 65-66.
33. After Aqua acquires a system, it will review customer accounts to determine what correct devices are required to protect its water supply. TR 66.
34. Aqua does not grandfather safety. TR 66-67.
35. Aqua does not make an exception with its classification of accounts which would permit a customer with more than two residential units to be classified as a residential account. TR 67.
36. Witness Fasbinder has participated in studies that reviewed information and rationale for the classification of residential and commercial accounts. The classification is based on the degree of risks. TR 67.

37. Aqua is not always notified when a customer changes the usage of the particular property. TR 67-68.
38. As the number of residential units expands the degree of hazard increases. TR 68.
39. It is in the public interest that Aqua has a Cross Connection Control Program to ensure that there is a supply of clean, good, safe water for all of its customers. TR 68-69.
40. The lack of compliance with Aqua's Cross Connection Manual increases the potential risk to the general public and potable water supply. TR 69.
41. There is a direct cost to Aqua when there is a contamination situation which is spread over all classes of customers. TR 69.
42. Aqua's policy is to prevent all contamination rather than risk a potential situation. TR 69.
43. The more units in a building increase the potential that there will be a change of usage from a residence to a beauty salon or a residence to a dental office. TR 74-75.
44. Every cross connection on the Aqua system requires a backflow device and the type of device hinges on the degree of hazard. TR 78.
45. The DEP Manual is a partial list and is not intended to supplant any ordinance or standards developed by the water company. Aqua Exhibit 3, TR 80.
46. Aqua's Tariff defines how accounts are classified. Aqua Exhibit 1, TR 82.
47. There is no situation where DEP says that there is no degree of hazard. TR 82.
48. The DEP Manual is a guideline for companies to evaluate and determine what is appropriate for their respective system. Aqua Exhibit 3, TR 82.

Conclusions of Law

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C. S. §§102, 701, 1501.
2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa. C. S. § 332(a).
3. A utility's approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v Bell Telephone Co. of PA*, 32 Pa. Cmwlth. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v Pa. PUC*, 63 Pa. Cmwlth., 238, 437 A.2d 1067 (1981); *Penelec v Pa PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995)
4. Water utilities have included the testing requirement for backflow prevention devices in their tariff to comply with DEP mandates. *Polites v. Aqua Pennsylvania, Inc.*, Docket No. C-20055157 (Order entered November 13, 2006).

5. The Complainant has not met his burden of proof as to the inadequate and unreasonable service and therefore, his Complaint is properly denied. 66 Pa. C. S. § 332(a).

Conclusion

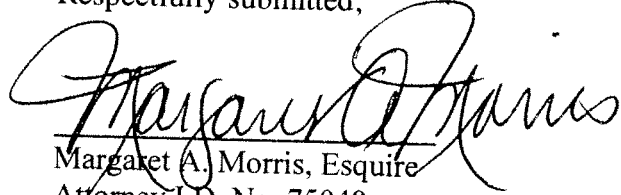
Based on the record evidence, it is clear that the Complainant has not met his burden of proof that Aqua's enforcement of its Cross Connection Control Program is done in an arbitrary or capricious manner. The account at issue in this proceeding has been properly classified as commercial and is required to have a testable backflow device. The Complainant's assertion that residential units regardless of the number do not create a hazardous condition and should not require a testable backflow device is not supported by record evidence. The Complainant disagrees with Aqua's definition of its classes of customers. Mere opinion or belief, regardless of how strongly held is not evidence.

Aqua's Cross Connection Control Program is consistent with federal and state law. Its Commission-approved Tariffs define that more than two residential units constitutes a commercial account and that all commercial must have a testable backflow device. Aqua has an absolute obligation to protect its water supply against the potential for contamination. The record evidence clearly supports its position that the Complainant's account is properly classified.

Aqua at all times has provided reasonable and adequate service consistent with both state and federal laws, Commission regulations and orders.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Jerry Cordisco at Docket No. C-2009-2137247.

Respectfully submitted,



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