

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEKSEY KONOVALOV

Complainant

VS

AQUA PENNSYLVANIA, INC.

Respondent

Docket No. C-2010-2212641

ALEKSEY KONOVALOV'S REPLY BRIEF

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Aqua's Main Brief Misrepresented Complainant's Position

In her main brief, Ms. Morris stated:

“The Complainant has only offered his unsubstantiated opinion that he should not be required to test the backflow device on his fire service and that Aqua’s Tariff should not apply to his account. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.”

However, as a basis of my opinion, in my formal complaint (attached to this brief along with the informal complaint) I explicitly provided a reference to the 25 Pa Code §109.709 that in its paragraph (b)(4) states that only non-residential customers are required to test backflow devices in accordance with a time schedule developed by a water supplier such as Aqua Pennsylvania Inc.

During our hearing I mentioned that exact same reference and asked to clarify a discrepancy between what this specific section of the law states and how the respondent implements it for its residential customers.

Mr. Fasbinder, an employee of Aqua Pennsylvania who also represented the respondent during the hearing, was the only person who tried to answer my question – for the first time in the entire process that started when I initially tried to clarify the question with the respondent, then with its corporate lawyer, then through a submission of my informal complaint, then with Ms. Morris, and finally through the submission of the formal complaint.

When answering the question, Mr. Fasbinder stated that his company “extended” the law to apply it to residential customers as well.

On my next question based on what law his company made that extension, Mr. Fasbinder acknowledged that does not know that.

In support of my opinion on the issue, I also provided a reference to how another public water supplier, Pennsylvania-American Water Company, implements the same Cross Connection and

Backflow Prevention program (in accordance with 25 Pa Code §109.709). Particularly on its web-site (<http://www.amwater.com/paaw/ensuring-water-quality/cross-connectionqa.html>) and in the company's tariff (<http://www.amwater.com/files/EffectiveTariffWater-PAP.U.C.-No.4.pdf>, §4.6), this supplier references the same law and states that applies the program to non-residential customers only as it relates to the requirement of annual backflow prevention device testing.

The same information was provided in my formal complaint and at the hearing during which Ms. Morris did not comment any part of this information and only questioned my comprehension skills implying that I misunderstood the information listed at the Pennsylvania American Water's web-site and its tariff.

"No Jurisdiction"

In the main brief the respondent requests to dismiss the complaint on the ground of lack of jurisdiction by the commission. In support of this request, the respondent included references to a number of cases. However, in all these cases, where the complainants requested to remove the requirement of annual backflow device testing, these complainants were non-residential customers effectively requesting to change the law by making them an exempt from the definition of non-residential customers as it is stated in 25 Pa Code §109.709.

The complaint is not about making a request to make an exemption from the definition provided in 25 Pa Code §109.709, it is about the interpretation of that law in the respondent's tariff reviewed and approved by the commission.

The tariffs of any public utility also subject to the jurisdiction of a Federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by such Federal regulatory body, 66 Pa.C.S.A. § 1302.

The commission has general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such

regulations, **not inconsistent with law**, as may be necessary or proper in the exercise of its powers or for the performance of its duties, 66 Pa.C.S.A. § 501, (b).

It is under the commission jurisdiction to review and approve the respondent's tariff and the commission has the power to make sure that the tariff is consistent with the law that tariff implements and that the law is implemented by all public water suppliers in one consistent format.

Conclusion

In its main brief, the respondent fails to address the complaint in its entirety and only offers its dismissal based on lack of jurisdiction by providing references to unrelated cases and dismissing or misrepresenting the information provided in the formal complaint and/or during hearing.

The respondent did not explain how and why it allowed different interpretation of 25 Pa Code §109.709 in the respondent's tariff by extending the requirement of annual backflow prevention device testing on to residential customers.

The issue of different interpretation and implementation of the same Cross Connection and Backflow Prevention program by the two public water suppliers, as it relates to the requirement for residential customers to test backflow prevention device on annual basis, has not been addressed either.

Given the circumstances, today residential customers of Aqua are put in unfair conditions when they are forced to pay additional fees (for testing backflow prevention devices) to maintain their water connection.

Based on the outlined above reasons, I would like to request that my formal complaint be adjudicated by directing the respondent to modify its tariff to be compliant with 25 Pa Code §109.709, that is remove the requirement of annual testing of backflow prevention devices from residential customers of Aqua.

Sincerely,
Aleksey Konovalov

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Aleksey Konovalov

Street/P.O. Box 325 Shetland Dr Apt # _____

City Exton State Pennsylvania Zip 19341

County Chester County

Daytime Telephone Number Where We Can Contact You: (610) 203-0062

E-mail Address (optional): alekseykonovalov@gmail.com

Utility Account Number 0004680030311332
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

AQUA PENNSYLVANIA INC

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER
(e.g., taxi, moving company, limousine)

TELEPHONE

(local, long distance)

4. **COMPLAINT (check one)**

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

There are incorrect charges on my bill.

There is a reliability, safety or quality problem with my utility service.

I received a notice that my utility service is being terminated.

I would like a payment agreement.

Other (explain).

B. **State the facts of your complaint.**

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

On September 29, 2009 I received "Re: 10-Day Reminder Shut-off Notice" letter from Aqua Pennsylvania Inc (reference # G007972) where the company required that I test a backflow device installed in my townhouse at my own expense and send a report card with test results to the company. As a basis for its requirement, the company included in the same letter a reference to the Pennsylvania Code, Title 25 Environmental Protection, Department of Environmental Protection, Chapter 109.

When reading the referenced Chapter 109, I only found the following parts pertinent to the use of backflow prevention devices:

1) Subchapter G, System Management Responsibilities, Section 109.709, states that **residential customers are only required to provide backflow devices** (paragraph (a)(1) of the section 109.709) and

2) Only **nonresidential customers** are additionally required to test the same devices in accordance with a time schedule developed by a water supplier such as Aqua Pennsylvania Inc (paragraph (b)(4) of the section 109.709)

Nowhere in the chapter 109 could I find any statement confirming that residential customers are required to test their backflow devices and at their own expense.

Although, this information was communicated to Mr. Fasbinder, Manager of Customer Field Services, and Mrs. Hopper, Attorney at Law (both are employees of Aqua Pennsylvania, it was dismissed and, as a result, on October 5, 2009 I had to submit an informal complaint to PUC with a request to confirm if Aqua Pennsylvania had the right to demand that I test the backflow device and my expense. The complaint was submitted on 10/07/09 with a BCS #2603578 and assigned to Mrs. Traci Mora.

On April 3, 2010 I received a response from Mrs. Mora stating that Aqua Pennsylvania has the right to require that I install a blackflow device in my house. No clarification about my actual request was provided.

On April 6, 2010 I called Mrs. Mora and left a voice message asking to clarify what to do next about my informal complaint that was not addressed.

On October 8, 2010 I received another similar letter from Aqua Pennsylvania again stating that I'm required to test my backflow device.

On October 9 and October 11, 2010 I contacted Mr. Fasbinder and Mrs. Hopper via email asking to clarify my question to avoid a submission of a formal complaint. In my request, particularly addressed to Mrs. Hopper, I explicitly stated that my complaint was never about a requirement of installation of the device but the requirement to test that device on annual basis at my expense. But neither Mr. Fasbinder nor Mrs. Hopper provided any clarification, although, Mr. Fasbinder confirmed receipt of my request.

On November 20, 2010 I received another "Re: 10-Day Reminder Shut-off Notice" letter with exact same requirement to test the device and since Aqua Pennsylvania never addressed my request have no choice but to submit this complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

1. Clarify if Aqua Pennsylvania can require that its residential customers have to test their backflow prevention devices at their own expense on annual basis.
2. If the Aqua Pennsylvania's requirement is compliant with the Pennsylvania Code, clarify questions 2 through 4 from my informal complaint (attached to this complaint).

3. If Aqua Pennsylvania cannot require that its residential customers have to test their backflow prevention devices at their own expense
 - a. Issue an order to Aqua Pennsylvania mandating that the company removes the requirement and stops sending me all notices in this regard.
 - b. Order Aqua Pennsylvania to refund my expenses (estimated at \$150) incurred to test my backflow device in 2008 (a corresponding receipt will be provided at the time of the trial, if recovered).

Informal Complaint

Dear Mr/Ms:

In August 2009 I received a letter from Aqua Pennsylvania Inc stating that I'm required to test a backflow prevention device installed as a part of a fire sprinkler system in my town-house. The letter also stated that the service class for my account was Commercial.

During the same month I called the Cross Connection Control Department of Aqua Pennsylvania Inc at 610-328-9510 and, after clarifying that my property was residential and had never been commercial, was told that this mistake will be corrected, that I don't have to test the device, and that I could disregard the letter.

In the beginning of September 2009 I received a second notice that still listed my property as commercial and required me to test the device. Following the note to disregard the first letter, I dismissed the second letter as well.

However, on September 29th, 2009, I received a third notice titled "Re: 10-Day Reminder Shut-Off Notice" that still qualified my property as commercial and warned me that if I don't present test results by 10/10/09 the company will shut off the water at my property.

On September 30th, 2009, I contacted Ms Lori, a customer service representative from the same Cross Connection Control Department, and tried to clarify why I was still receiving notices to test the device and was told that I'm required to do so regardless of a type of my property (commercial or residential). Ms Lori gave me a reference to a company's internal supplement #86 to Water-PA P.U.C #1 to support her statement. My argument that, according to the Pennsylvania Code (Title 25 Environmental Protection, Department of Environmental Protection, Chapter 109 Safe Drinking Water, Subchapter G, System Management Responsibilities, Section 109.709) only non-residential customers are required to test backflow prevention devices annually was dismissed and I requested to speak with Ms Lori's manager, Mr. Fasbinder.

In my conversation with Mr. Fasbinder, he maintained the position that, based on the Supplement #86, Aqua Pennsylvania Inc has the right to require any customer (residential or commercial) to test a backflow prevention device at the customer's expense every year and shut off the water at the customer's property if the customer refuses to run the test. I could only achieve an agreement to receive a copy of the mentioned Supplement #86 via email, to correct the mistake of my property being identified in the Aqua Pennsylvania's database as commercial, and to extend the deadline, by which I have to submit the test results of my backflow prevention device, until October 30th 2009. After the new deadline the water supply service will be shut off if I don't comply.

Given the circumstances of the issue, I would very much appreciate if you could help resolve this issue by addressing the following aspects.

- 1) Does Aqua Pennsylvania Inc have the right to demand that not only nonresidential but residential customers as well are required to test their backflow prevention devices at the

customer's expense every year, even if the Pennsylvania Code, Title 25 Environmental Protection, Department of Environmental Protection, Chapter 109 Safe Drinking Water, Subchapter G, System Management Responsibilities, Section 109.709, states that residential customers are only required to provide backflow devices (paragraph (a)(1) of the section 109.709) and only nonresidential customers are additionally required to test the same devices in accordance with a time schedule developed by a water supplier such as Aqua Pennsylvania Inc (paragraph (b)(4) of the section 109.709)? If no, can the Pennsylvania Public Utility Commission assist in resolving the issue?

- 2) If Aqua Pennsylvania Inc can enforce a part of its policy regarding the mandated testing of backflow device by residential customers at the customer's expense, could you please clarify according to what federal/state/local regulations one water supplier, such as Aqua Pennsylvania Inc, can require both residential and nonresidential customers to adhere to all portions of the supplier's implementation of the cross-connection program whereas another water supplier, such, for example, as Pennsylvania American Water - <http://www.amwater.com/paaw/ensuring-water-quality/cross-connectionqa.html>, does so (mandatory test of backflow devices) only for its nonresidential customers.
- 3) If Aqua Pennsylvania Inc can enforce a part of its policy regarding the mandated testing of backflow device by residential customers at the customer's expense, can the water supplier use my refusal to test the device as a basis to terminate the water supply at my property even though this type of refusal is not listed as a reason to shut off the service in the Responsible Utility Customer Protection Act (http://www.puc.state.pa.us/general/consumer_ed/pdf/Act201-Water.pdf)? I, as a customer, have maintained my account at Aqua Pennsylvania Inc in good standing since the account was opened on my name in September 2003.
- 4) If Aqua Pennsylvania Inc can enforce a part of its policy regarding the mandated testing of backflow device by residential customers at the customer's expense, can it do so selectively for some residential customers only, even if other residential customers who live in the same geographical and administrative location have the same type of property, cross-connection and backflow prevention device? In my case my property, located at 325 Shetland Dr, Exton PA, 19341, is a part of a home owners association called Evian. The association includes 284 townhomes and at least half of them have the same type of cross-connections and backflow prevention devices. The townhomes are used exclusively for residential purpose and, to the best of my knowledge, none of the other owners have ever received any notice from Aqua Pennsylvania Inc requiring them to test their backflow devices at the customer's expense on annual basis. If such a selective implementation of the cross-connection program is permitted could you provide references to federal/state/local regulations that allow that?

Sincerely,
Aleksey