



a. 52 Pa.Code § 56.83. Unauthorized termination of service. Unless expressly and specifically authorized by the Commission, service may not be terminated nor will a termination notice be sent for any of the following reasons: (6) Noncompliance with a payment agreement prior to the due date of (the bill which forms the basis of the agreement).

**WHEREFORE**, did Respondent violate the above law by terminating service six days prior to the October 1, 2013, due date listed on the monthly agreement bill?

2. On September 26, 2013, Respondent emailed Petitioner a Medical Certificate (Med Cert) Petitioner returned with this message: "Please find attached signed Med Cert Form. Along with the original medical assessment form previously submitted. Please contact me @ [215-543-4192](tel:215-543-4192). My doctor's phone number is [215-863-6110](tel:215-863-6110) and fax [215-863-6121](tel:215-863-6121). As stated to customer service representatives. My daughter and I have been sick the past few days so we have been in the house trying not to get other people sick. We have already suffered doing without water for one day. Another day without water would certainly result in inhuman treatment of this customer and child." **(Appendix II, p1 )**.

3. Respondent claims the (Med Cert) was not received until September 30, 2013, and duty did not exist to contact Dr. Prado who signed the (Med Cert) on September 26, 2013, **(Exhibit C)**. Despite receiving repeated notices from Petitioner that a medical condition existed. **(Appendix II, p2-3 )**. Even if it could be reasoned the signed (Med Cert) was not faxed to Respondent on September 26, 2013, 52 Pa.Code § 56.113., makes clear a duty existed for Respondent to call Dr. Prado after receiving Petitioner's repeated notice that a medical condition existed as follows:

52 Pa.Code § 56.113. Medical certifications. Certifications initially may be written or oral, subject to the right of the public utility to verify the certification by calling the physician or nurse practitioner or to require written verification within 7 days.

Certifications, whether written or oral, must include the following: (1) The name and address of the customer or applicant in whose name the account is registered. (2) The name and address of the afflicted person and relationship to the customer or applicant. (3) The nature and anticipated length of the affliction. (4) The specific reason for which the service is required. (5) The name, office address and telephone number of the certifying physician or nurse practitioner.

52 Pa.Code § 56.111. General provision. A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

52 Pa.Code § 56.115. Restoration of service. When service is required to be restored under this section and § § 56.114, 56.116—56.118 and 56.191, the public utility shall make a diligent effort to have service restored on the day of receipt of the medical certification. In any case, service shall be reconnected within 24 hours. Each public utility shall have employees available or on call to restore service in emergencies.

**WHEREFORE**, did Respondent's refusal to contact Dr. Prado after receiving repeated notice that a medical condition existed violate 52 Pa.Code. § 56.113, and six day failure to restore service violated 52 Pa.Code § 56.111, and 52 Pa.Code § 56.115?

4. On November 12, 2013, Petitioner in accordance with 52 Pa.Code. § 56.141. Dispute procedures provided Respondent this Dispute: "Regarding the water my daughter and I need to stay alive being shut off on 11/18/13 for \$191.00. \$50.00 of which is claimed to be owed for not asking me to shut the water until we settled are of the differences. I recently paid \$100.00 to Aqua out of a small settlement received from one cases I am prosecuting or plan to pro se. To cover Nov/Dec usage. Reduced usage will

be demonstrated for those months. All other charges and fees remain in dispute until further investigation can determine the truth or falsity of them. THEREFORE YOU ARE HEREBY BEING ADVISED OF MY INTENT TO FILE SUIT AGAINST AQUA AMERICA ON OR BEFORE JANUARY 2014. THEREFORE YOU SHOULD FORWARD THIS PAPER TO YOUR LEGAL DEPARTMENT AT ONCE.”(Appendix II, p6 ).

5. On November 14, 2013, after Respondent answered questions about service terminations Petitioner in furtherance of his complaint made this request: “Request a copy of my complete customer history with Aqua.” Respondent replied: “I have put this request in for a complete summary. Please allow up to 30 days to receive them.” (Appendix II, p6-10). Resulted in Respondent posting termination notices on Petitioners home not long after on November 26, 2013, December 3, 2013, and terminated service on December 12, 2013, prior to the “30 day to receive them.” Showing what happens to customer that exercise their First Amendment right to make a complaint against Respondent. (Exhibits D-F).

52 Pa.Code.§ 56.92. Notice when dispute pending. A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void.

**WHEREFORE**, did Respondent acts of posting notices and terminating service after receiving the above Dispute and Information Request in order to further a First Amendment right to file a complaint, not only demonstrate the lack of due care, but retaliation in light of the above law that was promulgated to protect customers against?

6. On December 16, 2013, the Medical Certification issued by Dr. Prado, along with a copy of the November 12, 2013, email complaint, acceptance, (Appendix II, p6),

and law was Emailed to Respondent representative Donna Alston, and PUC Supervisor Kevin Ford that day. However, it was not until two days later on December 18, 2013, and only after Petitioner emailed this question to Respondent: “Does Aqua recognize that it is illegal to terminate service of home owners with medical condition raising a two year old. After receiving the above stated complaint, and information request?”

**(Appendix II, 11).**

**7. Respondent Answer of Aqua Pennsylvania, Inc. To the complaint of Frank**

Nellom. Page 6, Court Four in pertinent part:

**a.** “the Respondent denies that the restoration of service on December 18, 2013 violated 52 Pa. Code § 56,115. The Respondent specifically avers that the provisions of Section 56.115 were never relevant since the Complainant's service was not restored because of a valid med cert; service was restored because of a business decision of the Company.”

**b.** The Respondent specifically denies that the restoration of service on December 18, 2013 was an admission that service had been “illegally” terminated. The Company specifically avers that it made a business decision on December 16, 2013, in keeping with the letter and spirit of Chapter 56, to restore service while it investigated the conflicting information on the presented med cert.

**c.** By way of further answer, the Respondent denies that the voice message left by a Company representative on December 16, 2013, to schedule the restoration appointment constituted an admission of any wrongdoing or liability.

**8 a., and b.,** Taken as true violates 52 Pa.Code § 56.111. Pertinent part: “The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.”

**c.** Taken as true represents a bald face lie Respondent is required to know the call made by John Kennedy was in fact on December 18, 2013. At 2:12 PM. (See true

and correct transcribed voice mail of John Kennedy copied from Petitioner's Google voice mail account where it remains for anyone to review). **(See Page 6, and Google Voice transcription Appendix-III).**

**WHEREFORE**, did Respondent's act of restoring service right after that notice evince an admission that the termination had in fact been illegal to begin with, and is Respondent Answer of Aqua Pennsylvania, Inc. To the complaint of Frank Nellom. Page 6, Court Four in fact false?

**9.** On January 15, 2014, Petitioner filed complaint in the Delaware County Court of Common Pleas against Respondent as indicated in his November 12, 2013, notice to Respondent.

**10.** On October 16, 2014, after Petitioner's Second Amended Complaint, and the Respondent's preliminary objections were filed with the trial Court. The trial Court sustained Respondent's preliminary objections to the extent that all liability claims asserted in the Second Amended Complaint are bifurcated from the damage claims and referred to the Public Utility Commission for disposition. Plaintiff shall effectuate this referral by filing the necessary action with the Public Utility Commission. Trial of this action with respect to damages is hereby stayed pending disposition of Plaintiffs claims before the Public Utility Commission, including all appeals. **(Exhibit G).**

**11.** On October 24, 2014, eight days after the Trial Court's ruling requiring Respondent to account for its actions, did Respondent begin posting notices again that day, and on October 30, 2014. **(Exhibit H-I).**

**12.** On October 31, 2014, Petitioner received notice that the complaint as ordered by the trial Court to be filed had been properly filed with the PUC, therefore,

forwarded a copy of the notice and complaint to Respondent who acknowledged receipt that day. **(Exhibit J)**.

**13.** On November 3, 2014, Petitioner indicated to Respondent Counsel that “In any case you should notify Aqua that they would be in violation of law for discontinuing service while complaints exist before both Trial Court and PUC.” **(Exhibit K)**. However, Respondent terminated service that day without having requested permission from either. Not only knowing a medical condition existed, but doing so would demonstrate its disregard for the power and authority of Trial Court and PUC to protect against its retaliatory acts against Petitioner for having taken legal action against Respondent. Conversely, Judicial notice must be taken on the fact that Respondent waited ten months after this action began in the Trial Court on January 15, 2014, to take action against Petitioner. **(Exhibit L)**.

**14.** On November 5, 2014, Dr. Harvey Soifen issued Respondent a Medical Certification. **(Exhibit M)**. On November 6, 2014, Respondent restored service.

**15.** On March 18, 2015, the honorable Administrative Law Judge Mark A. Hoyer canceled the telephone Hearing scheduled that day in order for the matter to be heard on June 10, 2015, by the honorable Administrative Law Judge Darlene Heep.

**16.** On June 10, 2015, during the hearing Respondent John Kennedy testified regarding his being responsible for the terminations and restorations, and Petitioner's complaint was not even considered a complaint as far as he was concerned, thus, as far as he was concern Petitioner's First, and Fourteenth amendment right did not exist.

### **II-Summary of the Argument:**

**17.** Petitioner avers Respondent is clearly demonstrated acting without due care

in terminating service six days prior to the October 1, 2013, due date listed on an agreement bill in violations of 52 Pa.Code § 56.83. Refusing to provide the due care of contacting Dr. Prado after notice that a medical condition existed with Petitioner and his child too sick to even get to Dr. Prado's office provides evidence of a wanton violation of 52 Pa.Code § 56.113. Refusing to prevent notices from being posted on Petitioner's home and terminating service after receiving Petitioner's complaint provides evidence of another wanton violation of 52 Pa.Code. § 56.92. Failure to prevent ten months into litigation the retaliatory act of terminating service eight days after an adverse decision of the Trial Court provides evidence of another wanton violation of 52 Pa.Code. § 56.92. Admission to the Honorable Judge on June 10, 2015, that the act of restoring service during dispute on December 18, 2013, was not even based upon the Medical Certification received, but rather a business decision having nothing to do with public health and safety also evince a wanton violation of 52 Pa.Code § 56.111. And making false statement about the date of Respondent John Kennedy's call represents compelling evidence of the deliberateness of Respondent's acts to warrant relief.

### **III-Argument:**

**18.** The United States Supreme Court recognized that, “the discontinuance of water or heating for even short periods of time may threaten health and safety.” *Memphis Light, Gas & Water Division v. Craft* , 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978). “Even a temporary termination of water service can be devastating to the customer, *Dedeke v. Rural Water Dist.* NO. 5 No. 51,281, 229 Kan. 242, @247, 623 P.2d 1324 (1981), that water service and other public utility services are considered to be "entitlements" or property rights protected by the due process clause of the

Fourteenth Amendment. Citing *Memphis, supra*; *Stanford v. Gas Service Company*, [346 F.Supp. 717](#), 721 (D. Kan. 1972) (life sustaining services fall within protected "rights and entitlements"), cited with approval in *Leek v. Theis*, [217 Kan. 784](#), 811, [539 P.2d 304](#) (1975); *Donnelly v. City of Eureka, Kansas*, [399 F.Supp. 64](#) (D. Kan. 1975) (municipal water service is a constitutionally protected entitlement); *Davis v. Weir*, [328 F.Supp. 317](#) (N.D. Ga. 1971) (termination of water service requires due process notice and hearing before termination); *Koger v. Guarino*, [412 F.Supp. 1375](#) (E.D. Pa. 1976). (Water user has a legitimate claim of entitlement to continued water service); contra, *Sterling v. Village of Maywood*, [579 F.2d 1350](#) (7th Cir.1978). Therefore, Respondent cannot claim ignorance of the important duty of care toward the public imposed upon it to carry out in good faith.

**19.** It has been held, in scenarios involving an actor's affirmative conduct, he is generally "under a duty to others to exercise the care of a reasonable man to protect them against an unreasonable risk of harm to them arising out of the act." RESTATEMENT (SECOND) OF TORTS § 302, cmt. a (1965); see also *Cardi & Green, Duty Wars*, 81 S. CAL. L.REV. at 716 (describing the proposition that a defendant owes a duty of care not to act in a way that creates a risk of harm for others as "black letter law repeated by an overwhelming majority of courts"). This duty appropriately undergirds the vast expanse of tort claims in which a defendant's affirmative, risk-causing conduct is in issue. Generally, however, there is no duty to protect or rescue someone who is at risk on account of circumstances the defendant had no role in creating. See, e.g., *Yania v. Bigan*, [397 Pa. 316](#), 321-22, [155 A.2d 343](#), 346 (1959) (citing the Section 314 of the Restatement of Torts for the proposition that a mere

observer has no duty to rescue). See *generally* Cardi & Green, *Duty Wars*, 81 S. CAL. L.REV. at 677. Seebold v. Prison Health Services, Inc., 57 A. 3D 1232, @ 1246 (Pa.2012).

**20.** Here, Respondent mailed Petitioner a monthly bill with the past due amount included in the total with a due date of October 1, 2013,. Yet, claim Petitioner' did not have a reasonable expectation of service to that date, therefore, the termination of service six days before was justified. Conversely, the due care in such an important matter required more to be indicated on that Bill to overcome Petitioner's reliance.

**21.** Next, the circumstances involving Respondent providing a Medical Certification to Petitioner he returned indicating he and his daughter was too sick to get to Dr. Prado's office, therefore, could only provide Dr. Prado's information as an oral certification to require the actual (Med Cert) be provided within seven (7) days under 52 Pa.Code § 56.113. The Medical Certification signed by Dr. Prado that very day provides compelling evidence that it was faxed to Respondent that day. Even setting aside that fact, however, the fact that Respondent refused to call Dr. Prado is clearly unjustified, and served only to establish the lack of due care under the circumstances that rises to the level of being wanton toward the safety of Petitioner and child, and deliberately indifferent to the law Respondent is deemed to know in order to be allowed to operate a utility business in Pennsylvania.

**22.** Next, the circumstances following Petitioner asserting his complaint with a good faith payment to Respondent, resulting in notices posted on his home and termination of service. On June 10, 2015, Respondent John Kennedy after reading Petitioner's November 12, 2013, complaint statement in pertinent: "All other charges

and fees remain in dispute until further investigation can determine the truth or falsity of them. THEREFORE YOU ARE HEREBY BEING ADVISED OF MY INTENT TO FILE SUIT AGAINST AQUA AMERICA ON OR BEFORE JANUARY 2014. THEREFORE YOU SHOULD FORWARD THIS PAPER TO YOUR LEGAL DEPARTMENT AT ONCE.” Insisted on admitting the wanton act to this Honorable Judge that he didn't consider Petitioner's words to constitute a complaint, therefore, notices and termination of service following receipt was justified and legal. Moreover, testified the restoration of service following did not result from the Medical Certification received following, in fact “just a business decision,” not of care nor concern. Removing all doubt regarding the lack of concern for public safety being promoted at the regional executive level.

23. Finally, the adverse action taken against Petitioner and his child ten months into ongoing litigation before the Trial Court, and immediately after being notified of the Complaint being successfully filed with this Public Utility Commission as ordered by the Trial Court is compelling evidence of retaliation, where upon remand Respondent will face a jury of its peers to decide in excess of one million in damages is justified for the unlawful wanton acts of Respondent which demonstrate an unreasonable lack of due care which pose a threat to public safety.

#### **IV-Relief:**

24. Petitioner avers the evidence demonstrate statutory or constitutional rights were violated of which a reasonable person would have known, and Respondent is required to know because of the important nature of providing water service to the public. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982); *Procunier v. Navarette*, [434 U.S. 555](#), 565, 98 S.Ct. 855, 861, 55 L.Ed.2d 24 (1978);

*Wood v. Strickland*, 420 U.S., at 322, 95 S.Ct., at 1001. Therefore, request Respondent being sanction the maximum provided by law for each violation. Whereas, to do otherwise would only encourage more of the same.

Respectfully submitted,

*Frank Nellom*

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Dated: June 18, 2015

**V-Verification:**

I, Frank Nellom, hereby certify that the statements made in the foregoing Brief for Petitioner, and accompanying (Appendix-I Exhibits A through M); (Appendix-II Emails between Petitioner and Respondent from September 26, 2013 to December 18, 2013), and (Appendix-III Voice-mail of John Kennedy dated 12/18/13 2:12 PM) Transcribed by Google Voice-mail are true and correct to the best of my knowledge, information and belief by my signature below make subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

*Frank Nellom*

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Dated: June 18, 2015

**VI-Proof of service:**

I, Frank Nellom, hereby certify a true and correct copy the of foregoing Brief for Petitioner, and accompanying (Appendix-I Exhibits A through M); (Appendix-II Emails between Petitioner and Respondent from September 26, 2013 to December 18, 2013), and (Appendix-III Voice-mail of John Kennedy dated 12/18/13 2:12 PM) Transcribed by Google Voice-mail was served upon Respondent's Counsel of record Margaret A. Morris by Email as practiced on the below date addressed as follows:

mmorris@regerlaw.com

*Frank Nellom*

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