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July 24, 2015

**Via UPS Next Day**

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building, 2 North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**RECEIVED**

JUL 24 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Docket No. C-2014-2450732  
Frank Nellom v. Aqua Pennsylvania Inc.  
Main Brief of Aqua PA**

Dear Secretary Chiavetta:

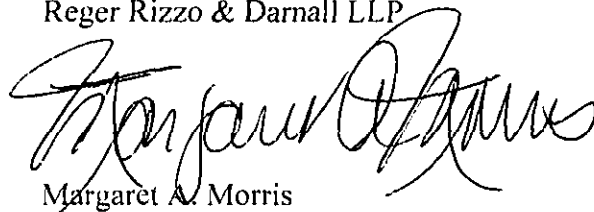
Enclosed for filing are the original and one copy of the Main Brief of Aqua Pennsylvania, Inc. in the above referenced proceeding. Kindly file the original of record and return the date-stamped copy to me in the enclosed self-addressed, stamped envelope.

A copy of the attached Main Brief has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm  
Enclosure

cc: The Honorable Darlene D. Heep, PA Public Utility Commission [w/enc.]  
Frances P. Orth, Esquire, Aqua Pennsylvania Inc. [w/enc.]  
Frank Nellom [w/enc.]

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK NELLOM

v.

AQUA PENNSYLVANIA, INC.

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Docket No. C-2014-2450732

**MAIN BRIEF OF RESPONDENT AQUA PENNSYLVANIA, INC.**

**RECEIVED**

JUL 24 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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Date: July 24, 2015

Counsel for Aqua Pennsylvania, Inc.

## **Introduction**

This matter comes before the Commission as a bifurcated matter to address the allegations of Frank Nellom (Complainant or Mr. Nellom), that Aqua Pennsylvania, Inc. (Aqua or Respondent) violated provisions of regulations at 52 Pa. Code § 56.1 *et seq.* (Chapter 56) in the termination and restoration of his water service on three specific occasions. Mr. Nellom seeks a \$25 million dollar fine for the alleged violations.<sup>1</sup>

In support of its request, Aqua timely submits the following Main Brief as directed. As established by the evidence submitted and as explained in more detail in this Brief, the Complainant has failed utterly to sustain his burden of proving that Aqua committed any violation of the Public Utility Code (Code), the Commission's regulations or orders, or Aqua's own tariff. The terminations at issue were the result of Complainant's non-payment for undisputed charges for the service he consumed. After each termination, his service was timely restored. The terminations and restorations were performed in accordance with the Code and all Commission regulations and requirements. There is no record evidence to sustain a violation or the exorbitant fine as requested. Mr. Nellom's entire case is based on his personal opinion and misguided application of the law governing the terminations and restorations.

## **History of the Proceeding**

On October 31, 2014, Mr. Nellom filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua. In his Complaint, Mr. Nellom stated that it was being filed pursuant to an Order filed on October 17, 2014, by Delaware Court of Common Pleas Judge Christine Fizzano Cannon at Docket 14-000431, which granted Aqua's Preliminary Objections and bifurcated the liability claims asserted in Second Amended Complaint filed by the Complainant in that court. The October 17, 2014 Court Order stayed the proceeding as to the requested damages (compensatory damages in the amount of \$1 million and punitive damages in the amount of \$10 million) and referred to the Commission for determination Complainant's allegation that the Company's terminations of his water service in

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<sup>1</sup> Mr. Nellom is also seeking \$1 million in compensatory damages and \$10 million in punitive damages.

September and December 2013 for non-payment was in violation of various regulations promulgated by the Commission at 52 Pa. Code § 56.1 *et seq.* Five separate counts were included in the Complaint filed with the Commission. As relief, Complainant requested that Respondent be fined. Attached to the Complaint were various documents.

On November 18, 2014, Complainant filed an Amended Formal Complaint, with various attachments. In this Amended Complaint, Mr. Nellom alleged that the termination of his service on November 3, 2014, for non-payment of charges accrued beginning January 24, 2014, violated the October 17, 2014 Court Order in that the Company needed permission from that Court and the Commission to lawfully terminate service for delinquent 2014 charges. He also asserted that the Judge Fizzano Cannon had ruled favorably on his allegations and “doubled the liability.” As relief, Complainant requested that “in addition to relief ordered by the Trial Court, request 25 million dollar fine against Respondent for research program to see if a self propelled (sic) carbon free electric generation device can be realized using a rechargeable battery, motor, generator heads, and controller to produce continuous carbon free (sic) electricity.”

On December 1, 2014, Aqua timely filed an Answer to the Complaint, in which it specifically admitted or denied the material averments as indicated, and explained that since service was established in Complainant’s name on May 24, 2011, he has failed to make timely, monthly payments. Since the start of service in 2011, he has made only eight payments, the last one being \$100.33 on October 24, 2013. After proper notice, service was terminated on September 25, 2013, for non-payment of delinquent charges; it was restored on October 1, 2013, after presentation of a medical certificate (med cert). Service was again terminated for non-payment on December 12, 2013; Aqua made the business decision to restore service on December 18, 2013, as a gesture of good faith even though conflicting med certs.<sup>2</sup> Attached to the Answer were: (1) the October 17, 2014 Court Order; (2) an account statement; and (3) the Bureau of Consumer Services (BCS) decision at BCS #3179316, dated December 18, 2013, which denied Complainant’s informal complaint, finding “no good faith payment history shown.”

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<sup>2</sup> A medical certificate dated December 12, 2013, stated “no medical reason” and that “it would not be especially dangerous” to have water service discontinued; that same medical certificate, dated December 16, 2013, was revised to also state, “patient needs water to take medication.”

On December 9, 2014, Aqua timely filed an Answer to the Amended Complaint, which it specifically admitted or denied the material averments as indicated. Aqua denied that the Company's actions at any time violated its Commission-approved tariff, the Code, Commission regulations and/or Commission orders; and specifically averred that its actions in terminating service on November 3, 2014, were lawful and permitted under the provisions of Chapter 56. Aqua explained that no payments were posted to the account in 2014; the last payment was made on October 24, 2013, in the amount of \$100.33. Service was terminated on November 3, 2014, for delinquent charges in the amount of \$272.76. Service was timely restored on November 6, 2014, upon the presentation of a valid med cert on November 5, 2014. Respondent further explained that the Complainant was advised on several occasions of his obligation to pay current charges while his Complaint for termination of 2013 charges was pending; the amount subject to termination did not include any charges incurred prior to January 8, 2014; and that other than communication with the Company or its counsel seeking a monetary settlement for the alleged violations associated with the two terminations in 2013, the Complainant has not inquired, disputed or challenged any charge on any bill issued in 2014.

On December 18, 2014, Complainant filed a Motion for Summary Judgment, seeking without an evidentiary hearing, a summary determination that Aqua violated the Commission's regulations in: (1) terminating service twice in 2013 for non-payment of 2013 charges; and (2) terminating service once in 2014 for non-payment of 2014 charges. As relief, the Motion requested imposition of a \$25 million fine. The Complainant asserted that "the Aqua documents and the medical certificates" attached to the Motion constitute the "record of evidence in this case" warranting summary relief. On January 7, 2015, Aqua filed an Answer to the Motion, explaining that the Complaint and Amended Complaint raise genuine issues of material fact and that Complainant was not entitled to judgment as a matter of law.

By Initial Telephonic Hearing Notice dated February 12, 2015, an initial telephonic hearing was scheduled for March 18, 2015, and the case was assigned to Administrative Law Judge Mark A. Hoyer (Judge Hoyer). On February 17, 2015, Judge Hoyer issued a Prehearing Order, directing the parties to comply with various procedural requirements.

The initial telephonic hearing was held as scheduled on March 18, 2015. Due to telephone difficulties, no witnesses or exhibits were presented; procedural items were addressed. Judge Hoyer informed the parties that Complainant's Motion for Summary Judgment would be denied and that a further in-person hearing would be scheduled. A transcript of nine pages was produced.

On April 28, 2015, Judge Hoyer issued the First Interim Order Denying Complainant's Motion for Summary Judgment,

By Hearing Change Notice dated May 4, 2015, the parties were notified that the presiding officer had been changed to Administrative Law Judge Cynthia Williams Fordham (Judge Fordham), and that the telephonic hearing scheduled for March 18, 2015, had been canceled and rescheduled as an in-person hearing to be held June 10, 2015. By Hearing Change Notice dated May 22, 2015, the parties were informed that the case had been reassigned to Judge Darlene D. Heep, with no change in the scheduled June 10, 2015 hearing.

The in-person hearing was held as scheduled on June 10, 2015, before Judge Heep. Both parties appeared and presented witnesses. Complainant testified, and sponsored 17 exhibits, which were admitted with the exception of Exhibit C-6. Exhibit C-17 was admitted for the limited purpose that the document existed not that it was sent to Aqua. TR 113. A ruling on the admission of Exhibit C-2 was held in abeyance as there was some question as to its reliability. Judge Heep deferred ruling on its admission and directed Mr. Nellom to submit the complete e-mail chain with the addressee and date and with no text omitted. TR 113.

Aqua introduced ten exhibits, all of which were admitted into evidence. The following persons testified on behalf of Aqua: (1) Lesley Dix, Regional Customer Care Coordinator; (2) Derrick McBride, Manager of Pennsylvania Collections; (3) John Carr, field technician who delivered the October 24, 2014 10-day notice; and (4) John Kennedy, Manager of the Eastern Call Center.

On June 19, 2015, Complainant filed a Brief, with separate Appendices I, II and III. The Complainant submitted revised Exhibit C-2 as an attachment to his Brief. On June 24, 2015, Aqua filed Opposition of Respondent to Complainant's Proposed Exhibit C-2 Revised, stating that the proposed exhibit, which purports to be an e-mail exchange between Complainant and Mr. Kennedy was redacted and was neither reliable nor probative. A ruling on proposed revised Exhibit C-2 is still pending.

The record in this proceeding was remains open. Pursuant to Judge Heep's directive, main briefs were due on July 24, 2015 and Reply Briefs due August 3, 2015.

### **Positions of the Parties**

#### **Complainant's Position**

The Complainant asserts that the termination and subsequent restoration of his service twice in 2013 and once in 2014 was unlawful.

He specifically alleges that: (1) the September 25, 2013 termination occurred before the due date on the October 2013 monthly bill; (2) the December 12, 2013 termination occurred while there was a dispute pending; and (3) the November 4, 2014 termination occurred in violation of the Court Order and in retaliation for the filing of his civil action.

The Complainant alleges the restoration of service on October 1, 2013 and December 18, 2013 was not timely since it was not done within 24-hours of the medical certificate being signed by the doctor.

#### **Respondent's Position**

Aqua asserts that each termination for delinquent undisputed charges was lawful and the subsequent restoration of service was timely under the Code, Chapter 56 and Aqua's tariff.

## Record Evidence

The following exhibits were introduced by the parties.

<u>Exhibit Number</u>	<u>Description of Complainant's Exhibit</u>
1.	November 6, 2013 e-mail from Mr. Nellom
2.	Question from Mr. Nellom-no date or addressee
3.	September 9, 2013 monthly bill
4.	April 9, 2013, health sustaining assessment form
5.	December 12, 2013 med cert
6.	May 29, 2015 Employability assessment form
7.	November 7, 2013 monthly bill
8.	September 20, 2013 3-day notice
9.	September 25, 2013 post termination notice
10.	October 24, 2014 10-day notice
11.	October 24, 2014 10-day notice
12.	November 3, 2014 3-day notice
13.	November 3, 2014 post termination notice
14.	November 26, 2013 3-day notice
15.	December 3, 2013 48-hour notice
16.	December 12, 2013 post termination notice
17.	September 26, 2013 med cert

<u>Exhibit Number</u>	<u>Description of Aqua's Exhibit</u>
1.	Account Statement
2.	PAR History
3.	Termination/Restoration September 2013
4.	Termination/Restoration December 2013
5.	Termination/Restoration November 2014
6.	Billing History Response, dated March 20, 2014
7.	Usage History
8.	BCS Report No. 3179316, closed December 18, 2013 sent to Company
9.	BCS Report No. 3179316, closed December 18, 2013 sent to Customer
10.	Timeline for terminations/restorations

## 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); 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, i.e., unlawful termination and untimely restoration. See, Feinstein, supra.

### **Discussion**

At issue in this proceeding is the termination of service on September 25, 2013, December 12, 2013 and November 3, 2014 and the restoration of service on October 1, 2013, December 18, 2013 and November 6, 2014. Each event is addressed separately.

### **September 25, 2013 Termination**

The Complainant alleges that the termination on September 25, 2013 was unlawful because it occurred before the due date, October 1, 2013, stated on his September 2013 Bill. He opines that a monthly bill issued subsequent to a termination notice invalidates the termination because the delinquent charges are reflected on the monthly bill and gives the customer the impression that termination would not occur before the monthly bill due date. TR 69-71. The Complainant offered no support, other than his opinion, for his position that the September 2013 Bill invalidated the termination notices and that termination had been stayed.

The September 2013 Bill, Exhibit C-3, clearly states under "Billing Detail" that no payment was made and that \$133.33 was owed from the last bill. Furthermore, under "Message Center" the Complainant was advised: "**[t]he due date refers to current charges and any deferred payment amount only.** If you do not pay your bill on time, your service could be subject to interruption." He was provided the required notices that his service was subject to termination for the delinquent balance of \$133.33. Specifically, a 10-day notice was mailed September 5, 2013, R-6; and a 3-day notice was posted on September 20, 2013. C-8.

The Complainant's position that his service would not be terminated before October 1, 2013 is not supported by the record evidence. He admits that he did not pay his bill in full or on time. TR 71. He knew that there was an outstanding delinquent balance of \$133.33 subject to termination. TR 45; Exhibits C-3 and R-3. He received the September 2013 Bill that advised him that the due date only applied to current and deferred charges. Tr 45, Exhibit C-3. He had actual notice that his service was subject to termination and choose not to contact Aqua before the termination. Exhibits C-8 and R-3.

The Complainant has not carried his burden of proof that the termination of his service on September 25, 2013 for undisputed delinquent charges violated the Code, Chapter 56

or Aqua's tariff. The Complainant's position that a monthly bill invalidates a termination notice is clearly without merit and should be summarily rejected. Based on the record evidence, Aqua requests that a finding be made that the termination of service on September 26, 2013 was lawful.

### **October 1, 2013 Restoration**

The Complainant alleges that restoration of his service was not timely since it was not restored within 24-hours of the doctor signing the med cert on September 26, 2013. TR 46, Exhibit C-17.

The record evidence reflects that the required notices were issued prior to and after termination on September 25, 2013. Exhibits C-8 and 9; R-3, 4, and 5. The Complainant contacted the Respondent the day **after** service was terminated to inquire why the service was terminated and the process for reconnection. He stated there was a sickly person in the house requested a med cert. The representative explained how to submit a med cert to restore his service. TR 210. Since his service was already terminated, the company was not required to place a 3-day termination hold on the account per Section 56.112.

That same day, September 26, 2013, at 17:06 (5:20 p.m.) a "Health Sustaining Assessment Form," dated April 9, 2013, was faxed to Aqua. Exhibit C-4 and Exhibit R-3. The Complainant was advised later that same day that the med cert was denied since the form was signed more than 30-days ago. TR 166-167. The Complainant did not contact the Respondent again until September 30, 2013 when another med cert was faxed at 12:40 p.m. TR47, 162, 168-169; Exhibit R-3. The Complainant was advised that the med cert was approved at 4:11 p.m. and an appointment was made for service to be restored the following day. Aqua requires that an adult be present for the restoration to confirm that there are no leaks on either side of the meter. TR 184. Service was timely restored on October 1, 2013 at 11 a.m. TR 170.

The Complainant's position that a utility must restore service within 24 hours of a med cert being signed is without support. Chapter 56 specifically requires that when a utility is required to restore service under Sections 56.114, 56.116-56.118 and 56.191, within 24 hours of

**receipt** of the med cert, not when it is signed. Section 56.111 requires the customer to obtain and forward the signed med cert to the utility.

The Complainant faxed a med cert, signed September 26, 2013, to Aqua on September 30, 2013 at 12:40 p.m. TR 169, Exhibit R-3. It was the Complainant's obligation to submit the med cert. He did not fax the med cert to Aqua until September 30, 2013. Exhibit R-3. His testimony that he assumed the med cert, signed September 26, 2013, had been sent by the doctor's office is not credible. Every conversation between the Complainant and Aqua on September 26, 2013 dealt with whether Exhibit C-4, the "Health Sustaining Assessment Form," signed April 9, 2013, had been received. The Complainant never mentioned the med cert signed September 26, 2013.

The Complainant has not carried his burden of proof that the restoration of his service on October 1, 2013 violated the Code, Chapter 56 or Aqua's tariff. Based on the record evidence, Aqua requests that a finding be made that the restoration of service on October 1, 2013 was timely.

#### **December 12, 2013 Termination**

The Complainant alleges that the termination of his service on December 12, 2013 was unlawful since there was a pending dispute. Exhibit C-1.

The record evidence reflects that the Complainant made a payment of \$100.33 October 24, 2013. Exhibit R-1. Aqua mailed a 10-day notice dated November 5, 2014 advising that the delinquent amount subject to termination was \$141.00. TR 173, Exhibit R-4. The Complainant sent an email, dated November 12, 2013, which advised the company that his payment of \$100 [sic] was for the November and December 2013 usage, and that "reduced usage will be demonstrated for those months" and that all bills remained in dispute. That email also advised of his intention to file a lawsuit on or before January 2014. Exhibit C-1. Over the next two days, he emailed the company to ask what was Aqua's threshold dollar amount for termination. The Complainant never identified any charge or bill that was in dispute. On November 14, 2013, at 4:39 p.m., he requested a complete summary of his account; the summary

was processed on the next business day, November 15, 2013, and mailed on November 27, 2013. A 3-day notice was posted on November 26, 2013. TR 174, Exhibit C-14. A 48-hour notice was posted on December 3, 2013. TR 174, Exhibit C-15. The Complainant contacted Aqua on December 5, 2013 to advise that there was sick child in the house; a 3-day termination hold (until December 9, 2013), consistent with Section 56. 1112, was placed on the account so the Complainant could submit a med cert. TR 161. No med cert was filed by December 9, 2013 and the service was terminated on December 12, 2013. The Complainant never submitted a med cert for his child; every med cert submitted was in his name. Exhibits C-4, C-5, C-17, and R-3, R-4 and R-5.

Section 56.92 prohibits the mailing or posting of a termination notice if an initial inquiry, dispute, informal or formal complaint has been filed and is unresolved and the subject matter of the dispute forms the grounds for the proposed termination. The disposition issue is, was there a pending inquiry, dispute or complaint when each termination notices was issued?

The Complainant's testimony that there was a pending dispute as of November 12, 2013 should be given little or no weight; he is not credible. The 10-day notice was mailed on November 5, 2013; there was no pending inquiry, dispute or complaint. The last contact from the Complainant was on September 30, 2013, the day the Complainant presented the med cert to restore service without making any payment. He emailed the company that day stating he would be paying the entire delinquent balance of \$242.33 in full in the very near future. TR 103-104. Therefore, as of September 30, 2013, **per his email**, there were no disputed charges. TR 103. The Complainant testified on cross-examination that, in hindsight, his email was an error. TR 104. His testimony conveniently changed when confronted with his own words that on September 30, 2013, he did not dispute the balance of \$242.33.

The record evidence also reflects that the Complainant twice accepted responsibility for the then-delinquent balance and the Company entered into two PARs<sup>3</sup> where he was permitted to pay \$15.00 towards the arrears monthly based on the household size and gross income. Exhibit R-2. The PAR balance for the last company PAR was \$227.05. TR 127,

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<sup>3</sup> January 28, 2013 and April 18, 2013.

Exhibit R-2. By definition, a PAR is “[a]n agreement in which a customer [sic] who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa.C.S. §1403; 52 Pa. Code § 56.2. Therefore, consistent with Commission precedent, the amount outstanding for the last company PAR, \$227.05, was undisputed. Mazza v. PECO Energy Company, Docket No. C-2012-2318472, Opinion and Order entered April 23, 2014.

The 3-day notice was posted on November 26, 2013. There was no pending inquiry, dispute or complaint. The alleged notice of dispute in the November 12, 2013 email is unclear and contradictory at best. His email infers that the November and December 2013 usage charges were in dispute (“Reduced usage will be demonstrated for [Nov/Dec].”) The charges subject to termination were for the delinquent charges billed as of October 3, 2013. Furthermore, in subsequent contacts with the company, he never identified what charges (other than the mention of the November/December 2013 usage) were disputed. The Complainant never contacted the company after receiving the account summary to inquire or dispute any specific charge. The Complainant never articulated a dispute regarding the amount subject to termination (\$141.00) which were billed before October 3, 2013. He simply notified Aqua of a potential lawsuit he intended to file before January 2014. Aqua is not required to stay collection or termination on the treat of a lawsuit. Aqua does not stay termination when a customer who has a delinquent balance and is subject to termination alleges a generic dispute without any specificity so that the Company, as required by Chapter 56.151, can investigate and attempt to resolve the issue.

Aqua asserts that the Complainant’s allegation that there was a pending “dispute” is not been made in good faith. The Complainant’s testimony on this issue is not credible and no weight should be given to it. He has convenient memory lapses where he is either is clearly incorrect on the facts or does not remember certain facts. The Complainant was not able to identify any specific charge on any bill that was issued that he disputed, yet he opines that simply using the word “dispute” is sufficient under Chapter 56 to prevent termination.

The Complainant alleges that since he called Aqua on September 26, 2013 and advised that there was a sick child in the residence, his service could not be terminated. In response to that phone call, Aqua explained the process to obtain and send a med cert to the company. Since service was terminated earlier that day, the company was not required under Chapter 56 to place a 3-day hold on the account so that the Complainant could obtain and submit a med cert. Mr. Nellom has never submitted a med cert for his child.

The Complainant has not carried his burden of proof that the termination of his service on December 12, 2013 violated the Code, Chapter 56 or Aqua's tariff. The Complainant is not credible and his testimony is unreliable and should be given little or no weight. Aqua asserts that the Complainant, in bad faith to bolster his civil claim for \$11 million dollars in damages, is claiming that all bills were disputed and termination was prohibited by Chapter 56. Based on the record evidence, Aqua requests that a finding be made that the termination of service on December 12, 2013 was lawful.

### **December 18, 2013 Restoration**

Service was terminated on December 12, 2013 at 10 a.m. On the same day service was terminated, the Complainant advised Aqua that his doctor had completed a med cert; he was advised to follow-up with his doctor since nothing had been received. At 1:03 p.m. on December 12, 2013, a med cert was received stating there was "no medical reasons" for the med cert and it would "NOT" be dangerous to terminate the service. Exhibit C-4. The same med cert was again faxed to the company on Friday December 13, 2013 at 10:06 a.m. Exhibit C-4. The med cert received on December 12, 2013 was denied on December 13, 2013 based on the doctor's comments that there was no medical reason to continue service as required by Section 56.111. The duplicative copy of med cert was denied on December 16, 2104, the next business day after receipt of that med cert. Exhibit C-4. On December 16, 2013 at 2:59 p.m., a med cert was received that contained conflicting information. The newly submitted med cert was the previously denied med cert that stated "no medical reason" with the following statement: "Patient needs water to take medication. 12/16/13." The statement that there was no medical reason was not crossed out. While the med cert group was reviewing the conflicting med cert,

John Kennedy made the business decision to restore service and attempted to reach the Complainant to schedule the restoration. He left a voice message for the Complainant on December 16, 2013 advising that service would be restored and if he returned the call before 3:00 p.m. that day, it could be accomplished that day. The Complainant did not return Mr. Kennedy's call until December 18, 2013. The restoration appointment was made and service was restored on December 18, 2013 at 3:30 p.m.

The Complainant alleges that Mr. Kennedy left him a voice message on December 18, 2013 and that service was only restored after he sent an email to Mr. Kennedy on December 18, 2013 questioning if Aqua knew it was illegal to terminate his service. In support, he relies on the email reflected on proposed Exhibit C-2. That document was edited and the proposed Exhibit C-2 does not indicate whom it was sent to or when it was sent. Mr. Nellom has not provided a copy of the complete email chain without redaction or any other documentation to support his claim. The only record evidence is his testimony that it had to be December 18, 2013 *since the Company calls on the date it is going to restore service.* TR 62.

Mr. Nellom's testimony regarding the events surrounding the December 18, 2013 restoration are based on his recollections. As the record evidence reflects, the Complainant is not credible and his testimony should be given little or no weight. His testimony is solely based on his faulty memory, opinions and/or assumptions. His testimony is self-serving, inconsistent, and completely unreliable. He provided conflicting testimony regarding the dates of the terminations and restorations, entering PARs with Aqua, and the filing his informal complaint.

Mr. Kennedy testimony is based on the business records of the company kept in the normal course of business. Based on those records and his review of those records, he testified that he is certain that he left the Complainant a voice message on December 16, 2013. TR 225. Aqua has no obligation under Chapter 56 to restore service for a med cert that does not satisfy the basic provisions of Section 56.111 that there is a medical need for the continuation of service. Aqua was in the processing of reviewing the conflicting med cert received on December 16, 2013 when Mr. Kennedy, acting within the scope of his job responsibility, made the business decision to restore the service. TR 225. Service was NOT restored because of the

conflicting med cert received on December 16, 2013. Therefore, the 24-hour time -frame required under Section 56.115 was not applicable. The delay in restoring service was the direct result of the Complainant not returning the voice message left on December 16, 2013 until December 18, 2013. Had Mr. Nellom returned the call by 3:00 p.m. on December 16, 2013, his service would have been restored that day. TR 229.

The Complainant has not carried his burden of proof that the restoration of his service on December 18, 2013 violated the Code, Chapter 56 or Aqua's tariff. Based on the record evidence, Aqua requests that a finding be made that the restoration of service on December 18, 2013 was not governed by Section 56.111 but was restored due to a business decision made by Mr. Kennedy.

### **November 3, 2014 Termination**

The Complainant alleges the termination of his service on November 3, 2014 was unlawful because it was in direct violation of the Court Order and demonstrated contempt. TR 48, 84; Aqua did not seek permission from either the Court or the Commission before terminating his service. TR 82-83; his service was terminated the day after the Court ordered him to file the Complaint as retaliation of his "successful" filing of his Complaint with the PUC. TR 50; all bills, past, present and future, are disputed until his damages claim is resolved. TR 51, 62; the hand delivery of any termination notice was retaliatory. TR 40; the damages he suffered outweighed the charges billed by Aqua. TR 50, 51 and 60; and Aqua is required to start the termination process as soon as any charge becomes delinquent. TR 80.

The record evidence reflects the following. The Complainant knew he had an absolute obligation to pay current undisputed charges while there was a dispute pending. TR 78, Exhibit R-5. He had notice that no payment was made in 2014 and that his service could be subject to termination. TR 78, Exhibit R-5. The Complainant never contacted Aqua to discuss any billed charges in 2014. The 2014 charges are undisputed. Exhibit R-5. The charges to termination in 2014 were billed after January 8, 2014. TR 46. The required 10-day notice was mailed (certified and 1<sup>st</sup> class) and hand delivered on October 24, 2014 advising that service was subject to termination for a delinquent amount of \$272.76 on or after November 3, 2014. TR 47,

52 and 181; Exhibit R-5. The Complainant was specifically advised that the amount subject to termination did not include any charges incurred prior to January 8, 2014. TR 46, Exhibit R-5. The required 3-day notice was hand-delivered on October 30, 2014. Exhibit C-12. The post termination was delivered on November 3, 2014. Exhibit C-13.

The Complainant presented no substantial evidence that the termination of his service was prohibited by the Code, Chapter 56, the Court or Commission. He has offered nothing more than his personal opinion that Aqua's termination on November 4, 2014 was unlawful. A personal opinion, no matter how strongly held, does not constitute evidence. PA Bureau of Corrections, supra.

There is no record evidence that supports the Complainant's arguments that the Court Order made a disposition regarding the liability alleged in the Civil Complaint. The Court Order speaks for itself; the damage claim was bifurcated consistent with the Commission's exclusive subject matter jurisdiction over the termination and restoration of the Complainant's water service. The Formal Complaint was filed on October 31, 2014; service was lawfully terminated on November 3, 2014. Other than his "belief" that the termination was retaliatory, the Complainant has provided no evidence to support his claim.

The termination of service on November 3, 2014 was for undisputed delinquent charges for \$272.76 billed after January 8, 2014. TR 47, 52. Exhibit R-5. The Civil Complaint disputed the termination for delinquent charges in 2013. TR 52, 54. The Court Order granted Aqua's Preliminary Objection and the determination of liability was bifurcated since the Court lacked subject matter jurisdiction to entertain the liability claim. The Court Order did not order the Complainant to file a complaint. The Court Order did not require Aqua to seek permission before beginning the termination process for the undisputed 2014 delinquent charges. The Complainant was advised on several occasions of his obligation to pay current charges while his complaint for termination of 2013 charges was pending before the Court and the Commission and that the calculation for the delinquent charges and that it did not include any charges billed in 2013. Exhibit R-5.

52 Pa. Code Section 56.92 prohibits a utility from mailing or delivering a termination notice if there is notice of an unresolved inquiry, dispute, informal or formal complaint and the subject matter of the dispute forms the grounds for the proposed termination. Section 56.92 is not applicable to the November 3, 2014 termination because: (1) there was no contact at all from the Complainant regarding any charges billed in 2014 and therefore, there was no pending inquiry, dispute, informal or formal complaint; and (2) the subject matter of the pending dispute (2013 charges) did not form the grounds for termination (2014 current charges).

The Complainant opines that the hand-delivery of the notices is prohibited and was retaliatory because of the pending civil action and the present Formal Complaint. He has offered no substantial evidence that Aqua's actions were unlawful.

Section 56.92 specifically authorizes a utility the choice to mail or hand-deliver a termination notice. The fact that some of the termination notices for the Complainant's account were mailed does not make the choice to hand-deliver a notice "retaliatory." A utility is entitled to manage its own affairs. PA Telephone Corp. v PA PUC, 33 A.2d 765 (1943). It is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or an arbitrary action by the utility is shown. Lower Chichester Twp. v PA PUC, 119 A.2d 674 (1956). There is no record evidence that Aqua's policy for the delivery of termination notices is an abuse of discretion or arbitrary.

The Complainant's position that Aqua is required to begin the termination process as soon as a charge is delinquent is without merit. He provided no support for his position. The Complainant testified he is accustomed to paying his bills "every 4 months when the balance got to \$100." TR 71. It is absurd that given his "pattern" of not timely paying his bills, he chastises Aqua for not terminating his service immediately, which contradicts his claim that Aqua was prohibited by the Court from terminating his service. As argued above, the Complainant is not credible and no weight should be given to his testimony.

Aqua, by contrast, presented testimony and exhibits that support the finding that termination was lawful under the Code, Chapter 56 and the Company's tariff. The allegation that Aqua violated the Court Order or Chapter 56 should be dismissed.

*The Complainant has not carried his burden of proof that the termination of his service on November 3, 2014 violated the Code, Chapter 56, a Commission or Court Order or Aqua's tariff. Based on the record evidence, Aqua requests that a finding be made that the termination of service on November 3, 2014 was lawful.*

### **November 6, 2014 Restoration**

The Complainant does not specifically allege that the restoration of his service on November 6, 2015 was untimely and presented no testimony that the restoration violated the Code or Chapter 56.

The record evidence reflects that a med cert was received on November 5, 2015 at 11:28 a.m. TR 183; Exhibit R-5. Service was restored on November 6, 2014 at 9:30 a.m. TR 183. Restoration occurred within 24 hours of Aqua receiving the med cert. TR 183.

The Complainant has not carried his burden of proof that the restoration of his service on November October 1, 2013 violated the Code, Chapter 56 or Aqua's tariff. Based on the record evidence, Aqua requests that a finding be made that the restoration of service on October 1, 2013 was timely.

### **Proposed Findings of Fact**

1. The Complainant in this proceeding is Frank Nellom, who resides and receives service at 520 Keystone Avenue, Darby PA 19023 (Service Address). Tr. 42.
2. The Respondent in this proceeding is Aqua Pennsylvania, Inc., which provides domestic residential water service to Complainant at the Service Address. Tr. 117
3. Service was established in Complainant's name on or about May 24, 2011. Tr. 66, 117; Aqua Exh. R-1.

4. Complainant admitted that he is responsible for all charges for service provided to the Service Address. Tr. 42-43. He is not seeking a payment arrangement. Tr. 45.
5. Since establishment of service, Complainant has failed to make timely and full payments for the service provided by Respondent. Tr. 71-72; 121; Aqua Exh. R-2.
6. Since establishment of service in 2011, Complainant has made eight payments (one in 2011, two in 2012 and five in 2013), the most recent being \$100.33 on October 24, 2013. No payments were made in 2014 or 2015. Tr. 59, 123; Aqua Exh. R-2.
7. Aqua witness Lesley Dix testified that she is employed by Aqua Pennsylvania, Inc., as the Regional Customer Care Coordinator Tr. 115. She sponsored the following exhibits which were admitted into the record:
  - A. Aqua Exh. R-1, a timeline of the account. Tr. 117;
  - B. Aqua Exh. R-2, an account statement for the period May 24, 2011 through June 3, 2015. Tr. 117-18;
  - C. Aqua Exh. R-3, a payment arrangement history. Tr. 125;
  - D. Aqua Exh. 4, the informal complaint Complainant filed with the Commission's Bureau of Consumer Services on December 13, 2013, at BCS #3179316, addressed to the December 12 2013, service termination. Tr. 129-30, 131-32; and
  - E. Aqua Exh. R-1, the BCS decision dated December 18, 2013, sent to Aqua which denied the informal complaint at BCS #3179316, finding that the December 12, 2013, service termination had been proper, that there had been no good-faith history of payment and which declined to order a payment arrangement. Tr. 31-32.
8. Aqua witness John Carr testified that he is employed by Aqua Pennsylvania, Inc., as a meter technician; his job requires that he post termination notices at properties where he terminates service on behalf of the Company. Tr. 149.
9. Aqua witness Derrick McBride testified that he is employed by Aqua Pennsylvania, Inc., as Manager of Collections. As such, he is responsible for the termination of service, restoration of service and also the medical certification process. Tr. 157. He sponsored the following exhibits, which were admitted into the record:
  - A. Aqua Exh. R-6, the ten-day shutoff notice, with a notice date of September 5, 2013, scheduled termination date of September 18, 2013, with an account balance of \$133.33. Tr. 159;
  - B. Aqua Exh. R-7, the ten-day shutoff notice, with a notice date of November 5, 2013, scheduled termination date of November 18, 2013, with an account balance of \$141.00. Tr. 173.
  - C. Aqua Exh. R-8, the ten-day shutoff notice, with a notice date of October 24, 2014, scheduled termination date of November 3, 2014, with an account balance of \$272.76, delivered to the service address. Tr. 180-81.
10. As of June 3, 2015, the balance on the account is \$795.60. Tr. 119; Aqua Exh. R-2.

11. The Commission's regulations require that, prior to service terminations, notice must be provided at least 10-days prior (in writing, delivered either by mail or in person at the discretion of the utility), 3-days prior (which can be provided telephonically), immediately prior (by knocking on the door and speaking with an appropriate adult) and immediately after such termination by means of a post-termination notice posted at the property. Tr. 163-65.

12. After proper notice as required by the Commission's regulations, service was terminated on September 25, 2013 for nonpayment of delinquent charges. Tr. 66.

A. The ten-day shutoff notice, with a notice date of September 5, 2013, scheduled termination date of September 18, 2013 with an account balance of \$133.33, was mailed. Tr. 159; Aqua Exh. R-6.

B. The 3-day notice was provided telephonically on September 20, 2013. Tr. 164.

C. Both immediately prior (knocking on the door) and post-termination notices (left at the property) were provided.

13. After service was terminated on September 25, 2013, a purported medical certificate dated September 26, 2013, was rejected by Aqua because it was signed by a doctor on April 9, 2013, in violation of the requirement that it be provided within 30 days of a scheduled service termination. Tr. 167.

14. Service was restored at 11:00 a.m. on October 1, 2013, after presentation of a medical certificate dated September 16, 2013, which was faxed to and received by Respondent on September 30, 2013, at 12:40 p.m. and approved by the Company on that same day. Tr. 47, 67, 101, 167-70.

15. After proper notice as required by the Commission's regulations, service was again terminated on December 12, 2013, for nonpayment of delinquent charges. Tr. 67, 135.

A. The 10-day termination notice dated November 5, 2013, showing the amount needed (\$141.00) to avoid the scheduled November 18, 2013 service termination, was mailed to Complainant. Tr. 173; Aqua Exh. R-7.

B. The 3-day notice was provided telephonically on November 26, 2013. Tr. 174.

C. In addition, a 48-hour notice was provided on December 3, 2013, as it appeared termination would occur after December 1, 2013. Tr. 174

D. Both immediately prior (by knocking) and post-termination notices (left at the property) were provided. Exhibit C-16.

16. On December 6, 2013, Aqua placed a 3-day medical hold (until December 9, 2013) on the scheduled service termination. Aqua Exh. R-5; Tr. 135

17. In an attempt to have service restored after the December 12, 2013 service termination, Complainant presented what purported to be a medical certificate dated December 12, 2013, that stated "no medical reason" and that "it would not be especially dangerous" to have water service discontinued; this medical certificate was denied by the Company on December 13, 2013, the same day that it was received. Tr. 177. That same medical certificate, dated December 16, 2013, was revised to also state, "patient needs water to take medication." This revised medical certificate was received by the Company at 2:59 p.m. on December 16, 2013. Tr. 176

18. Even though there was some question about the validity of the medical certificate, Aqua restored water service on December 18, 2013 as a gesture of good faith. Tr. 67, 179.
19. After proper notice as required by the Commission's regulations, service was again terminated on November 3, 2014, for nonpayment of delinquent charges. Tr. 67
- 1303 A. The 10-day notice, dated October 14, 2014, was sent certified mail, 1<sup>st</sup> class mail and posted. Exh. C-10. Tr. 152
- B. 3-day notice dated October 30, 2014. Exh. C-12
- D. Post-termination notice dated November 3, 2014. Exh. C-13.
- C. The amount of the delinquent arrearage was \$272.76. All charges were incurred after January 8, 2014. Tr. 47.
20. Service was timely restored at 9:30 a.m. on November 6, 2014, upon the receipt of a valid medical certification on November 5, 2014. Tr. 67, 183.
21. Complainant was unable to identify any item on any bill that he disputes, and, in fact, does not review his bills. Tr. 60, 62
22. If a bill for service is not paid in full or by the due date, it is considered delinquent and subject to late penalty charges. Tr. 121.
23. Even though no payments were made in 2014, late payment charges were not assessed because of the pending formal Complaint. Tr. 123.
24. Complainant entered into two payment arrangements with Aqua, respectively dated January 28, 2013, and April 18, 2013. Both required the payment of current bills plus \$15.00 toward the arrearage. Complainant did not comply with either; the balance on the first was satisfied by a subsequent payment. Tr. 127-28; Aqua Exh. R-3.
25. The termination notices provided by Respondent, in addition to setting forth the scheduled termination date and amount necessary to be paid to avoid termination, expressly discuss the medical certification procedure. Tr. 159
26. Customers are informed that they may obtain a medical hold of a scheduled termination by oral notification from a licensed physician and/or nurse practitioner, if followed up in writing within three days. The notice also specifies the information required. Tr. 160.
27. Aqua does not automatically reject medical certificates which lack the necessary information, as long as the medical certificate is signed by a licensed physician and/or nurse practitioner and there is an agreement to pay current bills going forward. Tr. 161-62.
28. When water service is restored, there must be a responsible adult (a person at least 18 years of age present) at the property to ensure that there are no leaks. Tr. 184.

### **Proposed Conclusions of Law**

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa. C.S. §§102, 701, 1405, 1501.

2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. §332(a).

3. To satisfy his burden of proof, Complainant must demonstrate that Respondent violated the Public Utility Code or a regulation or Order of the Commission. 66 Pa. C.S. §701. This must be shown by a preponderance of the evidence. Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602, alloc.den., 602 A.2d 863 (1992).

5. The Complainant has failed to establish that the utility violated the Public Utility Code or a regulation or Order of the Commission in requiring payment from Complainant for the services that it rendered. 66 Pa. C.S. §701.

6. A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for utility service provided to them. Kea v. Peoples Natural Gas Co., 60 PA PUC 215 (1985); Scaccia v. West Penn Power Co., 55 PA PUC 637 (1982).

7. Assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987).

### **Conclusion**

The Complainant has not carried his burden of proof that Aqua's actions in the termination of his service on September 25, 2013, December 12, 2013 and November 3, 2014 and the restoration of service on October 1, 2013, December 18, 2013 and November 6, 2014 violated the Code, Chapter 56, any Commission or Court Order or Aqua's tariff. His testimony is inconsistent, contradictory and not reliable. Aqua's testimony is based on its business records and should be given greater weight. The Complainant's request that the Commission fine Aqua \$25 million dollars should be summarily dismissed.

**WHEREFORE**, for the foregoing reasons, Aqua Pennsylvania, Inc. respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint and Amended Complaint of Frank Nellom at Docket No. C-2014-2450732 in its entirety.

Respectfully submitted,

Dated: July 24, 2015

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Counsel for Aqua Pennsylvania, Inc.

**Re: Docket No. C-2014-2450732  
Frank Nellom v. Aqua Pennsylvania Inc.  
Main Brief of Aqua PA**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of §1.54 (relating to service by a participant).

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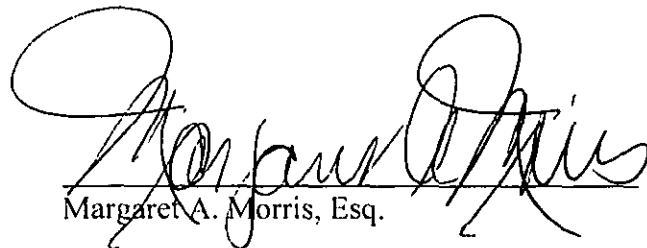
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Darby, PA 19023  
[franknellom@gmail.com](mailto:franknellom@gmail.com)

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Dated: July 24, 2015

  
Margaret A. Morris, Esq.

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