

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM TOWNE,

Complainant,

v.

PITTSBURGH WATER AND SEWER
AUTHORITY (PWSA),

Respondent.

Docket No. C-2019-3008437

**MOTION TO COMPEL RESPONSES
TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS**

FILED ON BEHALF OF
COMPLAINANT:
WILLIAM TOWNE

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Complainant, William Towne, pursuant to 52 Pa. Code § 5.331(a) *et seq.*, having first attempted less formal information requests as encouraged by 52 Pa.Code §5.322, submitted a First Set of Interrogatories and First Request for Production of Documents directed to the Pittsburgh Water and Sewer Authority (“Discovery Requests”). These were served on June 21, 2019, with a deadline for full, complete, and Verified answers within twenty (20) calendar days.

The Authority did NOT provide full, complete, or Verified answers. On or about July 1, 2019, Respondent served Objections to some requests and on or about July 11, 2019 served unverified partial responses to others. A copy of the Requests and Objections was previously served to the PUC’s Administrative Law Judge for this matter and all parties prior to the September 4, 2019 preliminary hearing call.

Interrogatory 3 requested identification of documents related to this action in a witness’s possession, custody, or control, and details about the witness’s knowledge or information related

to the case. PWSA's incomplete response was just that the witness "has access to customer records that are kept in the course of doing business." Those claimed records are requested but not provided (see Request for Production of Documents 8), nor identified more specifically in response to the previous interrogatory.

Interrogatory 4 requested identification of "the number of customers who received a call informing them of pending shut-off of water on or about March 11, 2019, when such a call was not preceded by the conditions and prior written notice required for legitimate termination of service." This point was objected to on the grounds alleging that it "is not relevant and is not reasonably calculated to lead to the discovery of admissible information."

As noted in the Commission's decision regarding preliminary objections, pursuant to 66 Pa. C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service and facilities. *Elkin v. Bell Telephone Co.*, 372 A.2d 1203 (Pa. Super. 1977) *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). A utility's widespread inadequate controls of public utility service and facilities is relevant evidence in a hearing regarding one specific instance of that inadequate control and service. This is a five-figure number of affected individuals, but PWSA refuses to admit to that or put the number on the record, claiming instead that this was just a small issue or "one mistake" and indicating that it only affected one customer, when that is not accurate.

Knowing the number of customers affected by this issue can help the PUC determine the scale of this problem with the public utility service, taking actions that are proportional rather than disproportional. The PUC taking proportional actions can reveal the incentive structure for PA utilities deciding whether to take steps or make investments that make this type of service inadequacy more or less likely. Note that Towne is not presently asserting claims that any other

customers should receive protection from unjust water shutoff in accordance with the notice nor other compensation. This question is relevant to the subject matter in the pending action and the material is discoverable within PA law.

Interrogatory 5 is related to 4 but seeking the number of customers who legitimately should have received such a call. (Note that this request does not seek identification of such customers.) In its objection, PWSA rightly points out that “Such circumstances are different than the circumstances alleged by Mr. Towne and would NOT show a violation by PWSA.” That is part of the point, in discovery being permitted to learn the factual basis of another party’s position in this case. If the true answer to this interrogatory was large relative to the answer to 4, this could strengthen PWSA’s position that the call Complainant received was a relatively minor error. Complainant suspects that this number is very small relative to the answer to 4.

In the Complaint giving rise to this case, Complainant requests that the PUC require certain steps be taken to bring the PWSA into compliance with PA law, including prevention of recurrence of the violations complained of. Interrogatory 6 asks “what, if anything, PWSA has done to correct and what it is doing to prevent recurrence of the inaccurate March 11, 2019 shutoff notice calls or a similar issue.” Request for Production of Documents #4 seeks documents in a similar vein. The PWSA’s repeated position is that the issue was promptly corrected, but that is under dispute. Further, PWSA has indicated it has taken steps to prevent recurrence, and that it intends to introduce evidence about this (attempting to partially do so at the September 4, 2019 preliminary hearing). Their corrective steps are key parts of their planned defense. Complainant has a right to a response to this discovery request to learn the other side’s factual position in the matter. Finally, it is possible that PWSA’s response on this point could be recognized by Complainant as sufficient to resolve at least parts of the Complaint.

Request for Production of Documents 1-3 sought call records which would demonstrate PWSA's factual position in the case. PWSA objected on the grounds that these records were "not relevant" and "not reasonably calculated to lead to the discovery of admissible information." In advance of the September 4, 2019 preliminary call, PWSA indicated it intended to introduce a subset of these records as evidence, without allowing Complainant the opportunity to learn more details of PWSA's factual position through the discovery process allowed by law. In addition to the points PWSA was trying to make, other parts of the requested information (including #3) could be used to identify witness who could testify to the inaccuracy of anticipated false representations from PWSA, especially regarding the claimed correction calls. These are the kinds of steps the discovery process is intended to help support, and the records are relevant to the proceeding as determined by PWSA itself.

Request for Production of Documents #2 for inbound call logs attempts to learn about PWSA's defense, as claimed including on the September 4, 2019 call, that it extended customer service hours and that customers had no trouble getting in touch with PWSA. Whether stated explicitly or implied, this is also a false defense point that the discovery process should permit impeachment of.

Request for Production of Documents #5 specifically addresses one of the issues raised in the Complaint, regarding the quality of service and support for a customer being able to contact a utility when the utility has violated the law regarding shutoff notices. PWSA flatly denies the existence of an issue in its Answer, ¶5.5. Complainant has a right to learn PWSA's basis for that denial, which would be contained or undermined in a response to the first half of this request. PWSA further denies that this could still be an issue, on the basis of its new recordings. It is possible that the new recordings do actually support PWSA's factual claims and

address the underlying issue, which could lead to this point of the complaint being partially or fully resolved. If PWSA will continue to take the position that this has been fully addressed, Complainant should be able to observe the factual basis for that position, and given the opportunity to agree or disagree that the evidence supports the position.

Request for Production of Documents #6 and 7 are also for matter which is relevant and discoverable in this proceeding, and which could help the Complainant learn the factual basis of the other party's position in this case.

Complainant also hereby includes in this Motion to Compel the remaining requests not specifically addressed above or objected to in the served Objections, because PWSA did not provide full, complete or Verified answers. PA Code requires verification of answers and unverified responses reportedly cannot carry evidentiary weight, but no Verification to any of the answers was provided, so no Verified answers were received.

Finally, Complainant has filed requests for some related documents which are public records under the PA Right-To-Know Law. PWSA has failed to comply with this law, and the Office of Open Records has formally adjudicated that and ordered the PWSA to provide records. This law is intended to help citizens hold government officials accountable, in other settings such as before the PUC. PWSA has so far refused to comply with both that law and the OOR's Final Determination (previously provided with exhibits for September 4). This demonstrates how far the PWSA is willing to go to avoid providing even public records that could be used to hold them accountable, which violates the spirit of PUC rules.

Respectfully submitted,

A handwritten signature in cursive script that reads "William Towne". The signature is written in black ink and is positioned above a horizontal line.

William Towne

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Compel was e-mailed and electronically served via PA PUC eService to the following this 13th day of September, 2019:

Daniel Clearfield and/or Carl Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com
dclearfield@eckertseamans.com

Hon. Mark A. Hoyer, PA PUC
Piatt Place, Suite 220
301 5th Ave
Pittsburgh, PA 15222
mhoyer@pa.gov



William Towne