

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Towne	:	
	:	
v.	:	C-2019-3008437
	:	
Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

The Formal Complaint is denied because, although the regulated service provider made a mistake, reasonable service was provided to the customer and his bill dated March 19, 2019 was not inflated in retaliation for the filing of this Complaint.

HISTORY OF THE PROCEEDINGS

On March 12, 2019, William Towne (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Pittsburgh Water and Sewer Authority (PWSA or Respondent) alleging, among other things, that PWSA threatened to terminate his service on March 10, 2019 and that PWSA failed to provide proper notice of the threatened termination. As relief, Complainant requested compensation for lost work, legal fees, service restoration fees and other related costs; that a civil penalty be imposed against PWSA; and that PWSA clarify its response telephone number in its recording informing customers of a pending shut off.

On April 1, 2019, PWSA filed its Answer and New Matter. In its Answer, PWSA admitted that it threatened to terminate Complainant's service via an automated telephone call. PWSA averred that within 90 minutes of the automated telephone call, PWSA promptly recognized its error and recorded a second message on Complainant's answering machine explaining that the previous call was made in error. In New Matter, PWSA averred that Complainant's service was never shut off, that Complainant's account with PWSA was currently in good standing and that there is no pending shut off associated with Complainant's service. On April 22, 2019, Complainant filed a reply to PWSA's New Matter.

On April 1, 2019, PWSA also filed Preliminary Objections. On April 11, 2019, Complainant filed an answer to the Preliminary Objections. An Interim Order Granting Preliminary Objections In Part and Denying Preliminary Objections In Part was issued on May 8, 2019.

An initial telephone hearing was rescheduled and held on September 4, 2019. Shortly after the hearing began, the undersigned ordered that this matter be continued to permit Complainant to file a motion to compel discovery and for PWSA to answer the motion. A Second Interim Order Continuing Hearing was issued on September 5, 2019, directing that any motion to compel discovery be filed by Complainant on or before September 20, 2019 and that PWSA may file an answer to any motion filed on or before September 30, 2019.

On September 13, 2019, Complainant filed a motion to compel discovery responses. On September 30, 2019, PWSA filed an answer to the motion to compel. On January 8, 2020, the motion to compel was granted in part and denied in part, in a third Interim Order.

On February 18, 2020, a Call-In Telephone Hearing Notice was sent to the parties scheduling a further telephone hearing for April 2, 2020.

On April 23, 2020, a Telephonic Hearing Cancellation/Reschedule Notice was electronically served on the parties cancelling the April 2, 2020 further telephone hearing and

rescheduling it for June 11, 2020. A Prehearing Order for Telephonic Hearing was electronically served on the parties on April 30, 2020, setting forth the procedural rules and call-in instructions for the scheduled further hearing.

The further hearing was held on June 11, 2020. Mr. Towne appeared *pro se* and testified on his own behalf. Complainant's Exhibits 4, 10 and 12 were admitted into evidence. Lauren M. Burge, Esquire and Carl R. Shultz, Esquire represented PWSA. PWSA presented the testimony of one witness, Julie Quigley, and offered PWSA Exhibits 1-11 that were admitted into evidence. The further hearing generated a 139-page transcript (Tr.).

The parties requested an opportunity to file main and reply briefs following the hearing. On July 16, 2020, a Briefing Order was issued. On September 10, 2020, after the parties agreed to dispense with filing briefs, an Interim Order waiving the briefing requirement and closing the hearing record was issued.

FINDINGS OF FACT

1. Complainant, William Towne, resides at 4243, Glen Lytle Road, Pittsburgh, Pennsylvania 15217 (service address) (Tr. 13-14).
2. PWSA is a municipal authority that became subject to Commission jurisdiction on April 1, 2018 (Tr. 66).
3. PWSA provides both water and wastewater service to Complainant at the service address (Tr. 67).
4. On March 11, 2019, at 9:42 a.m., PWSA erroneously sent out an automated telephone call to Complainant and approximately 11,000 other customers informing them that their water service would be terminated in three days for non-payment unless certain actions were taken. A box was checked that caused the shutoff notice call to be made to the

entire customer base. The error was corrected but not until approximately 11,000 calls went out (Tr. 15, 102, 107).

5. Complainant is enrolled in PWSA's e-billing product where bills for service are e-mailed to him and automatically paid (Tr. 67).

6. Complainant's bills for service provided by PWSA have always been paid on time and in full and he did not owe any outstanding bills on March 11, 2019 when the automated call was made to his cellphone (Tr. 23-25).

7. Complainant was working on March 11, 2019 and he was unable to answer the erroneous shut off call at the time it was made by PWSA (Tr. 15).

8. Complainant did not listen to the shut off message at first. Instead he checked PWSA's website to determine if there was a boil water advisory for the service address (Tr. 15-16).

9. After Complainant listened to the shut off message, he took leave from his job and attempted to contact PWSA at the customer service telephone number listed on PWSA's website which also happened to be the number provided in the shutoff notice message (Tr. 28, 60).

10. The shutoff notice message was in an automated voice that was difficult to understand, especially the telephone number provided for customer service (Tr. 17, 27).

11. Complainant began calling PWSA's customer service number repeatedly at approximately 10:00 a.m. on the morning of March 11, 2019, but he was unable to get through to PWSA to address the erroneous shut off notice. Complainant called PWSA approximately 30 times during business hours on March 11, 2019 and the vast majority of those calls were made before 11:00 a.m. (Tr. 58-59).

12. Complainant began calling attorneys when his attempts to reach PWSA proved unsuccessful because the automated shut off message advised that one of the ways to halt the shutoff involved producing a protection from abuse order (Tr. 56).

13. PWSA extended call center hours until 7:00 p.m. on March 11, 2019, because of the erroneous shut off call. PWSA responded to 1,928 calls that day, which was 3 times the usual number of calls (Tr. 85-87).

14. On March 11, 2019, at 11:05 a.m., PWSA called Complainant to advise him that the shut off call was a mistake and that his service would not be shut off (Tr. 83; PWSA Ex. 6).

15. Although the 11:05 a.m. call from PWSA may have been picked up by Complainant's cellphone, he did not receive the message. The most likely explanation is that he was calling PWSA and/or attorneys using the cellphone when the call came in (Tr. 56-59).

16. At 10:54 a.m. on March 11, 2019, PWSA posted a press release to its website to advise customers of the erroneous shutoff call (Tr. 87).

17. On March 11, 2019, PWSA also contacted the City of Pittsburgh's 311 Center to inform them of the mistaken shutoff call just in case customers called the City's 311 contact number concerning this issue (Tr. 87).

18. On March 11, 2019, PWSA notified the Commission about the mistaken shutoff call so that the Commission's Bureau of Consumer Services (BCS) could inform any customers who might call about the erroneous shutoff call that service was not going to be terminated and the call was a mistake (Tr. 87).

19. Complainant submitted a Complaint to the Commission on the night of March 11, 2019 because he was not aware that the shutoff call message left on his voicemail was a mistake (Tr. 59).

20. Complainant did not attempt to call PWSA after March 11, 2019 to address the shutoff call (Tr. 59-60).

21. PWSA did not receive any other formal complaints concerning the erroneous shutoff call made on the morning of March 11, 2019 (Tr. 89).

22. As a result of the erroneous shutoff call on March 11, 2019, PWSA has taken the notice to all customers option out of its system for these calls (Tr. 89).

23. Shutoff calls are no longer prescheduled by PWSA as they were when the erroneous shutoff call was made on March 11, 2019 (Tr. 90).

24. As a result of the erroneous call on March 11, 2019, shutoff calls involve multiple people in PWSA's collections department before they are placed to avoid mistakes (Tr. 90).

25. Telephone messages to customers of PWSA are no longer made by an automated voice. The voice of Julie Quigley, Director of Administration of PWSA, was recorded and is used for the calls so that the calls can be more easily understood (Tr. 64-65, 90).

26. Complainant's March 19, 2019 bill for service was based on actual meter readings (Tr. 94; PWSA Ex. 8).

27. Complainant experienced low water pressure and no water in his kitchen sink necessitating a repair by a plumber on Saturday, March 16, 2019. The service issue Complainant experienced was not caused by PWSA in retaliation for the filing of this Complaint (Tr. 31-32, 54).

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.²

In this matter, Complainant is seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that Complainant must establish a material fact by a preponderance of the evidence and must show that PWSA has violated the Public Utility Code or Commission regulations.³

Section 1501 of the Code⁴ mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.⁵

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

³ *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976).

⁴ 66 Pa.C.S. § 1501.

⁵ 66 Pa.C.S. § 1505.

reasonable and reliable service.⁶ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.^[7]

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.⁸

PWSA admitted that it sent a shutoff notice call to approximately 11,000 customers on March 11, 2019 by mistake. I find that this mistake does not amount to "unreasonable service" pursuant to Section 1501 of the Code. As a regulated entity, PWSA is not required to render perfect service to customers.

PWSA became subject to Commission jurisdiction on April 1, 2018 and is transitioning to full compliance. Tr. 66. It took several measures following the mistaken call on March 11, 2019 to notify affected customers and to improve procedures so that future call notices are more easily understood, and to avoid errors in both the call processes and collection processes moving forward. Tr. 89-90.

Complainant is rightly upset by this mistake. Through no fault of his own, Complainant was caused a significant amount of stress. He left work on March 11, 2019 to address the issue and did not have any success contacting PWSA because of the high volume of calls. Tr. 85-86. He was worried about the shutoff for many personal reasons but also because a resident of his home had medical issues that would be impacted by the shutoff. Tr. 15. The

⁶ *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984).

⁷ *Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993).

⁸ *Thurby v. W. Penn Power*, C-2011-2254048 (Order April 4, 2013); *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pa. Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order entered January 28, 2010).

shutoff call caused problems for Complainant. He thought the low water pressure situation he experienced at the service address after March 11, 2019 that ultimately led to a plumber making a repair on Saturday March 16, 2019 was a result of a partial shutoff. He also thought that the bill he received on March 19, 2019 was a retaliatory measure employed by PWSA because he filed a Complaint. None of this was in fact true, but because of Complainant's circumstances at the time and the stress he was experiencing, he thought these things were true.

Complainant's March 19, 2019 bill was based on actual meter readings. It was not inflated by PWSA as retaliation for the filing of a Complaint.

In summary, Complainant has failed to meet his burden of proof in this proceeding. PWSA made a mistake. "Reasonable service" does not mean perfect service in the context of Section 1501 of the Code. Unfortunately, mistakes will be made by the providers of service. Accordingly, the Complaint is denied in the ordering paragraphs to follow.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this Complaint. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. Complainant failed to meet his burden of proof.
4. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

5. Section 1501 of the Code does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service. *Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of William Towne against Pittsburgh Water and Sewer Authority at Docket No. C-2019-3008437 is denied.

2. That the record at Docket No. C-2019-3008437 be marked closed.

Date: December 8, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge