BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM TOWNE,

Complainant,

v.

PITTSBURGH WATER AND SEWER AUTHORITY (PWSA),

Respondent.

Docket No. C-2019-3008437

EXCEPTIONS OF COMPLAINANT

FILED ON BEHALF OF COMPLAINANT:
WILLIAM TOWNE

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM TOWNE, Complainant, v. PITTSBURGH WATER AND SEWER AUTHORITY (PWSA), Respondent.	Docket No. C-2019-3008437 **EXCEPTIONS OF COMPLAINANT** FILED ON BEHALF OF COMPLAINANT: WILLIAM TOWNE

EXCEPTIONS

Complainant, William Towne, takes exception to the following Initial Decision of the Administrative Law Judge entered in the above-captioned case on December 8, 2020, especially the following sections:

History of the Proceedings, last sentence:

Complainant takes exception to omission of the reasoning behind waiver of the briefing requirements, specifically that the PUC had changed its procedures to prohibit public access to the hearing transcript which Commission procedure strictly requires for preparation of the Brief. As part of its Covid-19 response, the Commission could have instead chosen to provide electronic access to PDF versions of that transcript and other documents to which it would normally provide public access in person, but it chose (and continues choosing) not to do that. (Complainant previously pointed out this option.) The ALJ also claimed to have an adequate understanding of the legal arguments in the case. This claim was credible in part because the ALJ should have had full access to the Public Utility Code, including its clear requirements

around shutoff notices. However, as described further below, this understanding and access to the Code's requirements do not appear to have been adequately used in reaching the initial decision.

Finding 4:

Complainant does not agree that the error was "corrected" and believes the evidence better supports having "detected" in place of the 4th word of the last sentence.

Complainant also takes exception to the denial of discovery seeking evidence to assess/support the "approximately 11,000" number cited twice in this finding. Records permitting a more precise accounting of this number exist but the only evidence available to the PUC (e.g. that the number is not actually much higher) is PWSA's verbal assertion. Higher numbers were cited by local news outlets claiming PWSA as a source. Complainant believes the number was likely at least that high.

Finding 14

While PWSA may have *intended* and possibly even once *attempted* to place such a correction call, they did not succeed in advising Complainant "that the shut off call was a mistake and that his service would not be shut off." They further did not take adequate steps to ensure that a correction notice was substantively delivered to Complainant as an example of the many customers who received false shutoff notice calls.

Call logs presented by PWSA showed call durations which in many cases were shorter than the message the PWSA claimed those calls delivered. Claims alleged to be backed by these suspect logs should be met with the strongest of skepticism and not lead to findings of fact. PWSA did not, in fact, place a correction call actually informing Complainant that the service would not be shut off until days *after* Complainant had received the initial calls and experienced

an actual shutoff consistent in timing with the notice, another person living at the subject property who experienced even more stress from this situation than Complainant had been hospitalized and become unresponsive (at a bankruptcy-inducing level of expense not covered by what was apparently a scam "insurance" policy), and privacy intrusions had been exposed for days as reiterated in the exception to Finding 20 below.

As further related to the exception to Finding 20 below, Complainant takes exception to the lack of any finding of fact that the PWSA has no process, procedure, or system in place for determining whether or not a notice or correction call successfully delivered the message, which could inform a decision about making an additional correction attempt promptly after failures.

Finding 20

Complainant takes exception to the implication that Complainant made no further attempt to contact PWSA after dozens of unsuccessful attempts on March 11, 2019. Complainant also filed this formal complaint before the PUC (which Complainant expected the utility to attend to) and hung a privacy-invading large-lettered sign on the subject property's front door, visible from the street shutoff where PWSA's shut-off employee or contractor (and any passerby on the moderately busy sidewalk) could see it, in what proved to be a futile attempt to avoid interruption of service. It does not seem reasonable to expect a customer to try to continue solving a short-notice pending shutoff by repeating an action (like calling a number nobody answers) that has already been demonstrated ineffective many times. That expectation is implied by citing Finding 20 as a material fact, especially without any corresponding finding of fact that PWSA also did not promptly attempt to call Complainant to address its erroneous shutoff call after the automated notice discussed in Finding 14 failed to notify Complainant that the shut off

call was a mistake, as well as the lack of any corresponding finding of fact that the PWSA does not even attempt to determine if another attempt to call might be warranted.

Finding 21

While no exception is taken to the finding of fact as stated, Complainant does take exception to any implications drawn from this finding related to the scope of the issue involved. First, Complainant acknowledges that the costs associated with the shutoff notice at his address were likely higher than for other customers. The vast majority of customers who received the shutoff notice likely do not share Complainant's years-long experience of harassment (including interference with utility services) and occasional life-threatening physical attacks from an individual with special personal connections to a police officer senior enough to prevent any investigation/consequences thereof. Even if that were somehow more common than Complainant estimates, most customers would not have had a birthday or similar special occasion occurring approximately three days after the three-day shutoff notice, as Complainant did. It is unlikely that those customers would have felt similar pressure to immediately seek legal counsel for what appeared to be the most relevant way to avoid shutoff (after successfully verifying that all bill payment steps had fully succeeded and no balance was due) or incur the costs associated with that. Even for those customers who received the call and did need to take time out immediately to deal with it (e.g. repeatedly and unsuccessfully trying to call PWSA), at least some likely either were not at work, or worked for employers who do not have the same policies regarding unscheduled time off and sudden departure from the workplace.

The majority of the households who received the shutoff notice likely did not have any residents likely to be medically affected by temporary lack of water or the stressor of the shutoff along with its apparent cause and message. Even if others did, they may have had non-scam

health insurance to cover most associated costs. Further, most households who received the call likely did not live in areas where PWSA was doing construction work that could cause an experience of turning on the tap to find no water a few days later on a timeline consistent with the notice. Finally, even if there were other customers where factors aligned to cause large individual costs, the procedure for filing and sustaining a formal complaint before the PUC is very costly (in time and/or legal fees) and difficult even for a highly educated native English speaker with relevant background knowledge. Failure to do every step in the PUC formal complaint process exactly right can result in a ruling like the present one which makes things significantly worse for all utility consumers in the Commonwealth, by clarifying that unwarranted short-notice shutoff calls not preceded by mailed notices as required by the Public Utility Code are perfectly fine under PA law and there should be no incentive for fixing systems to prevent this outcome.

That no other formal complaints were received and that PUC rules prohibit any form of class action with complaints filed on behalf of similarly situated customers (*Interim Order Granting Preliminary Objections In Part and Denying Preliminary Objections In Part* in this case, citing 52 Pa.Code § 1.21 *et seq.*) may imply that no other customers who received the notice (a) had sufficient knowledge and resources to navigate the process and (b) chose to take on the considerable costs and risks involved. This finding of fact should NOT be taken to imply that nobody else incurred costs from PWSA's violations, as implied by categorizing this as a material fact without further qualification.

Time-costs are also consistently undervalued in formal proceedings, especially when distributed. In this case, even if Finding 4 is accurate and customer households lost productivity for an average household total of just 15 minutes in response to this shutoff notice, that would

mean PWSA's violations imposed over $110,000 in distributed economic costs[1], even if there had not been any customers like Complainant whose circumstances combined with the unwarranted shutoff notice to produce much more costly consequences.

Findings 22-25

These findings are related to corrective actions PWSA verbally claimed to have implemented, and the conclusions are based directly on these findings (see 2nd full paragraph on page 8, "It took several measures…"). However, PWSA's verbal testimony is the only basis for this conclusion, which is contradicted by other evidence rather than supported by other evidence that could have been presented if these assertions were, in fact, true. Some of the records which could have demonstrated the truth of those assertions are unambiguously public records, as determined by the Pennsylvania Office of Open Records [OOR] (on August 14, 2019 in docket AP 2019-1123; never appealed). PWSA has refused to provide Complainant with access to these public records even after the OOR specifically ordered it to do so; in 2020 PWSA even sued Complainant (on October 6, 2020 at Allegheny County Court of Common Pleas docket SA-20-000475) to prevent Complainant from being able to access these public records which could undercut or back up PWSA's claims with respect to corrective measures. Complainant's costs to defend against that suit have already run into five figures and PWSA has demonstrated through its procedural steps a desire to maximize costs to Complainant and maximize delay of access to public records which might be used to hold them accountable, until at least after it is too late to affect PUC's ruling in this matter. This is not the behavior expected of an entity in possession of evidence that actually supports rather than contradicts or undermines its assertions.

[1] According to the United States Census American Community Survey, 1-year Selected Economic Characteristics for 2017 (the latest year for which data was available at time of search), the average family income was $99,400 dollars in the Pittsburgh metro area, and including nonfamily households, the mean household income was $80,012, with a margin of error of +/-1,105 (1.38%). Subsequent calculations of the money value of the average person's time model that as the result of working 40 hours a week for 50 weeks per year (2000 hours).

In this PUC case, even though "the Commission has allowed participants wide latitude in discovery matters (Pa. P.U.C. v. The Peoples Natural Gas Company, 62 Pa. PUC 56 (August 26, 1986); and Pa. P.U.C. v. Equitable Gas Company, 61 Pa. PUC 468 (May 16, 1986))," and Complainant sought discovery of records (e.g. in Request for Production of Documents #5) which could confirm the PWSA's verbal averments of improvements (e.g. replacement recordings which allegedly clarify the PWSA's customer service phone number as cited in Finding of Fact 25), PWSA objected to relevant requests on vague grounds of irrelevance. The ALJ sustained the objection claiming that these relevant requested records went "beyond the scope of this complaint proceeding and are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding" even though the PWSA's verbal-only averments about existence and contents of these records, which Complainant believes to be false, then served as the direct and sole basis for findings of fact on which the lack-of-consequences initial decision is based. When the truth of a fact would imply the existence of certain records which a utility company does not present as evidence and works very hard to prevent access to (within the PUC proceeding, and even violating laws outside the scope of the PUC proceeding), the PUC should not find the averment to be true. Complainant also takes exception to the PUC's denial of discovery requests which were relevant and applicable to the case, objections to which should have been overruled.

At the hearing, Julie Quigley testified before the PUC that "An additional change was that the calls are no longer in an automated or robo-voice. They are all recorded by myself and I have recorded all of those calls with respect to the language that [the Bureau of Consumer Services] wants to have and the regulations call for in all of the languages and in clear, concise information, and these have been tested internally by making calls to our personal cell phones.

PWSA and the outbound call vendor have also implemented enhancements that convey the specific service address in the message to the customer and provide an option for a warm transfer to PWSA customer service." Like the Authority's sworn testimony that the complained-of instance was the first occasion on which it had placed automated shutoff-notice calls to thousands of customers who should not have received them, this is simply not true. The untruth of that assertion was demonstrated to Complainant when Complainant received another automated shutoff-notice phone call in August 2020, again without any preceding notice by mail, playing a message in a very similar robotic voice again accompanied by an actual stopping of water service (which on that occasion actually *preceded* the notice call). This message also did not provide any option for a "warm transfer to PWSA customer service," just an option to "Press 9 to repeat the message or hang up when you are finished." This was noted by e-mail to the PWSA and ALJ Hoyer on Aug. 31 2020 while the record was still open in the above-captioned case, which was expected to clarify whether or not the PA Public Utility Code provides any incentives to not engage in the already-complained-of behavior by utilities.

In practice, there may be no consequences for a utility company representative's false statements before the PUC, and no practical way for individual utility customers to change that. However, the PUC should at least consider that when a fact being true would tend to produce documentary evidence and that evidence is not presented, it may consider the averment less likely to be true. When a utility fights considerable efforts to attempts to obtain even finally-determined-public records that could show the truth of an averment if it were true and then does not present the evidence at a hearing, the PUC should at least consider itself free to not find the facts the utility only verbally asserts to be true.

Missing findings of fact

This section is in addition to missing findings of fact to which exception is taken under Findings 14 and 20 above.

Though the evidence presented supports it, the Initial Decision includes no explicit finding of fact that PWSA did NOT send out, and Complainant (nor at least most of the others who received these calls) therefore did not receive, any written notice of pending utility shutoff, which the Code requires at least a week in advance of the call (PA Code Title 52 §56.91). However, this fact is clearly material to a determination of whether or not PWSA violated the Public Utility Code. Complainant believes this advance written notice requirement was written into the Code **specifically intending to prevent the types of harms incurred in this case**. Had that written notice been provided, even if in error, Complainant and PWSA would almost certainly have been able to clear up the issue and get/provide enforceable assurance that the water service would NOT be shut off, outside of Complainant's working hours, with much lower costs attributable to the Utility's mistakes. Following the Code's requirement also would have made such an error less likely because someone might have noticed that the volume of paper to be mailed would have been much larger than usual and/or that the calls could not be placed. The PWSA still has not modified its systems and processes to introduce fail-safes which strictly prevent the placement of three-day shutoff notices to customers who have not received the written notice in advance of that call within the time window prescribed by the Public Utility Code, and if this Initial Decision becomes final, neither they nor any other utility will have any incentive to do so.

Violation of this section of the Code (as cited in Complainant's Answer to Preliminary Objections ¶24) were important to overcoming the Preliminary Objection regarding legal

sufficiency of the Complaint in this case, but the ALJ's Initial Decision does not even find that the Public Utility Code requires what its text so clearly does, and makes no mention of PWSA's violation. The ALJ's Initial Decision essentially annuls that requirement of the Public Utility Code and sets a precedent decision that no negative consequences (none for utilities, only for customers) can be associated with a Utility's violation of that requirement.

Exceptions to Discussion & Conclusions

The second paragraph of Discussion notes 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." Conclusion 3 asserts that "Complainant failed to meet his burden of proof." However, by showing that the PWSA placed short-notice shutoff calls without sufficient advance written notice as required, Complainant has shown, by more than enough to satisfy his burden of proof, that PWSA has violated the Public Utility Code. The discussion, conclusions, and order should not ignore that.

Though to a lesser extent than the other Exceptions raised herein, Complainant also takes exception to the findings of fact stated in the paragraph bridging pages 8-9 not being [also] included in the findings of fact, as that is what those statements appear to be.

The ALJ finds (Finding 10) that "especially the telephone number provided for customer service" "was in an automated voice that was difficult to understand." While this difficulty is understated because the ALJ did not permit the provided original recording to be played as delivered, Complainant takes exception to the conclusion of law that a utility placing thousands of unwarranted short-notice shutoff calls (or even warranted shutoff calls with adequate advance written notice) which do not clearly provide a way to reach a utility's customer service line constitutes reasonable and adequate service. Complainant takes exception to the conclusion of

law that "reasonable" service and the Public Utility Code do not require a utility to verify, and where necessary correct, the understandability or accuracy of its outgoing messages informing customers of pending shutoff (which should have been done long before March 11, 2019).

Complainant takes exception to the conclusions of law that a robotic voice reading a prerecorded short-notice shutoff message including a customer service phone number that cannot be understood by a reasonable listener (let alone one that cannot be understood by a well-traveled native English speaker who is accustomed to verbal interactions in diverse environments with a variety of challenging foreign accents, as is the case here) both constitutes reasonable service and complies with PA Code Title 52 §56.93's requirement for utilities to utilize "**personal contact**" when giving short notice of pending shutoff, including but not limited to the requirement of Title 52 §56.93(b)(3) that "the 3-day personal contact notice must include…how to contact the public utility and the Commission." Those requirements in the Code are not written just for the benefit of customers whose service the utility plans to unavoidably disconnect in accordance with applicable laws. Those notice requirements are intended primarily for the benefit of customers who have a legal claim to avoid shutoff of service and who the Code's authors believe would reasonably be able to exercise that claim if given notice as required by the Public Utility Code. The PUC's precedent-setting conclusion of law in this case that the utility's customer service number need not be understandable would, if made final, undermine both the letter and spirit of the Public Utility Code.

Complainant takes exception to the conclusion of law that a utility who has just placed a short-notice shutoff call (whether warranted or not) to a customer's number, and fails to answer any of dozens of callbacks from that customer (using the same phone number the utility called) on its published customer service phone number during published business hours within the day

that notice went out, without even permitting redirection to a monitored voicemail system or a prerecorded message explaining a recent error, is delivering reasonable service or complying with the Code's requirement cited in the preceding paragraph. Though call volume may have been higher than usual on March 11, 2019 (Finding 13), PWSA testified that it still regularly aims to drop a certain percentage of incoming customer service calls, and considers it reasonable to drop more after it commits an error which would tend to increase the volume of customer service calls. Complainant takes exception to the PUC concluding that the PWSA's dropped call target guidance is consistent with reasonable and adequate service and Code requirements, especially in combination with the PUC permitting unlimited unwarranted short-notice shutoff calls.

Exceptions to Order

The PWSA is not the only utility subject to the Public Utility Code which has systems for placing telephone calls informing customers that their services will be shut off soon. As acknowledged in the penultimate sentence of the Discussion, "Unfortunately, mistakes will be made by the providers of service." Systems at PWSA and other utilities have defects which can (and if the status quo is maintained likely will) result in large numbers of customers getting shutoff messages they shouldn't be receiving. When these kinds of issues can affect such large numbers of people, it becomes more probable that at least some one of that large group can have complicating circumstances that make the experience especially costly. In at least some cases, there is no option for civil recourse to recover any of those costs imposed by the utility on the utility customer(s). This case is in that category due to PWSA claiming sovereign immunity outside the PUC, combined with the PUC's inability to award individual damages (as noted in earlier decisions in this case).

Those defects in systems and processes can be fixed, but doing so costs the time of utility employees and/or contractors who would fix it. Unfortunately too often, this time cost typically is recognized as costing money, while the costs imposed on the PA public for not fixing those systems are externalized. Market externalities like this, where a utility company can concentrate fiscal benefits of a decision to owners while distributing an externalized cost to the public, often justify regulation. In this case, regulations forbidding the complained-of conduct were already written and theoretically in force at the time the distributed cost was realized. They should be enforced in practice.

PWSA has strongly resisted attempts to quantify the costs associated with fixes they claim to have made (even violating open-records laws outside the scope of this proceeding and objecting to discovery in this proceeding, e.g. Request for Production of Documents 4), possibly because those changes have not actually been put in place. Whether or not PWSA has in fact implemented those changes, it is reasonable to assume that steps to prevent these Public Utility Code violations from happening again at PWSA or any other utility have *some* positive associated cost. Any rational utility management board would only choose to invest in not imposing costs on the public if making those fixes reduced some fiscal risk. Per findings of fact 4 and 21, even when a utility engages in these violations, there is a very low probability that anyone would even try to hold them accountable for even a fraction of the costs the utility's negligence and violations of the Code imposed. If this initial decision were to be finalized, it would set precedent and send a very clear message that there are no consequences at all to be had for a utility that fails to take adequate steps to prevent itself from placing large volumes of short-notice shutoff calls or adequately prepare for responding to such an error. To set incentives in a way that deters the externalized negative outcomes, the publicly set incentive for implementing

fixes to prevent these issues from occurring should be greater than the costs imposed externally (which should here be greater than the cost to fix) increased (divided by) the probability of "getting caught" (i.e. an enforcement action)[2]. Dismissing this case and setting the civil penalty to $0, as this Order would if finalized, only serves to degrade the meaning of the Utility Code's clear requirements and sets up PA utility customers to repeatedly experience issues like this in the future, whether from the PWSA directly or any other utility with access to the PUC's [public] final decision.

Conclusion

As described in greater detail above, Complainant takes Exception to the Initial Decision in the above-captioned case, and urges the full PUC to reconsider both the PWSA's violations of the Public Utility Code and the incentives structure its decision in this matter creates for utilities across the Commonwealth.

Respectfully submitted,

/s/ William Towne
William Towne

[2] For example, a civil penalty for failing to pay public transit fare only serves as a purely rational deterrent if the amount of the fine increased (divided by) the perceived probability of "getting caught" exceeds the fare/up-front cost which should have been paid. For example, if the perceived probability of "getting caught" is one in ten, the civil penalty would need to be at least ten times the fare (as a published proxy for the marginal societal cost of an additional rider) to serve as a purely rational regulatory deterrent to freeriding.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within EXCEPTIONS was eFiled with the PA PUC and emailed to the following the 28th day of December, 2020, having waited until after the Christmas holiday to not have the 10 days for PWSA's response covered by that holiday:

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