



Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

TEL: 412 566 6000
FAX: 412 566 6099

Lauren M. Burge
412.566.2146
lburge@eckertseamans.com

January 7, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: William Towne v. The Pittsburgh Water and Sewer Authority
Docket No. C-2019-3008437

Dear Secretary Chiavetta:

Enclosed for electronic filing please find The Pittsburgh Water and Sewer Authority's ("PWSA") Reply to Exceptions with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Lauren M. Burge

Lauren M. Burge

LMB/lww
Enclosure

cc: Hon. Mark Hoyer w/enc.
Cert. of Service w/enc.
Ra-osa@pa.gov

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PWSA's Reply to Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail and Email

William Towne
4243 Glen Lytle Rd
Pittsburgh, PA 15217
Firstpeterfourten@gmail.com

Hon. Mark Hoyer
Administrative Law Judge
PA Public Utility Commission
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
mhoyer@pa.gov

Dated: January 7, 2021

Lauren M. Burge

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Towne,	:	
	Complainant	:
	:	
v.	:	Docket No. C-2019-3008437
	:	
The Pittsburgh Water and Sewer	:	
Authority,	:	
	Respondent	:

**THE PITTSBURGH WATER AND SEWER
AUTHORITY’S REPLY TO EXCEPTIONS**

I. INTRODUCTION

Due to a technical error, PWSA mistakenly placed an automated call to the Complainant indicating that service to his property would be terminated in three days if the account balance was not satisfied. The Complainant received the automated mistaken call at 9:45 AM on March 11, 2019. Tr. 84; PWSA Exh. 3 and 4. Within 80 minutes, PWSA recognized the error and again called the Complainant at 11:05 AM to inform him of the mistaken call. This correction call apologized for the error and informed the Complainant to disregard the message about the impending termination of his account. Tr. 84; PWSA Exh. 5 and 6. The Complainant’s account was paid in full at the time of the mistaken call, and he was not, at any time, in danger of actual termination or subject to any active termination process. Tr. 84-85; PWSA Exh. 9.

An Evidentiary Hearing was held in this matter on June 11, 2020. On December 8, 2020, the Administrative Law Judge (“ALJ”) issued an Initial Decision (“I.D.”) which denied the Complaint. The ALJ found that the Complainant failed to meet his burden of proof, and that, although PWSA made a mistake, it provided reasonable service as required by Section 1501 of

the Public Utility Code. *See* I.D. at 9. The Complainant filed Exceptions to the I.D. on December 28, 2020.

Pursuant to 52 Pa. Code § 5.535 and the Secretarial Letter issued on December 8, 2020, PWSA submits the following replies to the Complainant's Exceptions. PWSA respectfully requests that the Commission deny the Complainant's Exceptions, adopt the recommendations in the Initial Decision, and dismiss the Complaint in its entirety.

II. REPLIES TO EXCEPTIONS

A. Reply to Exception No. 1 – History of the Proceedings and Waiver of the Briefing Requirement

The Complainant's first Exception relates to the parties' agreement to waive the briefing requirement, and the challenges Mr. Towne says he encountered in accessing a copy of the hearing transcript during the COVID-19 pandemic.

The I.D. correctly states that the parties requested the opportunity to submit briefs. I.D. at 3; Tr. 134-135. However, Mr. Towne later indicated that he was unable to access a copy of the hearing transcript to prepare his brief due to the Commission's offices being closed during the pandemic. In correspondence with the ALJ and the parties, it was clearly explained to the Complainant that he had the option to purchase a copy of the transcript, and that the Commission is unable to provide an electronic copy of the transcript under its contract with the court reporting service. In recognition of the limitations caused by the COVID-19 pandemic, both Mr. Towne and PWSA voluntarily agreed to waive its opportunity to submit briefs in this proceeding. *See Interim Order Waiving Briefing Requirement And Closing The Hearing Record*, dated September 10, 2020.

Thus, the Complainant was at no disadvantage by not having access to a copy of the hearing transcript. Further, the ALJ has appropriately applied the Public Utility Code in the I.D. Therefore, this Exception must be denied and the I.D. should be adopted.

B. Reply to Exception No. 2 – Finding of Fact #4

This Exception relates to whether PWSA “corrected” the error in placing the mistaken call, as well as the number of customers affected by the mistaken call.

First, the record establishes that, within 80 minutes of the mistaken call, PWSA made a correction call to the Complainant apologizing for the error and informing the Complainant to disregard the message about the impending termination of his account. Tr. 84; PWSA Exh. 5 and 6. In addition to placing correction calls, PWSA also issued a press release and posted on social media notifying customers to disregard the calls and apologizing for the mistake. Tr. 87-88; PWSA Exh.5 and 7; Towne Exh. 10. PWSA further notified the Commission’s Bureau of Consumer Services (“BCS”), on March 11th, of the mistaken calls so that 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; Finding of Fact #18. This is more than “detecting” the error, as Mr. Towne argues, but rather constitutes significant effort to correct the error.

Mr. Towne also takes exception to the statement that “approximately 11,000” customers received the mistaken calls because he believes the call was made to a greater number of customers. However, the record in this proceeding clearly establishes that this number is correct based on sworn testimony provided by PWSA’s Director of Administration during the evidentiary hearing. Tr. 102. The Complainant points to “higher numbers” that were “cited by

local news outlets,” but there is nothing in the record to support this statement or his overall assertion that the number is incorrect.

Further, it is irrelevant how many customers received the mistaken shutoff call because only the mistaken call made to Mr. Towne is at issue in this proceeding. Despite the Complainant’s repeated attempts to inappropriately turn his individual formal complaint into a broader “class action” type proceeding, Mr. Towne does not and cannot represent other customers. The *Interim Order Granting Preliminary Objections in Part and Denying Preliminary Objections in Part* (“Interim Order”) dated May 8, 2019 granted PWSA’s preliminary objection by dismissing Mr. Towne’s claims seeking recovery on behalf of other customers. Interim Order at 4. The Interim Order correctly stated that “[a]n individual complainant cannot represent another customer or assert claims on behalf of other customers.” *Id.*, citing 52 Pa. Code § 1.21 *et seq.* As such, this Exception must be denied and the I.D. should be adopted.

C. Reply to Exception No. 3 – Finding of Fact #14

This Exception relates to whether the Complainant actually received PWSA’s correction call. Mr. Towne claims that he did not actually receive the correction call from PWSA informing him to disregard the mistaken call, and further claims that there should have been a finding of fact that PWSA does not have an adequate process in place for determining whether such a correction call was actually delivered.

The record, however, clearly shows that the correction call was placed to the Complainant and connected to his telephone or voicemail. After PWSA made the mistaken call to Mr. Towne at 9:45 AM on March 11, 2019, PWSA recognized the error and promptly made a

second correction call to Mr. Towne at 11:05 AM that same day. Only approximately 80 minutes elapsed between the two calls. Tr. 84; PWSA Exh. 5 and 6. PWSA records show that the correction call was, in fact, made to Mr. Towne. PWSA Exhibit 4 shows that the initial mistaken call was placed to the telephone number associated with Mr. Towne's account at 9:45 AM via an answering machine or voicemail. PWSA Exhibit 6 shows that the correction call was later made to the same phone number at 11:05 AM, also via an answering machine or voicemail. Mr. Towne acknowledged that the phone number indicated in these exhibits is his cell phone number and that he can receive calls at this number when he is not at his home. Tr. 56-57.

Mr. Towne maintains that he did not receive the complete message notifying him of the error. The record shows that the correction call was connected to Mr. Towne's phone number or voicemail for 57 seconds. PWSA Exh. 6; *see also* Tr. 119-121. If Mr. Towne did not receive the complete message, there is nothing in the record to show that an incomplete message was caused by PWSA.

Mr. Towne also claims that he only learned of the mistake days after receiving the mistaken call. However, PWSA took a variety of steps to publicize the fact that the mistaken call was made in error to a number of customers, and to apologize and instruct customers to disregard the call. On March 11, 2019, the same day as the mistaken call, PWSA issued a press release (PWSA Exh. 7) and posted information on social media, including on Twitter. Towne Exh. 10. PWSA's customer service center received a very high call volume on the day of the mistaken call, but call volumes returned to normal by the close of business on that day and on the following days (*see* Tr. 85-86), indicating that other customers became aware of the error and the message to disregard the mistaken call.

PWSA made timely and appropriate efforts to notify Mr. Towne that the initial 3-day termination call he received was a mistake and should be disregarded, including placing a correction call to his cell phone, issuing a press release, and Tweeting about the error. The record does not support Mr. Towne's claim that PWSA did not place a correction call to him or that PWSA systems are somehow inadequate.

The Complainant makes additional unsupported allegations in this Exception, including an inaccurate statement that he "experienced an actual shutoff consistent in timing with the notice..." The record clearly establishes that PWSA never terminated service nor had any intention to terminate service as a result of the mistaken call; rather, the Complainant experienced an internal plumbing issue that affected the water supply to his kitchen sink, which was corrected by his private plumber. *See* Tr. 91-93; Finding of Fact #27. Nothing in the record shows any action by PWSA in March 2019 to terminate (and to later restore) water service to Mr. Towne.

PWSA took appropriate and timely steps to correct its error in placing the mistaken call, and the Complainant has failed to meet his burden of proof to show any violation of the Public Utility Code. Therefore, this Exception must be denied and the I.D. should be adopted.

D. Reply to Exception No. 4 – Finding of Fact #20

In this Exception, the Complainant objects to Finding of Fact #20, which states that he did not attempt to call PWSA after March 11, 2019 to address the mistaken call. He takes issue with this Finding of Fact even though he specifically testified that he did not, in fact, attempt to call PWSA after March 11, 2019. Tr. 59-60.

This Exception overlooks other findings of fact reflecting that the Complainant filed this Formal Complaint on March 11, 2019. Finding of Fact #19. The record also establishes that, while Mr. Towne did call PWSA repeatedly on March 11, 2019, the vast majority of those calls were made between 10:00 AM and 11:00 AM while PWSA was experiencing high call volumes due to the mistaken call. Tr. 58-59; Finding of Fact #11.

Finding of Fact #20 is clearly supported by the record, despite the Complainant's attempts to complicate basic facts established during the hearing. Other allegations in this Exception are unsupported by the record as discussed herein. Therefore, this Exception must be denied and the I.D. should be adopted.

E. Reply to Exception No. 5 – Finding of Fact #21

In this Exception, the Complainant excepts to the “implications” of Finding of Fact #21, which simply states that PWSA did not receive any other formal complaints regarding the mistaken call.

Once again, the Complainant attempts to twist a basic fact that is clearly established in the record to support his unfounded claims. The record undeniably shows that there were no other formal complaints filed with the Commission related to the mistaken call. Tr. 89. This Exception makes a variety of assumptions about how other customers may or may not have reacted to the mistaken call, their resources to pursue a formal complaint, and even the theoretical economic impact of the mistaken call across PWSA's customer base. The statements in this Exception are: (1) entirely unsupported by the record; and (2) irrelevant and outside the scope of this individual formal complaint proceeding. Mr. Towne continues to impermissibly attempt to style his formal complaint as a pseudo class action lawsuit, even though the ALJ has

clearly and correctly ruled that an individual complainant cannot represent another customer or assert claims on behalf of other customers. Interim Order at 4, *citing* 52 Pa. Code § 1.21 *et seq.* Finding of Fact #21 is accurate and fully supported by the record. Therefore, this Exception must be denied and the I.D. should be adopted.

F. Reply to Exception No. 6 – Findings of Fact #22, #23, #24 and #25

This Exception relates to four findings of fact that describe process improvements that PWSA has made to prevent a similar mistaken call from being placed in the future. The Complainant **believes** that PWSA did not actually make these improvements, although he provides no factual basis in the record for this belief.¹

This Exception is an inappropriate attempt to re-litigate discovery disputes and proceedings before other administrative agencies that are irrelevant and outside the scope of this proceeding.

The record shows that PWSA has made significant system modifications for outbound calls to prevent a similar error from occurring in the future. Tr. 89-91. In the system that issues outbound, automated calls, the option to call all PWSA customers has been removed. Tr. 89; Towne Exh. 12 at ¶ 1. These calls will now only be sent live and will not be scheduled, allowing the calls to be quickly stopped if an error occurs. Tr. 89-90; Towne Exh. 12 at ¶ 1. These termination messages are no longer read by an automated voice; rather, the message is now read by a real person – Julie Quigley, PWSA’s Director of Administration. Tr. 90. Additionally, PWSA has implemented system enhancements that will convey the specific service address in

¹ A customer cannot establish a case merely by stating his or her personal beliefs. The Complainant's evidence on this issue consists only of assertions. These assertions, no matter how honest or strong, cannot form the basis of a finding in his favor. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

the message to the customer and will provide an option for a warm transfer to PWSA Customer Service. Tr. 90-91; Towne Exh. 12 at ¶ 3. Although Mr. Towne characterizes this record evidence as “verbal only averments,” PWSA has provided the sworn testimony of its Director of Administration to substantiate these process modifications. The Complainant also claims that he received another automated termination call in August 2020, but once again, there is nothing in the record to support this allegation, and it is impermissible for the Complainant to raise completely new allegations for the first time in Exceptions.

Further, the Complainant has repeatedly attempted to use this proceeding as a forum to re-litigate an Office of Open Records (“OOR”) determination and address compliance with the Pennsylvania Right-to-Know Law. These issues are not within the Commission’s jurisdiction and are outside the scope of this proceeding. This Exception also tries to resurrect a related discovery dispute that was decided by the *Third Interim Order Addressing Complainant’s Motion to Compel* dated January 8, 2020 (“Third Interim Order”). Section 5.403 of the Commission’s regulations empowers the Administrative Law Judge to exclude evidence that is beyond the proper scope of Commission proceedings and focus the evidence on the matters properly at issue. 52 Pa. Code § 5.403(a). The Third Interim Order properly excluded the documents discussed in this Exception as being outside the scope of this proceeding, and the Complainant is not permitted to raise this settled discovery dispute again in exceptions.

For these reasons, this Exception must be denied and the I.D. should be adopted.

G. Reply to Exception No. 7 – The Complainant’s Alleged “Missing” Findings of Fact

In this Exception, the Complainant claims that the I.D. should have included a finding of fact indicating that PWSA violated the Commission’s regulations by failing to provide a written termination notice before placing the mistaken 3-day termination call to him.

The 10-day notice was not required, since Mr. Towne was fully paid in March 2019 and was not in danger of actual termination or subject to any active termination process. That being said, the Complainant is generally correct that Section 56.91 of the Commission’s regulations requires a 10-day notice prior to termination of service and that PWSA did not provide a 10-day termination notice to him before he received the mistaken call giving him a 3-day termination notice. 52 Pa. Code § 56.91. However, the argument that PWSA violated this regulation requiring a 10-day notice is nonsensical in this situation. PWSA did not provide the 10-day termination notice because *it never intended to terminate service to the Complainant*; Mr. Towne only received the mistaken 3-day termination notice due to a technical error, not because PWSA was actively in termination proceedings against him. Tr. 85, 96-97. The Complainant’s account was paid in full at the time of the mistaken call. Tr. 23-25; Finding of Fact #6. Mr. Towne was not intended to receive the call, and his service was never in actual danger of being terminated. *See* Tr. 96-97. Therefore, this Exception must be denied and the I.D. should be adopted.

H. Reply to Exception No. 8 – The Complainant’s Exceptions to the I.D.’s Discussion and Conclusions

In this Exception, the Complainant objects to the conclusion that he failed to meet his burden of proof to show that PWSA violated the Public Utility Code or Commission regulations. He again argues that PWSA violated the Code by failing to issue a written termination notice, and also argues that the mistaken call does not constitute adequate service.

As discussed above in response to Exception No. 7, PWSA did not provide the 10-day termination notice because it never intended to terminate service to the Complainant. Mr. Towne only received the mistaken 3-day termination notice due to a technical error, so of course PWSA did not issue a written termination notice or attempt personal contact as would otherwise be required by the Commission's regulations. The Complainant's account was never in active termination proceedings.

The Complainant also discusses his contention that the computerized voice reading the automated message was difficult to understand, and in particular that the contact telephone number was hard to understand. First, the Complainant was clearly able to locate PWSA's customer service number, as he testified that he called PWSA repeatedly after receiving the mistaken call. *See* Tr. 58-59; Finding of Fact #11. Additionally, PWSA's termination calls are now recorded by a human voice, rather than by an automated voice, and the recording is clear and easy to understand.

Mr. Towne was understandably upset by the mistaken call, but one mistake which is promptly corrected does not constitute inadequate service. The I.D. correctly found that the Complainant has failed to meet his burden of proof to show a violation of the Public Utility Code or Commission regulations. As such, this Exception must be denied and the I.D. should be adopted.

I. Reply to Exception No. 9 – The Complainant's Exceptions to the Ordering Paragraphs

In this Exception, the Complainant objects overall to the Ordering Paragraphs which deny his Formal Complaint. Mr. Towne makes a variety of sweeping conclusions in this Exception, many of which are well beyond the scope of this individual complaint proceeding,

and broadly claims that the dismissal of his complaint would mean that utilities are not held to any standard when serving customers. This is clearly incorrect.

Public utility law seeks to advance the public interest.² Section 1501 of the Public Utility Code provides the legal standard to be met by public utilities regarding quality of service. 66 Pa. C.S. § 1501. It provides that a public utility must provide adequate, efficient, safe and reasonable service and facilities. *Id.* The term “service” is defined broadly under Section 102 of the Public Utility Code so as to include maintenance of public utility facilities. 66 Pa. C.S. § 102. Section 1501 requires a public utility to furnish reasonable service. It 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.³ One mistake, promptly corrected, does not constitute unreasonable or inadequate service under Section 1501. *See I.D.* at 9.

Here, the mistake was promptly corrected (within 80 minutes) and Mr. Towne (whose account was fully paid) was not, at any time, in danger of actual termination or subject to any active termination process. Importantly, the technical error that triggered the mistaken calls was corrected. PWSA appreciates the concern and confusion that the mistaken call may have caused for some customers and has apologized to customers for the error. However, PWSA did not terminate service to any customers, including Mr. Towne, as a result of the mistaken call. As discussed above and established in the record, PWSA placed the correction call to the Complainant and all affected customers (*see* Tr. 84; PWSA Exh. 5 and 6), and information

² *PUC v. Purolator Courier Corp.*, 355 A.2d 850 (Pa.Cmwlth. 1976); *Pittston Gas Co. v. PUC*, 154 A.2d 510 (Pa.Super. 1959).

³ *See, e.g., Deidra Alston v. National Fuel Gas Distribution Corporation*, F-2011-2236871, Initial Decision dated March 12, 2013 (citing cases), <http://www.puc.state.pa.us/pcdocs/1220406.docx>, which became final by operation of law (as noted in the Opinion and Order entered Sept. 26, 2013 denying Alston’s Petition for Reconsideration, <http://www.puc.state.pa.us/pcdocs/1248491.docx>).

regarding the error was readily available from BCS and through social media, PWSA's website, and other news outlets. PWSA Exh. 7; Towne Exh. 10. As such, while PWSA regrets the error, the I.D. correctly found that this mistake did not constitute inadequate service pursuant to Section 1501 of the Public Utility Code. Thus, this Exception must be rejected and the I.D. should be adopted.

III. CONCLUSION

Therefore, for the reasons discussed above, PWSA respectfully requests that the Commission deny the Complainant's Exceptions and adopt the recommendations in the Initial Decision.

Respectfully submitted,

/s/ Lauren M. Burge

Lauren M. Burge, Esq. (PA Atty. I.D. 311570)
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Phone: (412) 566-6000
lburge@eckertseamans.com

Carl R. Shultz, Esq. (PA Atty. I.D. 70328)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
Phone: (717) 237-6000
cshultz@eckertseamans.com

Date: January 7, 2021

Attorneys for
The Pittsburgh Water and Sewer Authority