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June 14, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Docket No. C-2020-3022088
Patricia Shaver v. Suez Water Pennsylvania Inc.

Dear Secretary Chiavetta:

We are counsel for Suez Water Pennsylvania Inc. in the above matter and are submitting with this letter, via electronic filing, the Company's Exceptions to the Initial Decision of Administrative Law Judge Dennis J. Buckley. A copy of the Exceptions is being served in accordance with the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: ra-OSA@pa.gov
Certificate of Service (w/encl.)
The Honorable Dennis J. Buckley, Administrative Law Judge (w/encl.)
Judith A. McCoy Jordan (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Dennis J. Buckley, Presiding

PATRICIA SHAVER,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3022088
	:	
SUEZ WATER PENNSYLVANIA INC.,	:	
Respondent	:	

**EXCEPTIONS OF SUEZ WATER
PENNSYLVANIA INC. TO THE INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY**

Thomas T. Niesen, Esq. (PA ID # 31379)
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Attorneys for Respondent Suez Water Pennsylvania Inc.

DATED: June 14, 2022

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I. INTRODUCTION

This proceeding concerns the Complaint of Patricia Shaver against Suez Water Pennsylvania Inc. (“Suez” or “Company”)¹ concerning an incident of discolored water that occurred on July 2, 2020.

Administrative Law Judge Dennis J. Buckley was assigned to preside over the matter and an evidentiary hearing was held on February 18, 2021.

By Initial Decision, dated May 25, 2022, Judge Buckley concludes that Suez violated Section 1501 of the Public Utility Code (“Code”) by not responding in a timely manner to Ms. Shaver’s inquiries about the discolored water and imposes a civil penalty of \$5,000.

Suez submits the following Exceptions to the amount of the imposed civil penalty.

II. EXCEPTIONS

EXCEPTION NO. 1 - THE MAXIMUM CIVIL PENALTY UNDER SECTION 3301 OF THE CODE IS \$1,000 PER OCCURRENCE

Suez excepts to the imposition of a civil penalty of \$5,000. The maximum civil penalty per occurrence for a violation of Section 1501 of the Code is \$1,000. Section 3301 of the Code and Conclusion of Law 7.

Section 3301(a) of the Code provides for a maximum civil penalty of \$1,000 for a violation of Section 1501 of the Code stating as follows:²

(a) General rule. – If any public utility ... shall violate any of the provisions of this part ... or shall ... neglect ... to perform any duty enjoined upon it by this part ... such public utility ... for such violation, omission, failure, neglect or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.

In circumstances of continuing offenses, Section 3301(b) of the Code provides that the Commission may treat “each and every” day as a continuing offense. The Section, however, may be applied only where there the utility has violated a “regulation or final direction, requirement,

¹ Suez is now known as Veolia North America.

² A different and much greater civil penalty is provided under Section 3301(c) of the Code for gas pipeline safety violations. This matter does not involve gas pipeline safety.

determination or order of the commission.”

This proceeding does not involve violation of a “regulation” or “final” Commission “direction, requirement, determination or order.” The Initial Decision faults Suez only for a violation of Section 1501 based on the evidence of record, not a violation of a “regulation” or “final” Commission “direction, requirement, determination or order.”

In sum, under the circumstances presented in this proceeding, there is no statutory authority for imposing a civil penalty in excess of \$1,000. The civil penalty should be reduced to no more than \$1,000.

Suez’ Exception No. 1 should be granted.

EXCEPTION NO. 2 - IN THE ALTERNATIVE, THE CIVIL PENALTY SHOULD BE REDUCED TO \$250 PER DAY FOR A FIVE-DAY PERIOD AS THE DELAY IN RESPONDING TO COMPLAINANT WAS NOT INTENTIONAL

Suez excepts to the imposition of a civil penalty of \$5,000, which is based on the potential maximum allowed by statute over a five-day period. Initial Decision at 11 and 14. The delay in responding to Complainant was not intentional and the penalty should be reduced to \$250 per day over the five-day period.

Suez did not intentionally delay its response to Ms. Shaver’s inquiry concerning the discolored water incident. The Initial Decision, in this regard, concludes that “[t]he conduct complained of was occasioned by negligence on the part of Suez.”³

In its recent Opinion and Order entered February 22, 2022, in *Arnold v. Verizon North, LLC*, PaPUC Docket No. C-2019-3014304, 2022 PA. PUC LEXIS 46, the Commission recognized a clear distinction between intentional and negligent conduct in the determination of a civil penalty under Section 3301 stating as follows:

We also agree with Verizon in its Exceptions that the violations in this case were caused by negligence and the penalty assessed by the ALJ is not consistent with the penalties in prior cases where the violations resulted from negligence

³ Initial Decision at 13.

rather than being intentional. As noted, the ALJ found that the violations in this case were caused by negligence; nevertheless, the ALJ decided to assess the maximum penalty of \$1,000 per day. In accordance with our rulings in *Rosi* and *Meder*, the maximum penalty of \$ 1,000 violation per day allowed under Section 3301 of the Code normally should be applied only for the most egregious violations that were found to be intentional by the utility. In *Rosi*, supra, we stated: If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of \$ 500.00 to \$ 1,000.00 per day. If the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to \$ 500.00 per day. The precise penalty amount per day will be arrived at by applying the following additional standards, while recognizing that the Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis.

Rosi at 10.

As “[t]he conduct complained of was occasioned by negligence on the part of Suez,”⁴ the presumptive starting point for determination of a penalty is in the range of zero dollars to \$500.00 per day. Suez notes, as discussed in the Initial Decision, that the circumstances presented in this proceeding were related to an isolated incident over the Fourth of July holiday weekend⁵ involving Complainant and a neighboring property.⁶ There was no threat to life or property.⁷

In sum, this proceeding does not involve an egregious violation of the Code concerning intentional conduct. Suez submits that, consistent with past Commission decisions, including *Arnold* cited above,⁸ the civil penalty should be reduced. The penalty determination should not be based on an assumed statutory maximum per day but rather should be based on a mid-range amount of \$250 per day for negligent conduct over a five-day period, a total of \$1,250.00.

Suez’ Exception No. 2 should be granted.

⁴ Initial Decision at 13.

⁵ See Initial Decision at 14 citing 52 Pa. Code Section 69.1201(c)(6).

⁶ See Initial Decision at 13-14 citing 52 Pa. Code Section 69.1201(c)(5). The neighboring property is the subject of a proceeding at PaPUC Docket No. C-2020-3022094.

⁷ See Initial Decision at 13 citing 52 Pa. Code Section 69.1201(c)(2).

⁸ See 52 Pa. Code Section 69.1201(c)(9).

III. CONCLUSION

Suez Water Pennsylvania Inc. submits that, for the reasons set forth above, the Public Utility Commission should grant these Exceptions and reduce the civil penalty imposed by the Initial Decision to no more than \$1,000 or, in the alternative, to \$1,250.

Respectfully submitted,

SUEZ WATER PENNSYLVANIA INC.

By 

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Counsel for Suez Water Pennsylvania Inc.

Date: June 14, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of June 2022, served a true and correct copy of the foregoing Exceptions of Suez Water Pennsylvania Inc. upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Patricia Shaver
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