



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

June 15, 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-2019-3012999
Dennis Heston 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 (via email, w/encl.)
Judith A. McCoy Jordan (via email, w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Dennis J. Buckley, Presiding

DENNIS HESTON,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3012999
	:	
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)
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Tel: 717-255-7600

Attorneys for Respondent Suez Water Pennsylvania Inc.

DATED: June 15, 2022

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTIONS 1

EXCEPTION NO. 1 – THE SUEZ SYSTEM UPGRADE PROJECT AND
SERVICE TO COMPLAINANT COMPLIES WITH THE
COMMISSION’S WATER SERVICE REGULATIONS
AND THE PUBLIC UTILITY CODE 3

EXCEPTION NO. 2 – THE DIRECTIVE TO RESTORE SERVICE SHOULD
BE REJECTED 8

III. CONCLUSION 10

TABLE OF CITATIONS

Cases

Barone v. Pa. P.U.C.,
86 Pas. Cmwlth. 393, 485 A.3d 519 (1984) 6

Martinko v Aqua Pennsylvania, Inc.,
PaPUC Docket No. C-2013-2352596 5, 6, 8, 9

Statutes, Regulations, Texts and Codes

52 Pa. Code § 65.6 3, 5, 6

52 Pa. Code § 65.17 4

52 Pa. Code § 65.18 4

I. INTRODUCTION

This proceeding concerns the Complaint of Dennis Heston alleging a failure on the part of Suez Water Pennsylvania Inc. (“Suez” or “Company”)¹ to provide adequate water pressure to his residence at 910 Thornton Drive, Mechanicsburg, Pennsylvania.

Administrative Law Judge Dennis J. Buckley was assigned to preside over the matter and an evidentiary was held on May 26, 2020.

By Initial Decision, dated May 26, 2022, Judge Buckley concludes that Suez violated Section 1501 of the Public Utility Code (“Code”) by failing to render adequate water service to Complainant’s residence.

As presented in the following Exceptions, Complainant failed to demonstrate that Suez violated the Public Utility Code, a Commission Order or regulation or the Suez Tariff. The Initial Decision, accordingly, should be rejected and the Complaint should be dismissed.

II. EXCEPTIONS

In 2019, Suez invested more than \$1.1 million to upgrade approximately 9,400 feet of varied diameter water main along Gettysburg Pike, Mallard Way, Herman Drive, Thornton Drive and Grantham Road in Mechanicsburg replacing it with new, larger diameter water main. The existing system that Suez replaced was installed by a prior owner on or around 1963.²

The Company had been experiencing intermittent complaints of discolored / dirty water in the area. It was also experiencing many breaks on the existing main which was galvanized and unlined cast iron main. Breaks on the existing main were difficult to repair, prolonging service

¹ Suez is now known as Veolia North America.

² Tr. 11-12 and 21.

outages, as the existing main was located in backyards or unimproved areas.³ Pertinent to this proceeding is a four-inch cast iron pipe under Route 15 that was part of the then-existing system and that enabled the Thornton Drive area of Center Square to be served hydraulically from the Suez Grantham Tank.⁴

Replacement of the four-inch cast iron pipe was not possible. Reconstruction of Route 15 in 2003 had created a wetland area where the existing main was located and Suez' attempts to obtain easements through private property for a replacement main were unsuccessful.⁵ In order to move forward with the needed system upgrade, Suez decided to absorb the Thornton Drive area of Center Square into the Center Square pressure district and serve it hydraulically off the Suez Center Square Tank.⁶

Suez evaluated the water pressure in the Center Square and Grantham pressure districts through hydraulic modeling. There was an approximately 25 p.s.i.g. difference in the pressures between the systems. The pressure in the Thornton Drive area of Center Square connected to the Grantham pressure district ranged from approximately 65 p.s.i.g. to 80 p.s.i.g., while the pressure in the Center Square area connected to the Center Square pressure district ranged from approximately 40 p.s.i.g. to 65 p.s.i.g.⁷

As there is little difference in the elevation between the two Center Square pressure districts, Suez made the decision to serve all of Center Square from the Center Square Tank. Although this reduced the water pressure along Thornton Drive from what had been received with service off the Grantham Tank, post project field testing shows pressures to be between 40 p.s.i.g.

³ Tr. 21-22.

⁴ Tr. 10.

⁵ Tr. 22.

⁶ Tr. 10. The Grantham Tank and the Center Square Tank are on opposite sides of Route 15.

⁷ Tr. 10.

and 50 p.s.i.g., within the range of the modeled data and well within the required pressure range of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main as found in 52 Pa. Code Section 65.6 and consistent with the pressure in the rest of the Center Square pressure district. The increased water main size as a result of the system upgrade also provides improved fire flow protection.⁸

EXCEPTION NO. 1 - THE SUEZ SYSTEM UPGRADE PROJECT AND SERVICE TO COMPLAINANT COMPLIES WITH THE COMMISSION'S WATER SERVICE REGULATIONS AND THE PUBLIC UTILITY CODE

Suez excepts to the conclusion that Complainant demonstrated by a preponderance of the evidence that Suez violated a regulation of the Commission or the Public Utility Code. Initial Decision, Conclusion of Law 5. The Suez system upgrade project and its service to Complainant complies, in all respects, with the Commission's Water Service Regulations and the Code.

The Commission's Water Service Regulation at 52 Pa. Code Section 65.6 addresses water pressure and provides that a utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main stating as follows:

§ 65.6. Pressures.

(a) *Variations in pressure.* The utility shall maintain normal operating pressures of not less than 25 p.s.i.g. nor more than 125 p.s.i.g. at the main, except that during periods of peak seasonal loads the pressures at the time of hourly maximum demand may be not less than 20 p.s.i.g. nor more than 150 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. A utility may undertake to furnish a service which does not comply with the foregoing specifications where compliance with such specifications would prevent it from furnishing adequate service to any customer or where called for by good engineering practices. The authority of the Commission to require service improvements incorporating standards other than those set forth in this subsection when, after investigation, it determines that such improvements are necessary is not hereby restricted.

⁸ Tr. 10-12.

The pressure regulation reproduced above is part of the Standards of Design and Construction of water plant at 52 Pa. Code Section 65.17 and Section 65.18, which state as follows, in pertinent part:

§ 65.17. Standards of Design

(a) *General.* The design of the water plant of the utility shall conform to standard acceptable engineering practices. It shall be designed so as to provide reasonably adequate and safe service to its customers and shall conform to the requirements of the Department of Environmental Resources which concern sanitation and potability of water.

* * *

(e) *Water supply requirements.* The quantity of water delivered to the distribution system from total source facilities should be sufficient to supply adequately, dependably and safely the total requirements of all customers under maximum consumption and should be determined so as to maintain the specified pressures as required by § 65.6.

§ 65.18. Standards of Construction.

(a) *General.* The construction of the water plant of the utility shall conform to standard acceptable engineering practices. It shall be operated so as to provide reasonably adequate and safe service to its customers and shall conform with the requirements of the Department of Environmental Resources which concern sanitation and potability of water.

* * *

(c) *Mains.* Mains shall include the following:

* * *

(5) *Main sizing.* As new mains are installed or as mains which have reached the end of their useful lives are replaced, the new or replacement main shall be sized and designed to accommodate the standards contained in this chapter, particularly in regard to §§ 65.6 and 65.17 (relating to pressures; and standards of design) and this section.

Suez designed and constructed its system upgrade to comply with the Commission's Water Service Regulations and there is no question that the water pressure received by Complainant at the main serving his residence is within the range of pressures identified in Section 65.6. At hearing, Suez presented the results of a pressure study with recorded pressures taken at the main

every two minutes for a 14-day period from October 11, 2019, through October 25, 2019.⁹ The average pressure during the 14-day period was 41.85 p.s.i.g., which is well within the range of pressures required by the Regulation. There is, moreover, little variation or fluctuation in pressure. There are very few pressure recordings less than 40 p.s.i.g.¹⁰

The Initial Decision concludes that the uncontroverted evidence of water pressure at the main does not refute Complaint's claim that Suez has not provided reliable and adequate service and holds that "technical compliance with the Commission's regulation at 52 Pa Code § 65.6 is not dispositive of the issue in the case."¹¹ In reaching these conclusions, the Initial Decision relies on the testimony of Complainant in regard to water pressure inside the home. The Initial Decision is contrary to the Commission's decision in *Martinko v. Aqua Pennsylvania, Inc.*, PaPUC Docket No. C-2013-2352596.

In *Martinko*, Complainant experienced fluctuations in water pressure in his home that affected showers and household chores. Aqua presented water pressure test results, including tests taken at the main, demonstrating compliance with Section 65.6. Administrative Law Judge Cheskis, in an Initial Decision dated October 14, 2014, 2014 Pa. PUC LEXIS 548, which became final without further Commission action,¹² dismissed Mr. Martinko's Complaint concluding as follows:

Based on a review of the record evidence in this case, there is no substantial evidence that Aqua has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to the water pressure in Mr. Martinko's home. As noted above, Section 65.6 of the Commission's regulations requires Aqua to maintain pressure between 25 p.s.i.g. and 125 p.s.i.g. at the main, except during peak periods and under other circumstances. The test results presented by Aqua in this case demonstrate that Aqua has complied with

⁹ Tr. 12-15 and Suez Exhibit No. 2.

¹⁰ Suez Exhibit No. 2 and Tr. 12-14.

¹¹ Initial Decision at 10.

¹² See *Martinko v. Aqua Pennsylvania, Inc.*, PaPUC Docket No. C-2013-2352596, Final Order entered December 10, 2014.

that requirement. In particular, Section 65.6 does not require utilities to maintain any specific level of water pressure within a particular consumer's home. Instead, Section 65.6 requires utilities to maintain the specific level of water pressure at the main.¹³

Addressing the relative significance of pressure testing at the main and inside the home, Judge Cheskis explained that the most insightful test of water pressure for the purpose of determining service adequacy is that taken at the main:

... the most insightful water pressure test performed by Aqua is presented in Exhibit 6 - the test performed on the fire hydrant downstream from Mr. Martinko's home. The water pressure test performed by Aqua presented in Exhibit 5 is less insightful because that test presents the results of the water pressure test performed in Mr. Martinko's home and Section 65.6 does not require utilities to maintain a certain level of water pressure in a consumer's home.¹⁴

Judge Cheskis explained, still further, that the decision of the Commonwealth Court in *Barone v. Pa. P.U.C.*, 86 Pa. Cmwlth. 393, 485 A. 2d 519 (1984), cited by Mr. Martinko, did not support his Complaint as there was *not* substantial evidence that Aqua's service violated Section 65.6 but that the evidence, rather, demonstrated service *consistent* with the regulation.¹⁵ Similar evidence exists here, with the results of the Suez pressure study referenced above, demonstrating service consistent in all respects with Sections 65.6 (Pressures), 65.17 (Standards of Design) and 65.18 (Standards of Construction).

Judge Cheskis also agreed with Mr. Martinko that the Court in *Barone* stated that Section 65.6 "is not intended to restrict the authority of the Commission to order improvements where service is inadequate and the Commission correctly notes in its decision that it has power to order needed improvements notwithstanding that the pressure in [the utility's] main meets the standard of the regulation" but found no basis to conclude that the service provided by Aqua was inadequate

¹³ *Martinko*, Initial Decision, mimeo at 12.

¹⁴ *Martinko*, Initial Decision, mimeo at 12.

¹⁵ *Martinko*, Initial Decision, mimeo at 13-14.

such that the Commission should order any needed improvements.¹⁶ There is, similarly, no underlying basis to conclude here that the Suez service is inadequate. Suez designed and constructed a substantial system upgrade consistent with the Commission's Water Service Regulations, lessening the frequency of incidents of discolored / dirty water, of main breaks and length of service outages and improving flow for fire protection purposes.

The Initial Decision discounts the uncontroverted evidence presented by Suez of pressure sufficiency at the main and appropriate system design and construction and concludes, instead, that Complainant is entitled to receive the same quality of service (i.e. water pressure) he enjoyed before the replacement of the water main. Section 1501 of the Code provides that service must be reasonable and adequate. It does not, as concluded in the Initial Decision, create a statutory entitlement to a level of service to which a customer may have become accustomed or previously enjoyed. Additionally, while the Initial Decision focuses on a perceived decline in service as a result of reduced pressure, it ignores the substantial improvements in service as a result of the system upgrade in the form of improved water quality, fewer main breaks, shortened service outages and improved fire protection.¹⁷

If Mr. Heston is dissatisfied with the water pressure inside his home, there are things that he can do to increase the pressure including installation of an in-home water booster pump.¹⁸ Suez witness Saunders also testified that what is perceived to be a pressure deficiency inside the home

¹⁶ *Martinko*, Initial Decision, mimeo at 14.

¹⁷ The Initial Decision cites *Honey Brook Water Co. v. Pa. P.U.C.*, 647 A. 2d 653 (Pa. Cmwlth. 1994) and *Fox ridge Vill., LP v. Pa. P.U.C.*, 258 A. 3d 1161 (Pa. Cmwlth. 2021 Unpublished) in support of the conclusion that a rendering of inadequate water pressure may be a violation of Section 1501. *Honey Brook*, however, involved a failure of the utility to comply with a prior order of the Commission to install a well by a date certain to remedy little or no water pressure. There is no similar prior directive of the Commission involved here and, unlike the circumstances in *Honey Brook*, Suez has already engaged in a substantial system upgrade in the Center Square area. In the unpublished opinion in *Fox Ridge*, it was determined that the utility acted *reasonably* by requiring a developer to install a booster pump for development homes above 1,220 feet.

¹⁸ Tr. 23-25.

is sometimes a flow issue that might be addressed through investigation by the customer of the customer owned service line.¹⁹ Suez, in any event, is not required to maintain a certain level of water pressure inside a consumer's home.²⁰ As for the installation of a booster pump, Mr. Heston made it clear in closing argument to Judge Buckley that he is not interested in having a booster pump installed.²¹

In sum, the Suez system upgrade in the Thornton Drive area was necessary to replace aging facilities. The resulting water service pressures are consistent with the original modeling for the project and with the water service pressures in the remainder of the Center Square pressure district. A study of water pressure at the main serving Mr. Heston's residence demonstrates that pressure is not just marginally – *but well within* – the range of pressures required by the Commission's Water Service Regulations. Consistent with *Martinko*, Suez' service is in full compliance with Commission regulations, reasonable and adequate. Complainant has failed to prove that Suez has violated a Commission order or regulation. Suez submits that the Commission should reject the Initial Decision and deny and dismiss the Complaint.

Suez Exception No. 1 should be granted.

EXCEPTION NO. 2 - THE DIRECTIVE TO RESTORE SERVICE SHOULD BE REJECTED

Suez excepts to the directive that it restore Complainant's service to the level that he had before September 2019. Initial Decision, Ordering Paragraph No. 2; See also Finding of Fact 16. There is nothing Suez can do on its system to increase pressure at Mr. Heston's residence to pre-upgrade levels and Mr. Heston has refused the installation of a booster pump.

Ordering Paragraph 2 of the Initial Decision directs Suez to restore Complainant's service

¹⁹ Tr. 23-25; *Also see Martinko*, Initial Decision, mimeo at 14-15.

²⁰ *See Martinko*, Initial Decision, mimeo at 12.

²¹ Tr. 26-27.

to the level that he had before September 2019. Suez witness Saunders explained that there is nothing that Suez can do on its system to increase pressure to Mr. Heston's residence.²² There are, however, things that Mr. Heston could do inside his residence to boost pressure including the installation of a booster pump,²³ but Mr. Heston made it clear in his closing argument to Judge Buckley that he has no interest in having a booster pump.²⁴

Notably, the installation of in-home measures including the purchasing of a booster pump to control pressure are the responsibility of the homeowner, not the utility. In *Martinko*, Judge Cheskis explained as follows:

... there are measures that an individual can undertake to better control the specific water pressure at any given moment at a specific location. This would include purchasing a booster pump or a pressure sustaining vessel. Tr. 41. None of these measures, however, are Aqua's responsibility. As Mr. Willard testified, Aqua does not regulate the pressure inside a customer's home but is responsible for maintaining the pressure at the main. Tr. 38-39, 42-43.²⁵

In sum, the Commission in its Final Order should remove the directive that Suez restore Complainant's service to the level that he had before September 2019. There is nothing that Suez can do on its system to increase pressure to Mr. Heston's residence, and the placing of a booster pump in the residence to increase water pressure is not a viable option as Mr. Heston is not interested in installing a pump even if Suez were to pay for the pump and have it installed at Company cost.²⁶

Suez Exception No. 2 should be granted.

²² Tr. 25.

²³ Tr. 25; *See also* Finding of Fact 16.

²⁴ Tr. 26-27.

²⁵ *Martinko*, mimeo at 15.

²⁶ Suez submits that the Commission has no jurisdiction to order Suez to install a booster pump on customer owned in-house plumbing and no jurisdiction to order Mr. Heston to accept a booster pump on his in-house plumbing. The option to place a booster pump in Complainant's residence to increase water pressure was only possible through settlement and Mr. Heston is not interested in having the pump installed.

III. CONCLUSION

Suez Water Pennsylvania Inc. submits that, for the reasons set forth above, the Public Utility Commission should grant these Exceptions, reject the Initial Decision and deny and dismiss the Complaint of Dennis Heston at C-2019-3012999.

Respectfully submitted,

SUEZ WATER PENNSYLVANIA INC.

By 

Thomas T. Niesen
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Counsel for Suez Water Pennsylvania Inc.

Date: June 15, 2022

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Dennis J. Buckley, Presiding

DENNIS HESTON,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3012999
	:	
SUEZ WATER PENNSYLVANIA INC.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th 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

Dennis Heston
910 Thornton Drive
Mechanicsburg, PA 17055
dmheston@yahoo.com



Thomas T. Niesen (PA ID # 31379)