

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 25, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Dennis Heston

C-2019-3012999

v.

Suez Water Pennsylvania Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Suez Water Pennsylvania Inc. (Suez or Respondent) on June 15, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley, issued May 26, 2022, in the above-captioned proceeding. The Initial Decision sustained the Formal Complaint (Complaint) filed by Dennis Heston (Complainant) on September 10, 2019. No Replies to Exceptions were filed. For the reasons stated below, we shall grant Suez's Exceptions, and reverse the ALJ's Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding

On September 10, 2019, the Complainant filed a Complaint, alleging that Suez failed to provide adequate and reasonable service. The Complainant alleged that Suez replaced a water main in the area which led to a decrease in water pressure in his residence such that two appliances that used water could not be operated at the same time. The Complainant requested that the low water pressure situation be corrected. Complaint at 2-3.

On October 9, 2019, Suez filed an Answer to the Complaint (Answer) denying any reliability, safety or quality problem and contending that there was no water pressure issue. Suez averred that following the main replacement referred to in the Complaint, Suez conducted pressure tests on the system and found the new water pressure levels to be within the permitted range of the Commission's Regulation at 52 Pa. Code § 65.6. Suez requested that the Complaint be dismissed. Answer at 1-2.

The evidentiary hearing took place on May 26, 2020. The Complainant appeared *pro se* and presented testimony on his own behalf but did not offer any exhibits. Suez was represented by counsel and presented the testimony of Mr. Arthur Saunders, the Engineering Manager for Suez. Five exhibits were admitted into evidence (Suez Exhibits 1-5). I.D. at 2.

The record closed on April 6, 2022. *Id.* at 3.

In the Initial Decision issued on May 26, 2022, ALJ Buckley sustained the Complaint because the Complainant proved by a preponderance of the evidence that Suez violated the Public Utility Code (Code) at 66 Pa. C.S. § 1501. The ALJ also directed Suez to restore service to the same level that the Complainant had before September 2019. *Id.* at 1, 3, 10-11.

As noted, *supra*, Suez filed Exceptions on June 15, 2022. No Replies to Exceptions were filed.

II. Background

The dispute between the Parties concerns the water pressure level experienced by the Complainant following a water main replacement project by Suez to address water quality issues and chronic water main breaks and leaks. Due to the reconstruction of Route 15 in 2003 creating a wetland area where the existing main was located and Suez's unsuccessful attempts to obtain the necessary easements across private property for a replacement main, Suez chose to absorb and hydraulically serve the area, including the Complainant's residence, from a different pressure district than the one used to serve the area prior to the main replacement. Tr. at 9-10, 22.

Following the replacement of the water main in the Thornton Drive area of Mechanicsburg, the Complainant testified that the water pressure in his home dropped substantially, so much so that it is not possible to operate two water-using appliances in the residence at the same time. *Id.* at 5-6. Suez acknowledged that the water pressure along parts of Thornton Drive, Mechanicsburg, where the Complainant's residence is located, was less than the water pressure that was available prior to the main replacement, but it remained within the permitted water pressure levels under the Commission's Regulation at 52 Pa. Code § 65.6. *Id.* at 11-12.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v.*

Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Safe, Adequate and Reasonable Water Service

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

§ 1501. Character of service and facilities

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. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

Section 1501 of the Code does not require a public utility to provide perfect service, but a public utility is obligated to provide service that is reasonable and adequate.

Analytical Lab Servs., Inc. v. Metro. Edison Co., Docket No. 2006608 (Order entered December 21, 2007). The term “service” is defined broadly under Section 102 of the Code to include any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities, used, furnished or supplied by public utilities. See 66 Pa. C.S. §102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995). “Inappropriate and unreasonable treatment to customers can be interpreted as inadequate service...” *Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Order entered May 9, 2011) (citing *Edward T. O’Toole v. Metropolitan Edison Co.*, Docket No. C-20030854 (Order entered May 9, 2005)). Quality customer service is expected of all regulated utilities. *Id.*

B. ALJ’s Initial Decision

In his Initial Decision, ALJ Buckley made sixteen Findings of Fact and reached five Conclusions of Law. I.D. at 3-5 and 10-11. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ sustained the Complaint, finding that the Complainant met his burden of proving, by a preponderance of the evidence, that Suez violated 66 Pa. C.S. § 1501 because Suez failed to provide adequate and reliable service. I.D. at 10. The ALJ found that the new water pressure at the Complainant’s residence being within the required range pursuant to the Commission’s Water Service Regulations does not refute the Complainant’s claim that Suez has not provided reliable and adequate service. The ALJ further concluded that compliance with the Commission Regulation at 52 Pa. Code § 65.6 does not in itself prove that the Complainant is being provided with adequate service within the meaning of 66 Pa. C.S. § 1501. *Id.* at 9. Rather, the ALJ reasoned that

“[w]hen there has been such a pronounced deterioration in the quality of service as has been established by the Complainant’s uncontradicted testimony and which has been caused by the utility, then the utility has violated the requirements of Section 1501. This includes rendering inadequate water pressure.” *Id.*, citing *Honey Brook Water Co. v. Pa. PUC*, 647 A.2d 653 (Pa. Cmwlth. 1994; *Fox Ridge Vill., LP v. Pa. PUC*, 258 A.3d 1161, (Pa. Cmwlth. 2021 Unpublished).

The ALJ concluded that reasonable and adequate utility service is not provided when the actions of a utility substantially degrade the quality of service previously enjoyed by a customer, and technical compliance with the Commission’s Regulation is not dispositive of the issue in this case. Inasmuch as Suez caused the decline in quality or service, the ALJ directed Suez to take the necessary steps to restore the same quality of service that the Complainant enjoyed before Suez replaced the water main that led to the decrease in pressure at the service address. *Id.* at 10.

C. Exceptions

1. Suez’s Exception No. 1

In its Exception No. 1, Suez excepts to the ALJ’s conclusion that the Complainant demonstrated by a preponderance of the evidence that Suez violated a provision of the Code. To the contrary, Suez argues that the system upgrade project and its service to the Complainant complies with the Commission’s Regulations and the Code. Specifically, Suez contends that the design and construction of its system upgrade complies with the Commission’s Regulations at 52 Pa. Code §§ 65.17 and 65.18, and the water pressure received by the Complainant at the main serving his residence is within the range of pressures required at 52 Pa. Code § 65.6. In support of its argument, Suez reiterated the results of a pressure study with recorded pressures taken at the main every two minutes for a fourteen-day period in October 2019 showing the average pressure at

that time being 41.85 p.s.i.g., and within the range of the pressures required by 52 Pa. Code § 65.6. Exc. at 3-5, citing Suez Exh. 2; Tr. at 12-14.

In addition, Suez avers that the ALJ improperly relied on the Complainant's testimony regarding water pressure inside the home when reaching his conclusions. To that end, Suez argues that the Initial Decision is contrary to the Commission's decision in *Martinko v. Aqua Pennsylvania, Inc.*, Docket No. C-2013-2352596 (Order entered December 10, 2014) (*Martinko*). Suez contends that, in *Martinko*, the Commission held that 52 Pa. Code § 65.6 requires utilities to maintain the specific level of water pressure at the main, which is where the most insightful test of water pressure to determine service adequacy should be taken, rather than within a particular customer's home. Suez maintains that there is no underlying basis to conclude that Suez's service is inadequate here. Exc. at 5-7.

Suez also contends that the Initial Decision's conclusion that the Complainant is entitled to receive the same quality of service (*i.e.* water pressure) he enjoyed before the water main was replaced is incorrect. Suez avers that 66 Pa. C.S. § 1501 does not create a statutory entitlement to a level of service to which a customer may have become accustomed or previously enjoyed. Suez argues that the Initial Decision fails to recognize the improvements in service as a result of the system upgrade, which include improved water quality, fewer main breaks, shortened service outages, and improved fire protection. *Id.* at 7.

Finally, Suez states that there are things the Complainant can do to improve his water pressure, including installing an in-home water booster pump; however, the Complainant made it clear to the ALJ that he is not interested in having a booster pump installed. *Id.* at 7-8.

Suez concludes that the system upgrade was necessary to replace aging facilities, and that the resulting water pressures are consistent with the original modeling for the project and with the water service pressures in the remainder of the pressure district. Suez points out that a water pressure study at the main serving the Complainant's residence demonstrates that pressure is well within the range of pressures required by the Commission's Regulation. Suez contends that its service is reasonable and adequate and in full compliance with Commission Regulations, and, therefore, the Initial Decision should be rejected and the Complaint should be denied and dismissed. *Id.* at 8.

2. Suez's Exception No. 2

Suez, in its Exception No. 2, excepts to the ALJ's directive that it restore the Complainant's service to the level that he had before September 2019. Suez argues that there is nothing it can do on its system to increase water pressure at the Complainant's residence to levels experienced prior to the system upgrade. Moreover, Suez states that the Complainant refused the installation of a booster pump. Suez contends that the directive to restore service to prior levels should be rejected. *Id.* at 8-9.

D. Disposition

Upon our review of the record and the arguments, we conclude that the water service (*i.e.*, water pressure) being provided to the Complainant complies 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. Specifically, 52 Pa. Code § 65.6 provides, in relevant part, 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.

52 Pa. Code § 65.6(a).

In addition, the water pressure regulation set forth above is part of the Standards of Design and Construction of water plant at 52 Pa. Code §§ 65.17 and 65.18, which, in pertinent part, state as follows:

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.

52 Pa. Code §§ 65.17 and 65.18.

The evidence of record in this case shows that the water pressure on the Complainant's service line just inside the main serving his residence is within the range of pressures required by 52 Pa. Code § 65.6. Suez presented the results of a pressure study with recorded pressures taken at the main that serves the Complainant's residence every two minutes for a fourteen-day period from October 11, 2019, through October 25, 2019, which showed that the average pressure during the fourteen-day period was 41.85 p.s.i.g., which is within the range of pressures required by 52 Pa. Code § 65.6. The pressure study further showed that there is little variation or fluctuation in pressure

and that there are very few pressure recordings less than 40 p.s.i.g. See Suez Exh. No. 2; Tr. at 12-15.

We do not agree with the Initial Decision's conclusion in this case that the Complainant is entitled to receive the same quality of service (*i.e.* water pressure) he enjoyed before the replacement of the water main.¹ Pursuant to 66 Pa. C.S. § 1501, utility service must be reasonable and adequate; however, Section 1501 does not create a statutory entitlement to a level of service to which a customer may have become accustomed or previously enjoyed, if the current service being provided complies with Commission requirements. Rather, Section 1501 provides that “[s]uch service and facilities shall be in conformity with the regulations and orders of the commission,” 66 Pa. C.S. § 1501, which, as the water pressure study discussed above demonstrated, is the case here.

In addition, the Initial Decision appears to rely on the testimony of the Complainant regarding water pressure inside his home in reaching its conclusion. However, the Initial Decision's conclusion is contrary to the Commission's decision in *Martinko v. Aqua Pennsylvania, Inc.*, Docket No. C-2013-2352596 (Order entered December 10, 2014) (*Martinko*)²; See also *Costanza v. United Water Pa., Inc.*, C-00015211 (Order entered February 8, 2002). In *Martinko*, the Commission dismissed

¹ We agree that the two cases cited by the ALJ in his Initial Decision support the conclusion that a rendering of inadequate water pressure may be a violation of 66 Pa. C.S. § 1501; however, both of these cases are distinguishable from the instant matter. In *Honey Brook Water Co. v. Pa. PUC*, 647 A.2d 653 (Pa. Cmwlth. 1994), the utility failed to comply with a prior Commission order to install a well to remedy poor water pressure. In *Fox Ridge Vill., LP v. Pa. PUC*, 258 A.3d 1161 (Pa. Cmwlth. 2021 Unpublished), the Commission determined that the utility acted reasonably by requiring a developer to install a booster pump for development of homes above a certain altitude.

² In *Martinko*, the Initial Decision of the ALJ, which was issued on October 29, 2014, became final without further Commission action in its Order entered December 10, 2014. Any citations to page numbers herein refer specifically to the pages of the Initial Decision.

a complaint against Aqua Pennsylvania, Inc. (Aqua) that alleged fluctuations in water pressure that affected showers and household chores because Aqua presented water pressure test results taken at the main that demonstrated compliance with 52 Pa. Code § 65.6. In the Initial Decision, which became final without further Commission action, the ALJ stated:

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 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.

Martinko at 12. The ALJ, in discussing the relative significance of pressure testing at the main versus inside the house, explained that the most insightful test of water pressure for the purpose of determining service adequacy is that taken at the main. To that end, the ALJ stated:

... 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.

Id.

Based upon our review of the record, we conclude that there is no basis to find here that the service provided by Suez (*i.e.* water pressure) is inadequate or unreasonable. The water service pressures following the system upgrade necessary to replace aging facilities, are consistent with the original modeling for the project and with the water service pressures in the remainder of the area served by the pressure district. Following the system upgrade constructed by Suez, the study of water pressure at the main serving the Complainant's residence demonstrates that pressure is within the range of water pressures required by 52 Pa. Code § 65.6. Moreover, we find that 66 Pa. C.S. § 1501 does not create a statutory entitlement to a level of service to which a customer may have become accustomed or previously enjoyed, if the current service being provided is in compliance with the Commission Regulations. For these reasons, we conclude that the service (*i.e.*, water pressure) being provided to the Complainant's residence is reasonable and adequate, and that the Complainant has failed to prove that Suez has violated any provision of the Code, or a Commission order or regulation. Accordingly, we shall grant Suez's Exception No. 1, and, therefore, deny and dismiss the Complaint.

Turning to Suez's Exception No. 2, inasmuch as we concluded above that the service (*i.e.*, water pressure) being provided by Suez to the Complainant is reasonable and adequate, we find here that the directive for Suez to restore service to the level that the Complainant experienced prior to September 2019 should be rejected. Following the completion of the system upgrade that resulted in other benefits to Suez's system and customers, there is nothing that Suez can do on its system to increase pressure to the Complainant's residence. *See* Tr. at 25. However, if the Complainant is dissatisfied with

the water pressure inside his home, there are things he can do to increase the pressure, including the installation of an in-home water booster pump, which is the responsibility of the homeowner, not the utility.³ *Id.*; *See also Martinko* at 15. Therefore, we find that the directive that Suez restore Complainant's service to the level that he experienced before September 2019 should be rejected. Accordingly, we shall grant Suez's Exception No. 2.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall grant the Exceptions of Suez Water Pennsylvania Inc., and therefore, reverse, the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Suez Water Pennsylvania Inc., filed on June 15, 2022, to the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on May 26, 2022, at this docket, are granted, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Dennis J. Buckley, issued on May 26, 2022, at this docket, is reversed, consistent with this Opinion and Order.

³ As for the installation of a booster pump, we note that the Complainant was opposed to having a booster pump installed. *Id.* at 26-27. In addition, Suez notes that sometimes what is perceived to be a pressure deficiency inside the home is a flow issue that might be addressed through investigation of the customer-owned service lines by the customer. *See Tr.* at 23-25.

3. That the Formal Complaint of Dennis Heston, filed on September 10, 2019, at this docket, is denied, consistent with this Opinion and Order.

4. That the proceeding at Docket No. C-2019-3012999 shall be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: August 25, 2022